



2025/74

14.1.2025

**COMMISSION IMPLEMENTING REGULATION (EU) 2025/74**

**of 13 January 2025**

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

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

**1. PROCEDURE**

**1.1. Initiation**

- (1) On 23 May 2024, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of lysine originating in the People's Republic of China ('the country concerned' or 'the PRC') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). It published a Notice of Initiation in the Official Journal of the European Union <sup>(2)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 8 April 2024 by Metex Noovistago <sup>(3)</sup> ('the complainant'). The complaint was made by the Union industry of lysine in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

**1.2. Registration**

- (3) The Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2024/2732 of 24 October 2024 ('the registration Regulation') <sup>(4)</sup>.

**1.3. Interested parties**

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

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

<sup>(2)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of lysine originating in the People's Republic of China (C/2024/3265) OJ C series 23.05.2024. ELI: EUR-Lex - 52024XC03265 - EN - EUR-Lex.

<sup>(3)</sup> Metex Noovistago was acquired by Group Avril and, on 16 July 2024, changed its legal name to Eurolysine.

<sup>(4)</sup> Commission Implementing Regulation (EU) 2024/2732 of 24 October 2024 making imports of lysine originating in the People's Republic of China subject to registration ELI: [http://data.europa.eu/eli/reg\\_impl/2024/2732/oj](http://data.europa.eu/eli/reg_impl/2024/2732/oj).

#### 1.4. Comments on initiation

- (6) Following initiation, the Confederación Española de Fabricantes de Alimentos Compuestos para animales ('CESFAC'- the Spanish confederation of animal feed producers), Andrés Pinaluba S.A. (a lysine importer and distributor) and the Vall Companys Group (a user of lysine and animal feed producer also represented by CESFAC) claimed that the Eurostat import statistics under CN code 2922 41 00, presented in the complaint, do not allow for objective examination of injury factors as they are based on the "as reported" import data, as Eurostat does not distinguish between the different types of imported lysine [lysine hydrochloride ("HCl") and liquid lysine], which have varying concentration levels of the amino acid. CESFAC, Pinaluba and Vall Companys claimed that aggregating lysine types with significantly different concentrations per unit of measurement, without any adjustment to bring them to the same level, leads to volume and price distortions. They further claimed that all the injury elements that rely on import statistics (i.e. import volume, import share, Union consumption, market share data) described in the complaint were based on the inadequate "as reported" data and that Metex Noovistago did not disclose the "as corrected" import statistics in the non-confidential version of the complaint. CESFAC, Pinaluba and Vall Companys noted that the Union industry's refusal to disclose the "as corrected" import statistics undermined their right of defence in this proceeding and stands in violation of Article 19 of the basic Regulation. For this reason, they requested the Commission to provide the "as corrected" data, or at least to disclose of a comprehensive non-confidential summary of the information.
- (7) Firstly, the Commission agreed that different types of lysine with varying concentrations, without an adjustment accounting for this, do not allow for an objective assessment of the Union consumption, lysine volume imported and price calculation. The Commission adjustment of imported volumes and prices in the investigation is set out in recital (234).
- (8) While it is true that some of the import statistics in the complaint are based on 'as reported' data from Eurostat, the Commission noted that the non-confidential version of the complaint contains, in section 'Market data with correction for the lysine content', the conversion rate from liquid lysine to lysine HCl, and the conversion rate from lysine sulphate to lysine HCl. To obtain the import values for imports under CN 2922 41 00 expressed in 'lysine HCl equivalent', the Union industry applied the above-mentioned conversion rates. The Commission therefore considered that, since the Union industry disclosed publicly available Eurostat import data, the corresponding conversion factors to adjust liquid lysine and lysine sulphate to HCl equivalent, and the converted import prices (paragraph 265 of the non-confidential version of the complaint), all interested parties had access to the final "as corrected" import data. Therefore, the claims became moot.
- (9) Following initiation, the China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters ('CCCMC') also submitted comments related to the complaint and the initiation of the investigation.
- (10) CCCMC claimed that the investigation was initiated in the absence of sufficient and objective evidence of injury as required by Articles 5.3 of the WTO Anti-Dumping Agreement ("ADA") and Article 5(2) of the basic Regulation and that the Commission failed to review properly the information in the complaint as required by Article 5(3) of the basic Regulation.
- (11) In particular, CCCMC claimed that the Union industry's assessment on the evolution of lysine sulphate volumes is based on mere assumptions and that the allegation of low Chinese prices is based on unobjective and incorrect data. The claim is based on the Union industry's using Eurostat import data, which is by nature not detailed enough to estimate the volumes, and then applying assumptions regarding the ratios of the different volumes.
- (12) At the outset, the Commission noted that it carried out its examination of the complaint in accordance with Article 5 of the basic Regulation and came to the conclusion that the requirements for initiation of an investigation were met, i.e. that there was sufficient evidence to initiate the investigation.

- (13) According to Article 5(2) of the basic Regulation, a complaint shall contain such information as is reasonably available to the Union industry. The legal standard of evidence required for the purpose of initiating an investigation ('sufficient' evidence) is different from that which is necessary for the purpose of a preliminary or final determination of the existence of dumping, injury or of a causal link. Therefore, evidence which is insufficient in quantity or quality to justify a preliminary or final determination of dumping, injury or causation, may nevertheless be sufficient to justify the initiation of an investigation. In this regard, CCCMC did not substantiate why the ratio applied by the complainant to the Eurostat import data was not adequate. Therefore, the claim was rejected.
- (14) CCCMC also claimed that the Commission failed to examine and to consider publicly known challenges faced by the Union industry to procure main raw materials and energy in quantities for the production at competitive prices, as well as scientific findings that are likely to affect consumer's choices and change consumption pattern in the EU.
- (15) In this regard, the Commission noted that the claim of CCCMC goes beyond the requirements of Article 5(3) of the basic Regulation, as the Commission's role at initiation stage is to examine the accuracy and adequacy of the evidence provided in the Union industry to determine whether there was sufficient evidence to justify the initiation. CCCMC failed to explain how, the alleged challenges and scientific findings call this conclusion into question. Therefore, the claim of CCCMC was rejected.
- (16) Moreover, CCCMC claimed that its rights of defence were severely infringed because (i) the open version of the complaint treated import volumes as reported from Eurostat without disclosing the data 'as corrected' by applying the conversion rates, (ii) the injury factors would not allow for an objective understanding of the data submitted in confidence, (iii) the annexes pertinent to export prices were reported as non-susceptible to summarisation of 'as corrected' amounts, and (iv) most of the sources of information on which the complaint was based were not disclosed.
- (17) On the above claims the Commission noted that as the Union industry consists of a single producer, it is justified that injury factors were given in ranges and in indexed form in the complaint to preserve the confidential nature of such data. The Eurostat import volumes 'as corrected', indexes and ranges allow for an understanding of the trends and levels of the data on the various injury indices submitted by the applicant in confidence. Regarding the non-disclosure of sources for the conversion, the Union industry provided the data 'as corrected' and explained the sources of information used<sup>(?)</sup>, therefore, this part of the claim became moot. In view of the considerations above, CCCMC claim was rejected.

### 1.5. Sampling

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

#### 1.5.1. Sampling of importers

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

#### 1.5.2. Sampling of exporting producers in the PRC

- (21) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

<sup>(?)</sup> t24.009771, t24.009918.

- (22) Six exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample.
- (23) The exporting producer CJ (Liaocheng) Biotech Co., Ltd. ('CJ') argued that a sample of two groups was a departure from the Commission's well-established practice of selecting three exporting producers, and that its inclusion in the sample would provide benefits as there are no foreign-owned producers in the provisional sample, and that adding a third group to the sample will avoid unnecessary difficulties if one of the sampled is found not to be cooperating at a later stage. The Commission notes that the sample originally selected on 4 June 2024 covered a substantial share of the imports to the Union of the product under investigation originating in the People's Republic of China, initially assessed at [67-77] %. Moreover, the Commission considered that such sample could reasonably be investigated within the time available. The Commission noted that a sample of less than three producers is not exceptional and that it cannot anticipate possible withdrawals from cooperation. Finally, the Commission recalled that the presence of foreign-owned companies in the sample is not a criterion listed under Article 17(1) of the basic Regulation. Consequently, the Commission rejected the claim submitted by CJ and confirmed the sample selected on 4 June 2024.

#### 1.6. Individual examination

- (24) No exporting producers in the PRC requested individual examination under Article 17(3) of the basic Regulation.

#### 1.7. Questionnaire replies and verification visits

- (25) The Commission sent questionnaires to the Union producer, the sampled exporting producers in the PRC and the importers that had come forward. It also provided a questionnaire to a user that made itself known to the Commission. The same questionnaires were made available online on the day of initiation.
- (26) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (27) Questionnaire replies were received from the sole Union producer, the two sampled Chinese exporting producers, three importers and one user. No questionnaire replies were received from the GOC.
- (28) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

#### *Union producers*

— Eurolysine SAS - Amiens, France

#### *Importers*

— Andrés Pinaluba S.A., Reus, Spain

#### *Users*

— Vall Companys Group, Lleida, Spain

#### *Exporting producers in the PRC and their related importers in the Union*

— Heilongjiang Eppen Biotech Co.,Ltd ("Eppen")

— Eppen Netherlands B.V. - Rotterdam, Netherlands

- Heilongjiang Eppen Biotech Co., Ltd. - Daqing, China
- Meihua Holdings Group Co. Ltd (“Meihua”):
  - Jilin Meihua Amino Acid Co., Ltd. - Baicheng, China
  - Meihua Holdings Group - Langfang, China

#### 1.8. Investigation period and period considered

- (29) The investigation of dumping and injury covered the period from 1 January 2023 to 31 December 2023 (‘the investigation period’). The examination of trends relevant for the assessment of injury covered the period from 1 January 2020 to the end of the investigation period (‘the period considered’).

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

### 2.1. Product under investigation

- (30) The product under investigation is lysine and its esters, salts thereof, and feed additives, consisting of dry weight basis of 68 % or more, but not more than 80 % of L-lysine sulphate, and not more than 32 % of other components such as carbohydrates and other amino acids (‘the product under investigation’).
- (31) The Chemical Abstracts Service (CAS) registry number for L-lysine hydrochloride is 657-27-2, for aqueous solution of lysine is 56-87-1, and for lysine sulphate is 60343-69-3 and 94195-18-3.
- (32) Lysine is an essential amino acid, a building block for making proteins, that is necessary for human and animal health. Lysine is produced by bio-fermentation: the transformation of carbohydrates into amino acids by the interplay of bacterial strains. Lysine is used in a wide range of applications, for example feed market, pharma and food (dietary supplement).

### 2.2. Product concerned

- (33) The product concerned is the product under investigation originating in the PRC, currently falling under CN codes ex 2309 90 31 and ex 2309 90 96 for Lysine sulphate, and under CN code 2922 41 00 for lysine hydrochloride and aqueous solution of lysine (TARIC codes 2309 90 31 41, 2309 90 31 49, 2309 90 96 41, 2309 90 96 49) (‘the product concerned’).

### 2.3. Like product

- (34) The investigation showed 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 investigation produced and sold on the domestic market of the PRC; and
  - the product under investigation produced and sold in the Union by the Union industry.
- (35) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

### 2.4. Product exclusion claim

- (36) CCCMC claimed that the scope of the investigation should be restricted to lysine hydrochloride and not cover lysine sulphate because the latter is not produced by the Union industry. CCCMC claimed that lysine sulphate and lysine hydrochloride are different products with their own distinct characteristics and usage.

- (37) In this respect, the Commission first noted that all three forms of lysine (HCl, liquid and sulphate) were meant to be covered by the product description in recitals (30) to (32). The Commission then noted that the investigation has shown that lysine hydrochloride and lysine sulphate have similar essential physical, technical and chemical characteristics. The production process of the three forms of lysine (HCl, liquid and sulphate) is very similar. The main difference occurs at the end of the manufacturing process depending on whether the final form of lysine is powdered or liquid. As a nutrient, lysine can be brought into different forms and these different forms are competing with each other. Additionally, the variations in the product under investigation, i.e. the form of lysine and the content of lysine in the product, do not alter its basic definition, its characteristics, or the perception that various parties have of it. The different forms of lysine have the same function, i.e. to provide highly digestible lysine to animals and human beings, either in pharmaceutical products, in food (as a dietary supplement), or feed. The lysine form is irrelevant all three forms are interchangeable as they are the same nutrient. This has been also confirmed by an EU lysine importer and a user in their questionnaire replies and written submissions<sup>(6)</sup>. Finally, the fact that this product type is currently not manufactured by the Union industry is irrelevant in view of the direct competition between the three main product types, as explained above.
- (38) Therefore, this claim is rejected at this stage of the investigation.

### 3. DUMPING

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

- (39) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (40) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide information regarding the inputs used for producing lysine. Six exporting producers submitted the relevant information.
- (41) In order to obtain information, which 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. 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.
- (42) Following the initiation, the Commission received comments regarding the applicability of Article 2(6a) from the CCCMC that are addressed in section 3.2.10 below.
- (43) In point 5.3.2. of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may 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.
- (44) On 28 June 2024, the Commission informed by a note to the file interested parties on the relevant sources it intended to use for the determination of the normal value ('the First Note').

<sup>(6)</sup> TRON save number: t24.006315.

- (45) 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 lysine. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified three possible representative countries, namely Brazil, Colombia and Thailand. Due to the lack of data for producers of lysine in the possible representative countries, the Commission informed that it would base its calculations on data regarding the production of citric acid, a product in the same sector as lysine and with a similar production process. The Commission received comments on the First Note from the complainant, from the exporting producers Heilongjiang Eppen Biotech Co.,Ltd ('Eppen') and Meihua Holdings Group Co. Ltd ('Meihua') and from the users Barentz Iberia S.L.U and Agri Nutrition B.V. The comments are addressed in the relevant sections below.
- (46) On 31 October 2024, the Commission addressed the comments received from interested parties on the First Note in a Second Note to the file ('the Second Note') and informed interested parties on the relevant sources it intended to use for the determination of the normal value, with Colombia as the representative country. It also informed interested parties that it would establish selling, general and administrative ('SG&A') costs and profits based on available information for the company Sucroal S.A. (Sucroal), a producer in the representative country.
- (47) The Commission received comments to the Second Note from the complainant and from the exporting producers Eppen and Meihua referring to the sources used to establish undistorted costs in the representative country. These have been addressed under the respective headings of section 3.4 below. Additionally, Eppen repeated their position expressed in their comments on the First Note that significant distortions within the meaning of Article 2(6a) of the basic Regulation do not exist and that therefore the domestic costs and prices should be used in the investigation. These comments are addressed under section 3.2 below.
- (48) After having analysed the comments and information received, the Commission concluded that Colombia was an appropriate representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are developed in detail in Section 3.3 below.

### 3.2. Normal value

- (49) 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".
- (50) 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').
- (51) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

#### 3.2.1. Existence of significant distortions

- (52) 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.”*
- (53) 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.
- (54) 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.
- (55) 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”.
- (56) Pursuant to this provision, the Commission issued a country report concerning China (*‘the Report’*)<sup>(7)</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 was placed on the investigation file at initiation.
- (57) The Union industry argued that prices or costs of the product under investigation, 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 and that, as a result, it is not appropriate to use domestic prices and costs to establish normal value.

(7) 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.



- (58) To support this position, the Union industry referred to the evidence contained in the Report <sup>(8)</sup>, to findings in several recent Commission investigations - namely the ones concerning sodium gluconate <sup>(9)</sup>, certain polyvinyl alcohols <sup>(10)</sup>, sulphanilic acid <sup>(11)</sup>, citric acid <sup>(12)</sup> and monosodium glutamate <sup>(13)</sup>-, as well as US trade authority conclusions on citric acid and sodium gluconate. It also referenced US determinations regarding prices and costs in China highlighting factors such as the socialist market economy doctrine, the Communist Party's of China ('CCP' or 'Party') leading role and the interventionist economic policy of the Chinese state.
- (59) Moreover, pointing out that the producers in the above-mentioned Commission investigations are the same as those in the lysine sector, the Union industry recalled the following elements pointing to the existence of significant distortions.
- (60) First, the chemical sector, including the lysine subsector, is being served to a significant extent by enterprises that operate under the ownership, control or policy supervision or guidance of state authorities:
- As established in the sodium gluconate investigation, a substantial degree of ownership and control by the GOC persisted in the chemical sector, with a number of enterprises, even if not fully state-owned, found to have an important proportion of direct and indirect state shareholding.
  - Similarly, the sulphanilic acid investigation showed that the CCP entertained a prominent role in the operations and decision-making processes of several Chinese exporting producers of that product.
- (61) Second, the state presence in lysine companies also allows the authorities to interfere with prices and/or costs:
- Under the PRC's company law, every company must establish a CCP organization if it has at least three CCP members, as outlined in the CCP Constitution <sup>(14)</sup> and the company shall provide the necessary conditions for the activities of the party organization. These rules are also applicable to the producers of lysine and the suppliers of their inputs.
  - As established in the monosodium glutamate investigation, in the case of Meihua Group, one of the lysine producers, four of the members of the Board were listed to be CCP members in 2022, among them the Deputy Director and the Finance Director. Moreover, the Commission found in that investigation evidence of Meihua's Party building activities and the CCP's influence on the company's operations. On top of that, local authorities supported the construction of Meihua's lysine plant which started production in 2021 in Jilin. According to the complaint, it has a production capacity of 500 tonnes of lysine sulphate per day.

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<sup>(8)</sup> Referring also to the updated version of the Report, published in 2024 (see below).

<sup>(9)</sup> Commission Implementing Regulation (EU) 2023/752 of 12 April 2023 imposing a definitive anti-dumping duty on imports of sodium gluconate 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. ELI: [http://data.europa.eu/eli/reg\\_impl/2023/752/oj](http://data.europa.eu/eli/reg_impl/2023/752/oj).

<sup>(10)</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. ELI: [http://data.europa.eu/eli/reg\\_impl/2020/1336/oj](http://data.europa.eu/eli/reg_impl/2020/1336/oj).

<sup>(11)</sup> Commission Implementing Regulation (EU) 2021/441 of 11 March 2021 imposing a definitive anti-dumping duty on imports of sulphanilic acid 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. ELI: [http://data.europa.eu/eli/reg\\_impl/2021/441/oj](http://data.europa.eu/eli/reg_impl/2021/441/oj).

<sup>(12)</sup> Commission Implementing Regulation (EU) 2021/607 of 14 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. ELI: [http://data.europa.eu/eli/reg\\_impl/2021/607/oj](http://data.europa.eu/eli/reg_impl/2021/607/oj).

<sup>(13)</sup> Commission Implementing Regulation (EU) 2021/633 of 14 April 2021 imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China and in Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council. ELI: [http://data.europa.eu/eli/reg\\_impl/2021/633/oj](http://data.europa.eu/eli/reg_impl/2021/633/oj).

<sup>(14)</sup> Report, p. 26.

- In the case of Ningxia Eppen Biotech Co., Ltd., the Commission found in the monosodium glutamate investigation that the company's Chairman served as a representative to the 12<sup>th</sup> People's Congress of the Ningxia Hui Autonomous Region, at least until July 2020. Also, the Ningxia Federation of Industry and Commerce highlighted the CCP's involvement in the company's operations, stating that the Party Committee Secretary and relevant Party Organization leaders are required to participate in key meetings and communicate decisions to Party members and stakeholders. Additionally, Guangxin Group which owns 99.22% of Ningxia Eppen Biotech Co., Ltd., is a wholly owned by the Guangdong Provincial Government focused on new materials development <sup>(15)</sup>.
  - As regards the Fufeng Group, another lysine producer, representatives of the US Congress assert that the group has close links to the CCP <sup>(16)</sup>. In the monosodium glutamate investigation, the Commission found that Fufeng not only had the support of CCP members and local public authorities but that the latter coordinated matters of interest for the company <sup>(17)</sup>.
  - Furthermore, the Chairman and General Manager of Yufeng Industrial Group, a further lysine producer, has been a CCP member since 1994 and the group's online presence also features dedicated sections for CCP members and related activities <sup>(18)</sup>.
  - The sodium gluconate investigation demonstrated that the GOC was in a position to interfere with prices and costs in the chemical sector through personal connections between exporting producers and the CCP, at the level of manufacturing enterprises, producers of raw materials, as well industry associations.
  - Moreover, since most lysine producers are probably members of the China Food Additive and Ingredients Association and they or their suppliers are members of the China Starch Industry Association ('CSIA'), they have to follow the overall leadership of the CCP and organize Party activities in their companies.
- (62) Third, the GOC pursues public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces:
- China's resource allocation system prioritizes sectors deemed strategic or politically <sup>(19)</sup> significant by the government, rather than relying on market forces. The chemical industry, including lysine production, is recognized as important, as evidenced by numerous government plans and directives at various administrative levels. Lysine production specifically is influenced by policies related to corn deep processing, as outlined in the 13<sup>th</sup> FYP on Grain and Oil Processing. The plan has resulted is, among others, in excess capacity and increased exports.
  - In addition, with regard to inputs, the Commission found in the monosodium glutamate investigation <sup>(20)</sup> that the corn sector in China is heavily regulated, with the government maintaining significant stockpiles that allow for manipulation of market prices through strategic buying and selling. Despite efforts to address excessive reserves since 2016, these stockpiles continue to distort prices. The government oversees all aspects of the corn value chain, including production subsidies and processing operations, as indicated by the National Development and Reform Commission directives aimed at ensuring food security and balancing supply and demand. Furthermore, investment in corn deep processing projects is subject to strict regulatory management under the State Council Order No. 673 <sup>(21)</sup>.

<sup>(15)</sup> See at: <http://www.cnchemicals.com/Press/91652-Star%20Lake%20Bioscience%20to%20acquire%20Eppen%20Biotechs%2099.22%20percent%20equity.html>; here Annex 11 (accessed on 21 October 2024).

<sup>(16)</sup> See at: <https://thehill.com/policy/defense/3662967-lawmakers-raise-concerns-about-chinese-based-firms-acquisition-of-land-near-us-military-installation/>; here Annex 12 (accessed on 21 October 2024).

<sup>(17)</sup> See Regulation 2021/633, rec. 62.

<sup>(18)</sup> See at: <http://en.yufengholding.cn/news/11.html> and [http://en.yufengholding.cn/product/14/#c\\_portalResProduct\\_list-16062041548822158-2](http://en.yufengholding.cn/product/14/#c_portalResProduct_list-16062041548822158-2); here Annex 14 (accessed on 21 October 2024).

<sup>(19)</sup> See Regulation 2023/752, rec. 51 and 52.

<sup>(20)</sup> See Regulation 2021/633, rec. 76.

<sup>(21)</sup> *Ibid.*, rec. 77.

- State policies in China significantly influence the corn sector at both national and provincial levels, as exemplified by the Heilongjiang 2017 Guiding Opinion on the Development Layout of the Corn Deep Processing Industry <sup>(22)</sup>. This document encourages the establishment of large-scale operations and provides for state financing for eligible enterprises, which in turn shows ongoing government interference, aligned with the objectives of the national 14<sup>th</sup> FYP.
  - The Commission also identified significant state interference in the ammonia sector, a key raw material for monosodium glutamate production, as outlined in China's 13<sup>th</sup> FYP for the Petrochemical and Chemical Industry, which sets annual ammonia production targets exceeding 1 million tonnes. Local policies, such as those in Hebei <sup>(23)</sup>, further support this initiative, particularly through the development of large ammonia facilities and preferential electricity pricing in regions like Chongqing and Zhejiang <sup>(24)</sup>. Such government involvement throughout the entire lysine value chain has the potential to distort market prices.
  - In the sodium gluconate investigation, the industry was found to be subject to several plans, directives and other policy documents focused on chemicals, including food additives, which were issued at national, regional and municipal level, such as the 14<sup>th</sup> FYP. The latter's technological goals were further defined in the 14<sup>th</sup> FYP on Developing the Raw Materials Industry.
- (63) Fourth, much like in other sectors of the Chinese economy, the chemical sector is subject to the distortions resulting from the discriminatory application or inadequate enforcement of bankruptcy, corporate and property laws:
- Referring to the Report and recent Commission investigations, the Union industry pointed out that lysine producers are affected by distortions resulting from discriminatory application of relevant legislation, in particular when it comes to insolvency and land use rights allocation.
- (64) Fifth, wage costs are distorted in the chemical sector as well:
- With reference to the Report, the Union industry indicated restrictions on collective organization, the lack of ratification of International Labour Organisation ('ILO') conventions, the presence of State-controlled trade unions and the household registration system.
  - The sodium gluconate investigation concluded that the sector was affected, both directly and indirectly, by distortions of wage costs <sup>(25)</sup>.
- (65) Sixth, lysine producers have access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the state:
- The Report showed that granting access to finance by the State-owned banks, regulations in force and bond as well as credit ratings in China are often distorted. Those distortions are caused by such phenomena as creditworthiness assessment based on a firm's strategic importance for the government, implicit guarantees etc.
  - Moreover, borrowing costs have been kept artificially low to stimulate investment growth, which led to the excessive use of capital investment with ever lower returns on investment.
  - In addition, the government has rolled over debt, created "zombie" companies and transferred debt ownership through mergers as well as debt-to-equity swaps, without addressing the underlying debt issues.
  - The sodium gluconate investigation concluded that the substantial government intervention in the financial system had led to the market conditions being severely affected at all levels.

<sup>(22)</sup> Ibid., rec. 78.

<sup>(23)</sup> Report, p. 69.

<sup>(24)</sup> Report, p. 223.

<sup>(25)</sup> See Regulation 2023/752, rec. 65.

- (66) The Union industry further submitted that the above-mentioned distortions are systemic. State interventions are found throughout the country and across all sectors of the economy, in relation to the allocation of capital, land, labour, energy and raw materials, among others. The sodium gluconate investigation has shown that, when the producers purchase or contract for inputs, the prices paid and registered as costs are exposed to the systemic distortions described above. For instance, suppliers of inputs employ labour that is subject to the distortions, borrow money that is subject to the distortions in the financial sector/capital allocation and are subject to the planning system that applies across all levels of government and sectors.
- (67) In conclusion, the Union industry argued that significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the lysine sector.
- (68) 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>(26)</sup>, which relies on publicly available sources.
- (69) That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China.

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

- (70) 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>(27)</sup>.
- (71) 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>(28)</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.
- (72) 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>(29)</sup>.
- (73) 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.
- (74) 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.

<sup>(26)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final.

<sup>(27)</sup> Updated Report – Chapter 2, p. 7.

<sup>(28)</sup> Updated Report – Chapter 2, p. 7-8.

<sup>(29)</sup> Updated Report – Chapter 2, p. 10, 18.

- (75) 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>(30)</sup>. This illustrates the unquestioned and ever growing control of the CCP over the economic system of China.
- (76) 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.
- (77) 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>(31)</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.
- (78) 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.
- (79) 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.
- (80) 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.).
- (81) The economic operators, private and state-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans, but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans<sup>(32)</sup>.
- (82) 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>(33)</sup>.
- (83) 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>(34)</sup>.
- (84) 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>(35)</sup>.

<sup>(30)</sup> See at: [http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node\\_2825.html](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.html) (accessed on 21 October 2024).

<sup>(31)</sup> Updated Report – Chapter 2, p. 29-30.

<sup>(32)</sup> Updated Report – Chapter 4, p. 57, 92.

<sup>(33)</sup> Updated Report – Chapter 6, p. 149-150.

<sup>(34)</sup> Updated Report – Chapter 6, p. 153 -171.

<sup>(35)</sup> Updated Report – Chapter 7, p. 204-205.

- (85) 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>(36)</sup>.
- (86) 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>(37)</sup>.

3.2.3. *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*

- (87) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.
- (88) The sector of the product concerned is mainly served by private companies, such as: Meihua Group <sup>(38)</sup>; Yufeng Industrial Group <sup>(39)</sup>; Fufeng Group <sup>(40)</sup>; Heilongjiang Wanli Lida Group <sup>(41)</sup>.
- (89) However, CCP interventions into operational decision making have become the norm not only in State-owned enterprises ('SOEs'), but also in private companies <sup>(42)</sup>, with the 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.
- (90) Moreover, the lysine sector is subject to several government policies, such as the 2022 key policies announced by the Ministry of Finance and the Ministry of Agriculture and rural affairs: "[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, [...] 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>(43)</sup>. Similarly, the 14<sup>th</sup> FYP on Promoting the Modernization of Agriculture and Rural Areas sets the following objectives: "[n]ational food security industry belt construction. Based on the production and supply of rice, wheat, corn, soybeans, etc., coordinate the layout of capacity building in production, processing, storage, and circulation, and build food safety industrial belts [...]" <sup>(44)</sup>. Furthermore, the 14<sup>th</sup> FYP on Developing Bioeconomy also requires to "develop enzyme preparations, microbial preparations, fermented feed, feed amino-acids and other biological feeds [...]" <sup>(45)</sup>.

<sup>(36)</sup> Updated Report – Chapter 8, p. 207-208, 242-243.

<sup>(37)</sup> Updated Report – Chapter 2, p. 19-24, Chapter 4, p. 69, p. 99-100, Chapter 5, p. 130-131.

<sup>(38)</sup> See at: <http://www.meihuagr.com/> (accessed on 17 October 2024).

<sup>(39)</sup> See at: <http://en.yufengholding.cn/Company.html> (accessed on 17 October 2024).

<sup>(40)</sup> See at: <http://www.fufeng-group.com/> (accessed on 17 October 2024).

<sup>(41)</sup> See at: <http://www.wanlilida.com/wap.php/About/about/type/1.html> (accessed on 17 October 2024).

<sup>(42)</sup> See Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law. See updated Report – Chapter 3, p. 47-50.

<sup>(43)</sup> See at: [http://www.moa.gov.cn/gk/cw/gk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cw/gk_1/nybt/202206/t20220610_6402146.htm), paragraph 20 (accessed on 21 October 2024).

<sup>(44)</sup> See at: [https://www.gov.cn/zhengce/content/2022-02/11/content\\_5673082.htm](https://www.gov.cn/zhengce/content/2022-02/11/content_5673082.htm), section II.6, Box 2 (accessed on 21 October 2024).

<sup>(45)</sup> See Section IV.10 of the Plan available at: [https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202205/t20220510\\_1324436.html](https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202205/t20220510_1324436.html) (accessed on 17 October 2024).

- (91) Government control and policy supervision can be also observed at the level of the relevant industry associations <sup>(46)</sup>.
- (92) For instance, the China Biotech Fermentation Industry Association, ('CBFIA') states in Article 3 of its Articles of Association that the organisation “accepts the professional guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management” <sup>(47)</sup>. The Party branch of CBFIA <sup>(48)</sup> requires the association to “examine and deploy specific activities to foster the comprehensive and strict governance by the Party and strengthen Party building [...] and to fully recognize that the in-depth promotion of the comprehensive and strict governance by the Party over national industry associations and chambers of commerce is a political requirement guiding industry associations' and chambers of commerce's efforts to adhere and strengthen the leadership of the Party” <sup>(49)</sup>.
- (93) Meihua Group and Fufeng Group are among the members of CBFIA, both serving as Deputy Chairmen of the association's board of directors <sup>(50)</sup>.
- (94) As for CSIA, the association pursues the goal to “publicize and implement national industrial policies, serve the industry wholeheartedly, and promote industrial production” <sup>(51)</sup>. In addition, Article 3 of its Articles of Association states that CSIA “establishes an organization of the Communist Party of China, carries out Party activities, and provides the necessary conditions for the activities of the Party organization” and “accepts the 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>(52)</sup>.
- (95) Meihua Group is among the Vice Chairmen of CSIA's executive council <sup>(53)</sup>.
- (96) 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.

3.2.4. *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*

- (97) The GOC is in position to interfere with prices and costs through state presence in firms. Indeed, CCP cells in enterprises, state-owned and private alike, represent an important channel through which the state can interfere with business decisions.
- (98) 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>(54)</sup>) and the company shall provide the necessary conditions for the activities of the Party organisation.

<sup>(46)</sup> Updated Report – Chapter 2, p. 24-27.

<sup>(47)</sup> See at: <http://m.cfia.org.cn/site/term/5.html> (accessed on 17 October 2024).

<sup>(48)</sup> See at: <http://m.cfia.org.cn/#menu> (accessed on 17 October 2024).

<sup>(49)</sup> See at: <http://m.cfia.org.cn/site/content/2092.html> (accessed on 17 October 2024).

<sup>(50)</sup> See at: <http://m.cfia.org.cn/site/term/3.html> (accessed on 17 October 2024).

<sup>(51)</sup> See at: <https://www.siacn.org.cn/dl/pjn-252Bx-.html> (accessed on 17 October 2024).

<sup>(52)</sup> See at: <https://www.siacn.org.cn/dl/IOa-252B22.html> (accessed on 17 October 2024).

<sup>(53)</sup> For Dongxiao Biotechnology Co., Ltd., see at: <https://siacn.org.cn/hys/C04ke8i8V6FKwm58AiHI8kZLWAqQfQJGMbT7hpaoMfyhfo=.html> (accessed on 21 October 2024). For Baolingbao Biotechnology Co., Ltd. see at: <https://siacn.org.cn/hys/iRjtpfyhfmlZnu6t27hPXu7asXt46rxUsrzpUWSRfyhfRrLA=.html> (accessed on 21 October 2024). For Zhejiang Huakang Pharmaceutical Co., Ltd. see at: <https://siacn.org.cn/hys/SWj57c6UUhw8Rgkzb+016qfKa9gWhP3BQaNR0qBW3Tw=.html> (accessed on 21 October 2024).

<sup>(54)</sup> Updated Report – Chapter 3, p. 40.

- (99) 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>(55)</sup>, including exercising pressure on private companies to put “patriotism” first and to follow Party discipline<sup>(56)</sup>.
- (100) Already in 2018, it was reported that Party cells existed in 73% of some 2.57 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>(57)</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.
- (101) 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>(58)</sup> was released, which further expanded the role of the Party committees in private enterprises.
- (102) 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>(59)</sup>.
- (103) The investigation confirmed that overlaps between managerial positions and CCP membership / functions exist also in the lysine sector. To provide an example, the Deputy Chairman of the Meihua Group holds the position of Secretary General of the group’s Party branch<sup>(60)</sup>.
- (104) Additionally, the chairman of Yufeng Industrial Group also serves as the Secretary of the Party committee and as a representative of the Hebei Provincial People’s Congress<sup>(61)</sup>.
- (105) 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>(62)</sup>. Thus, the state presence in firms, in the lysine and other sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

3.2.5. *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*

- (106) 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.
- (107) 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>(63)</sup>.

<sup>(55)</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>(56)</sup> Updated Report – Chapter 3, p. 41.

<sup>(57)</sup> See at: <https://merics.org/en/comment/who-ccp-chinas-communist-party-infographics> (accessed on 18 October 2024).

<sup>(58)</sup> General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era, see at: [www.gov.cn/zhengce/2020-09/15/content\\_5543685.htm](http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm) (accessed on 21 October 2024).

<sup>(59)</sup> Financial Times (2020) - Chinese Communist Party asserts greater control over private enterprise, see at: <https://on.ft.com/3mYxP4j> (accessed on 21 October 2024).

<sup>(60)</sup> See at: <http://www.meihuagr.com/index.php/article/1501.html> (accessed on 18 October 2024).

<sup>(61)</sup> See at: <http://www.yufengholding.cn/intro/2.html> (accessed on 18 October 2024).

<sup>(62)</sup> Updated Report – Chapter 14, Sections 14.1 to 14.3.

<sup>(63)</sup> Updated Report – Chapter 4, p. 56-57, 99-100.



- (108) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.
- (109) The 2022 key policies of the Ministry of Finance and the Ministry of Agriculture and rural affairs mentioned above (see recital (90)) 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>(64)</sup>.
- (110) The 14<sup>th</sup> FYP on Promoting the Modernization of Agriculture and Rural Areas <sup>(65)</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>(66)</sup>. According to the 14<sup>th</sup> FYP on Developing the Planting Sector at National Level <sup>(67)</sup>, “[d]uring the 14<sup>th</sup> Five-Year Plan period, we will explore potential expansion, increase production capacity, optimize structure, promote diversified development, and improve supply guarantee capabilities” <sup>(68)</sup>.
- (111) The CSIA’s 14<sup>th</sup> FYP <sup>(69)</sup> further shows the existing government policies in the sector by explaining that “[s]ince 2016, the state has adjusted the corn temporary storage policy of the three northeastern provinces and the Inner Mongolia Autonomous Region to a new mechanism of “market-oriented purchase” plus “subsidy”, which has caused a sharp drop in corn prices and greatly reduced the production cost of corn starch; in order to digest excess corn inventory, Heilongjiang, Jilin, Liaoning, Inner Mongolia and other places have given different degrees of subsidies to corn deep processing enterprises, which have continued to increase the production capacity of corn deep processing and corn starch production” <sup>(70)</sup>.
- (112) The 14<sup>th</sup> FYP on Developing Bioeconomy directly addresses the sector of the product concerned, by aiming to “[s]trengthen the main position of enterprise innovation. Give play to the leading and supporting role of leading enterprises in the biological field, guide large enterprises to open resources such as technological innovation, supply chain, and financial services to the upstream and downstream of the industrial chain, and promote integration and innovation in small and medium-sized enterprises. Focusing on key fields with large scale and wide influence such as biomedicine, bio-agriculture, and bio-manufacturing, bio-innovative enterprises are encouraged to deepen their cultivation in subdivided fields, cultivate their development advantages, and cultivate them into individual champions with global competitiveness” <sup>(71)</sup>. More specifically, the Plan also requires the entities concerned to “develop enzyme preparations, microbial preparations, fermented feed, feed amino-acid and other biological feeds [...]”.
- (113) On the province level, according to the Hebei 14<sup>th</sup> FYP on Strategic and Emerging Industries <sup>(72)</sup> the government authorities are set to shape the sector’s industrial layout as follows: “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” <sup>(73)</sup>.

<sup>(64)</sup> See at: [http://www.moa.gov.cn/gk/cw/gk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cw/gk_1/nybt/202206/t20220610_6402146.htm), paragraphs 6 and 15 (accessed on 18 October 2024).

<sup>(65)</sup> See at: [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 18 October 2024).

<sup>(66)</sup> Ibid., Section II.1.

<sup>(67)</sup> See at: [http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113\\_6386808.htm](http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113_6386808.htm) (accessed on 18 October 2024).

<sup>(68)</sup> Ibid., Section III.1.3.

<sup>(69)</sup> See at: <https://www.siacn.org.cn/ds/220877802e.html> (accessed on 18 October 2024).

<sup>(70)</sup> Ibid., Section I.1.2.

<sup>(71)</sup> See Section III .6 of the Plan.

<sup>(72)</sup> See at: <http://lvsefazhan.cn/index.php/guozijianguan/408.html> (accessed on 21 October 2024).

<sup>(73)</sup> Ibid., Section IV.3.

- (114) Furthermore, in 2024, Shandong issued a major policy to promote, upgrade and develop the corn industry <sup>(74)</sup>, providing important tax support for research and development.
- (115) Similarly, Jilin issued specific preferential policies favouring the industry of the product concerned. According to a report released on its website, the “Jilin Provincial Taxation Bureau [...] formulates and adjusts the list of policy benefits as well as the list of topics requiring quick response. Enterprises have needs, taxation responds. On the way to industry upgrading, there are enough policy tools available” <sup>(75)</sup>. This is confirmed by a representative of the Meihua Group “[i]n 2017, the company settled in Jilin Baicheng Industrial Park as the first company in Baicheng with a total investment of CNY 10 billion. After years of gradual development and growth, with the strong support of tax preferential policies, [...] the market competitiveness of products has been effectively improved. In the first half of 2023 alone, our company has enjoyed an export tax rebate of CNY 139 million, which has freed us from worries in the process of product production, and we can more calmly deal with the risks and challenges of the international market and further expand the scale of exports” <sup>(76)</sup>. The Chairman of the Meihua Group also declared that “Jilin Meihua has received strong support and help from leaders at all level of the province and of the municipality, which has helped Meihua develop rapidly” <sup>(77)</sup>, hence indicating that preferential policies were not limited to tax policies.
- (116) Similar support measures are also available in Heilongjiang, as indicated in the Suihua municipality industry system development plan 2023-2026 <sup>(78)</sup> in which Heilongjiang Chengfu Food Group, a lysine producer, accounting for 7,39% of the lysine domestic production capacity <sup>(79)</sup>, is listed as a key enterprise.
- (117) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (118) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector. Such measures impede market forces from operating freely.

3.2.6. *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*

- (119) 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.
- (120) 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>(80)</sup>.

<sup>(74)</sup> See at: [https://www.sohu.com/a/756699103\\_121769698](https://www.sohu.com/a/756699103_121769698) (accessed on 18 October 2024).

<sup>(75)</sup> See at: [http://jilin.chinatax.gov.cn/art/2023/11/6/art\\_334\\_710476.html](http://jilin.chinatax.gov.cn/art/2023/11/6/art_334_710476.html) (accessed on 18 October 2024).

<sup>(76)</sup> Ibid.

<sup>(77)</sup> See at: [http://www.jlbc.gov.cn/xxgk\\_3148/ywdt/202409/t20240927\\_999796.html](http://www.jlbc.gov.cn/xxgk_3148/ywdt/202409/t20240927_999796.html) (accessed on 18 October 2024).

<sup>(78)</sup> See at: [https://www.suihua.gov.cn/sh/szf/202309/c12\\_78183.shtml](https://www.suihua.gov.cn/sh/szf/202309/c12_78183.shtml) (accessed on 18 October 2024).

<sup>(79)</sup> See at: [https://pdf.dfcfw.com/pdf/H3\\_AP202312291615475016\\_1.pdf](https://pdf.dfcfw.com/pdf/H3_AP202312291615475016_1.pdf) (accessed on 21 October 2024).

<sup>(80)</sup> Updated Report – Chapter 6, p. 171-179.

- (121) 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>(81)</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>(82)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(83)</sup>.
- (122) 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 chemical, and therefore lysine, sector. The present investigation revealed nothing that would call those findings into question.
- (123) 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.

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

- (124) 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 fundamental ILO conventions, in particular those on freedom of association and on collective bargaining <sup>(84)</sup>.
- (125) 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>(85)</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.
- (126) 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>(86)</sup>. Those findings lead to the distortion of wage costs in China.
- (127) No evidence was submitted to the effect that the lysine sector would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

3.2.8. *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*

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

<sup>(81)</sup> Updated Report – Chapter 9, p. 260-261.

<sup>(82)</sup> Updated Report – Chapter 9, p. 257-260.

<sup>(83)</sup> Updated Report – Chapter 9, p. 252-254.

<sup>(84)</sup> Updated Report – Chapter 13, p. 360-361, 364-370.

<sup>(85)</sup> Updated Report – Chapter 13, p. 366.

<sup>(86)</sup> Updated Report – Chapter 13, p. 370-373.

- (129) First, the Chinese financial system is characterised by the strong position of state-owned banks <sup>(87)</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>(88)</sup> and they regularly implement public policies designed by the GOC.
- (130) 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>(89)</sup>. While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (131) 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>(90)</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>(91)</sup>.
- (132) 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>(92)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(93)</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.
- (133) 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.

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<sup>(87)</sup> Updated Report – Chapter 6, p. 137-140.

<sup>(88)</sup> Updated Report – Chapter 6, p. 146-149.

<sup>(89)</sup> Updated Report – Chapter 6, p. 149.

<sup>(90)</sup> See the *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)* issued by the China Banking and Insurance Regulatory Commission (“CBIRC”) on 28 August 2020; available at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 21 October 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>(91)</sup> See the *Notice on the Commercial banks performance evaluation method* issued by the CBIRC on 15 December 2020, available at: [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (accessed on 21 October 2024).

<sup>(92)</sup> Updated Report – Chapter 6, p. 157-158.

<sup>(93)</sup> Updated Report – Chapter 6, p. 150-152, 156-160, 165-171.

- (134) Third, 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>(94)</sup>. Official media in China have recently reported that the CCP called for “*guiding the loan market interest rate downwards*” <sup>(95)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (135) 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.
- (136) 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.
- (137) No evidence was submitted in the present investigation demonstrating that the sector of the product concerned is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

### 3.2.9. *Systemic nature of the distortions described*

- (138) 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.
- (139) 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 in recitals (87) to (137) above. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, lysine 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.
- (140) 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.
- (141) 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.

<sup>(94)</sup> OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris. p. 29, see at: [https://doi.org/10.1787/eco\\_surveys-chn-2019-en](https://doi.org/10.1787/eco_surveys-chn-2019-en) (accessed on 21 October 2024).

<sup>(95)</sup> See at: [http://www.gov.cn/xinwen/2020-04/20/content\\_5504241.htm](http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm) (accessed on 21 October 2024).

- (142) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

### 3.2.10. Arguments from the interested parties

- (143) Upon initiation, CCCMC, Eppen and Barentz submitted comments concerning the application of Article 2(6a) of the basic Regulation. CCCMC argued that (i) Article 2(6a) of the basic Regulation is incompatible with WTO law and (ii) the allegation of significant distortions affecting the Chinese lysine sector is not based on positive evidence. Also Eppen considered Article 2(6a) of the basic Regulation incompatible with WTO rules, remarking in addition that the use of the methodology pursuant to Article 2(6a) of the basic Regulation cannot be a foregone conclusion from the outset. Barentz for its part considered that in the present case it is appropriate to use domestic prices in China to establish whether dumping takes place since significant distortions were not demonstrated.
- (144) To support its first argument, CCCMC submitted that the methodology prescribed by Article 2(6a) of the basic Regulation for establishing the normal value is incompatible with the WTO agreements and jurisprudence. CCCMC argued that since 12 December 2016, the EU was expected to adhere to the standard ADA methodologies to establish the normal value of the Chinese exporting producers, which prescribe the use of the actual prices and costs of the Chinese exporting producers. With reference to Articles 2.1 or 2.2 of the ADA, as well as to the Panel report in DS538 *Pakistan – BOPP Films (UAE)* and the Appellate Body report in DS437 *EU – Biodiesel (Argentina)*, CCCMC took the position that while, in exceptional circumstances, the normal value may be constructed, the data relating to the cost of production and SG&A and profits must always be obtained from the sources in the exporting country. Nothing in the ADA allows, according to CCCMC, an investigating authority to disregard the costs and prices of the exporting producer (or those existing in the exporting country) and to replace them with allegedly undistorted prices or benchmarks in another country on the grounds that significant distortions supposedly exist in the exporting country, with the notion of significant distortions not even existing in the ADA.
- (145) At the core of their second argument, CCCMC disagreed with the Commission's consideration in the Notice of Initiation that the complaint contained sufficient evidence that the use of domestic prices and costs in China is inappropriate due to significant distortions affecting such prices and costs, and that the application of Article 2(6a) of the basic Regulation is thus warranted. To support this view, CCCMC listed a number of elements and submitted that: (i) the Union industry relied heavily on the 2017 Report, which is in CCCMC's view outdated; (ii) the Union industry relied on previous Commission investigations which were temporally unrelated, concerned very different products and sectors and were based on facts available rather on positive evidence; CCCMC referred in this context to the Appellate Body report in DS379 *US – AD and CVD (China)*; (iii) the Union industry provided evidence on substantial government intervention which is mainly based on state ownership, in CCCMC's opinion a criterion which does not constitute sufficient evidence of "meaningful control", "entrustment" or "direction" by the government; (iv) the Union industry relied on extremely general, non-binding policy documents, such as the 14th FYP; (v) the Union industry relied on other document too broad and general to constitute evidence; (vi) the non-application of the 13% VAT on exports is neither a subsidy nor any government intervention in the market. It is merely to avoid double taxation; (vii) production site choices of lysine manufacturers stem from practical aspects rather than political factors or pressure from the GOC; (viii) even if government interventions were to be presumed, the Union industry did not provide evidence to prove that such intervention is the cause of significant distortions.
- (146) CCCMC's arguments could not be accepted. Concerning the compatibility with WTO agreements and jurisprudence, the Commission considered that the provision of Article 2(6a) of the basic Regulation is fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCMC. Indeed, the existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a

similar level of development as the exporting country. As explicitly clarified by the Appellate Body in DS473<sup>(96)</sup>, WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission recalled in this connection that once it is determined that due to the existence of significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. The same provision of the basic Regulation also allows the use of domestic costs if they are positively established not to be distorted. In that context, the exporting producers had the possibility to provide evidence that their individual costs were undistorted. However, no positive evidence as to the factors of production of individual exporting producers being undistorted was submitted. Therefore, whether the Chinese companies' records were kept in accordance with the generally accepted accounting principles of China, or whether the records reasonably reflected the costs associated with the production and sale of the product under investigation in China, cannot affect the conclusion concerning the application of the methodology under Article 2(6a) of the basic Regulation.

(147) As for the claims on sufficiency of evidence in the complaint, the Commission recalled that, as confirmed by the General Court in *Viraj Profiles*, the quantity and quality of the evidence necessary to meet the criteria of the sufficiency of the evidence for the purpose of initiating an investigation is different from that which is necessary for the purpose of a preliminary or final determination of the existence of dumping, injury or of a causal link<sup>(97)</sup>. The complaint met the standards set in Article 5(9) of the basic Regulation, in combination with Article 2(6a)(d). Indeed, as indicated in the Notice of Initiation, the Commission considered at the initiation stage that there was sufficient evidence pursuant to Article 5(9) of the basic Regulation tending to show that, due to significant distortions affecting prices and costs, the use of domestic prices and costs in China would be inappropriate, thus warranting the initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. The Commission therefore proceeded to prove such distortions in Sections 3.2.2 to 3.2.9. Indeed, in doing so the Commission complemented the evidence and arguments presented by the Union industry by its own investigations and eventually demonstrated, on the basis of the entire body of available evidence, the presence of significant distortions justifying the use of Article 2(6a) of the basic Regulation to establish normal value.

(148) Eppen pointed out that there is no reference to the concept of significant distortions in Article 2.2 ADA as it does not fall into any of the categories for alternative calculation methods provided in that provision. Moreover, Eppen submitted that the use of data from an appropriate representative country or international prices to construct normal value is in its view not consistent with Article 2.2 ADA which only permits using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits when constructing normal values. Eppen also quoted in this connection the requirement of Article 2.2.1.1. ADA that costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provide that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sales of the product under consideration. Moreover, Eppen took the position that WTO jurisprudence, namely DS437 *EU – Biodiesel (Argentina)* and DS494 *Cost Adjustment Methodologies II (Russia)* support its argument on the WTO incompatibility of Article 2(6a) of the basic Regulation.

(149) The Commission could not accept Eppen's argument for the reasons laid out above in recital (146). In addition, with respect to DS494, the Panel Report specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute. Moreover, the Commission pointed out that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members.

<sup>(96)</sup> WT/DS473/AB/R - European Union - Anti-Dumping Measures on Biodiesel from Argentina - AB-2016-4 - Report of the Appellate Body, para. 6.198.

<sup>(97)</sup> Judgement of 11 July 2017, *Viraj Profiles v Council*, T-67/14, EU:T:2017:481, para. 98.

- (150) Barentz pointed out that the Union industry's allegations on distortions on the lysine market in China are made on a general basis, based on prior EU reports or decisions on distortions in other sectors. However, to apply Article 2(6a) and (6b) of the basic Regulation, it is necessary to prove that the domestic prices in China are not the result of free market forces, but that they are affected by substantial government intervention in the specific case of lysine. It is not sufficient to state a general intervention in the economy by the Chinese government. On the contrary, it is necessary to prove specific Chinese aids to the lysine market, and the link between the government actions and lysine prices. Consequently, Barentz advocated the use domestic prices in China to establish whether or not dumping takes place.
- (151) The argument of Barentz had to be dismissed for the reasons specified already in recital (147) above. The Commission pointed out in particular that the determinations justifying the application of Article 2(6a) of the basic Regulation have not been made in view of the Union industry's allegation but on the basis of the Commission's own investigation, as described in detail in Sections 3.2.2 to 3.2.9.

### 3.3. Representative country

#### 3.3.1. General remarks

- (152) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank <sup>(98)</sup>;
  - Production of the product under investigation in that country;
  - Availability of relevant public data in the representative country.
  - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (153) As explained in recitals (44) to (46), the Commission issued two notes for the file on the sources for the determination of the normal value: the First Note on production factors on 28 June 2024 and the Second Note on the production factors on 31 October 2024. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note on production factors, the Commission informed interested parties of its intention to consider Colombia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

#### 3.3.2. A level of economic development similar to the PRC

- (154) In the First Note on production factors, the Commission identified Brazil as the only country that has a similar level of economic development as the PRC according to the World Bank, i.e. it is classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product under investigation was known to take place.
- (155) Comments were received from Eppen, and Barentz-Agri Nutrition NV, a Union importer/user, proposing the use of Indonesia as representative country since it produces and exports lysine to the Union. The Commission notes that Indonesia only attained the status of upper middle-income country in July 2023 and therefore did not have the same level of economic development as the PRC for the full investigation period and therefore is not suitable. Therefore, this proposal was rejected.

<sup>(98)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.



- (156) With regard to Brazil, the Commission analysed the imports of the main factors of production into Brazil. The analysis of import data showed that the imports into Brazil of the major factors of production were not affected by imports from the PRC.
- (157) Meihua, commented that Brazil is not a suitable representative country noting the Brazilian import prices discrepancy from international prices. Eppen, and Union industry also supported the view that Brazil's import prices for corn/maize are not suitable as benchmarks.

### 3.3.3. *Readily available data in the representative country*

- (158) In the First Note the Commission indicated that for the country identified as having a similar economic level as PRC and also being a producer of lysine, i.e. Brazil, the availability of public data needed to be further verified in particular with regard to the public financial data from producers of the product under investigation.
- (159) Regarding financial data, however, the Commission could not find readily available financial data for lysine producers in Brazil for the two companies that were identified in the First Note as lysine producers, namely Evonik Brazil and CJ do Brazil. For the two lysine producers identified by the Union industry, namely Birla Carbon<sup>(99)</sup> and QGP Quimica<sup>(100)</sup>, the Commission investigated further and concluded that these companies were not producing the product under investigation and that their production processes were not similar to the lysine production process.
- (160) The Commission found financial information for a Brazilian company in the fermentation business, Union Agro S.A. This company produces fertilizers which also contained amino acids, proteins and enzymes. However, the last period for which Union Agro S.A. data is available is 2022.
- (161) As there were no readily available financial data for a company producing the product under investigation in Brazil for the investigation period, the Commission concluded that Brazil could not be considered as an appropriate representative country for this investigation.

### 3.3.4. *Production of products in the same general category and/or sector*

- (162) As there was no financial data available for countries which have a similar level of economic development than the PRC and where there is production of lysine, the Commission considered the production of a product in the same general category and/or sector of the product under investigation. In the First Note, the Commission concluded that citric acid was an appropriate proxy product in the same general category and/or sector as lysine with a view to identify an undistorted value in a representative country with a similar level of economic development as the PRC for the same factors of production used in the production of lysine. Citric acid is a product in the same general category and subcategory of the product under investigation (chemicals, in particular organic acids obtained by fermentation). Like lysine, citric acid is an organic chemical product produced by fermentation of agricultural carbohydrates. Citric acid and lysine are produced by a fermentation process with regulated steps followed by a crystallisation phase<sup>(101)</sup> and the drying of the crystals. Both lysine and citric acid can be sold either in dry matter form or in aqueous solutions, and both products are commonly used by pharmaceutical and food industries.

<sup>(99)</sup> "Birla Carbon is one of the largest manufacturers and suppliers of high-quality carbon black additives globally, and a flagship business of the US \$60 billion Aditya Birla Group...We provide a complete portfolio of products across ASTM grades and specialty blacks to meet the specific end requirements across rubber, plastics, coatings, inks and niche industries globally." <https://www.birlacarbon.com/about/>.

<sup>(100)</sup> QGP Quimica produces and provides chemical products for the leather, agriculture, and construction industries.

<sup>(101)</sup> Development of Amino Acid Crystallization Processes: L-Glutamic Acid Benny Harjo, Ka Ming Ng, and Christianto Wibowo Industrial & Engineering Chemistry Research 2007 46 (9), 2814-2822 DOI: 10.1021/ie061148f.

- (163) The Commission considered that citric acid, being an essential weak organic acid with extensive use in the pharmaceutical and food industries, was a suitable product of the same subcategory as they have the same core input raw materials, relevant consumables in common, and very similar production processes. Therefore, the Commission concluded that citric acid was an appropriate product in the same subcategory (organic acids obtained by fermentation) as the product under investigation. The Commission therefore indicated it would use production of citric acid, a similar product to lysine, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation. In line with Article 2(6a)(a) of the basic Regulation, it was considered that financial data for citric acid producers could be regarded as representative also for exporting producers of the product concerned.
- (164) Barentz, a Union importer objected to the use on citric acid as this is meant for human consumption, whereas lysine is a feed additive. They proposed to use monosodium glutamate instead. The Commission notes that the required defining characteristic is the similarity of the production procedure and that in any case, food and feed are within the same regulatory frameworks as regards imports to EU. The comment was therefore rejected.
- (165) Analysis of level of income and production of citric acid identified Brazil, Colombia and Thailand as possible representative countries with the same level of development as the PRC and where production of citric acid takes place.
- (166) The Union industry and the Meihua agreed to the provisional choice of Colombia as representative country, noting the lack of distortions and of dependence on PRC imports.
- (167) Regarding Thailand, the Commission informed in the Second Note that, as noted also by Meihua in its response to the First Note, the price of corn is distorted due to an applicable import quota in respect of maize and additionally that company financial data are in general not audited and therefore considered of lesser quality. Therefore, the Commission excluded Thailand from considerations as an appropriate representative country.
- (168) With regard to Brazil, the Commission concluded that imports into Brazil of the major factors of production were not affected by imports from the PRC. However, the imports into Brazil of corn/maize, the most important factor of production (FOP), were limited in volume as Brazil is a major exporter of corn/maize. Secondly, the price for imports was 15 % lower than the price for exports and about 30 % lower than the average price of total of imports around the world. Therefore, the duty paid import prices into Brazil could not be considered as an appropriate benchmark for corn/maize, and in the absence of a benchmark for the most significant FOP, Brazil could not be considered as a suitable representative country.
- (169) Regarding Colombia, the same analysis also showed that it could be used as an appropriate representative country as it has the same economic level as the PRC and their imports of the main factors of production were not materially affected by imports from the PRC or any of the countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council<sup>(102)</sup>. Furthermore, the Commission informed in the First Note that they had identified a producer of citric acid Sucroal whose financial data was readily available for the investigation period. One of the exporting producers and the Union industry supported the use of Colombia and no objection was raised to the use of Sucroal.
- (170) In light of the above considerations, the Commission informed the interested parties with the Second Note that it intends to use Colombia as an appropriate representative country and Sucroal S.A., in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (171) Interested parties were invited to comment on the appropriateness of Colombia as a representative country and of Sucroal as producer in the representative country.

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<sup>(102)</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33) ELI: <http://data.europa.eu/eli/reg/2015/755/oj>. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

(172) In response to the Second Note, the complainant and Meihua supported the use of Colombia and Sucroal. Eppen, noted that between the First and Second Note the Commission had revised the financial data it provided for Sucroal and requested an explanation of the revision. The company also requested more detailed data to ensure that the other operating costs of Sucroal do not include elements that are deducted from the export price when netting back to the ex-works level of trade. Regarding the update of the Sucroal data, the Commission noted that financial data can be revised, for example following an audit, and that the Commission bases its analysis on the most up to date and accurate data available. To ensure this, the Commission retrieved the financial data of Sucroal from the Colombian authorities. The data therein are in agreement with the data provided with the Second Note, therefore the Commission considers that it has provided the most up to date and accurate data and, therefore, the comment has been addressed. The request regarding the breakdown of the “other operating expenses” is addressed in recitals (219) below.

### 3.3.5. *Level of social and environmental protection*

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

### 3.3.6. *Conclusion*

(174) 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.

## 3.4. **Sources used to establish undistorted costs and benchmarks**

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

(176) Subsequently, in the Second Note, the Commission stated that in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas <sup>(103)</sup> ('GTA') to establish the undistorted cost of raw materials and of coal. The Commission also stated that it would use readily available electricity prices from Colombia <sup>(104)</sup> for determining prices of electricity as well as for gas and steam (using readily available data to calculate the energy needed for steam generation based on US Governments data <sup>(105)</sup>), and ILO Statistics <sup>(106)</sup> for determining labour costs.

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

<sup>(103)</sup> Global Trade Atlas, Available at <https://connect.ihsmarkit.com/gta/home>.

<sup>(104)</sup> See <https://www.enel.com.co/es/personas/tarifas-energia-enel-distribucion.html>. For each month, prices are reported for Tarifas de energia electrica (\$/kWh)/ Sector no residencial/Nivel 3/Industrial con contribucion/Doble horario (day and night).

<sup>(105)</sup> US Department of Energy: Benchmark the Fuel Cost of Steam Generation, Energy Tips: STEAM, Steam Tip Sheet #15 (Fact Sheet), Advanced Manufacturing Office (AMO), Energy Efficiency & Renewable Energy (EERE)

<sup>(106)</sup> [https://www.ilo.org/shinyapps/bulkexplorer51/?lang=en&segment=indicator&id=EAR\\_XEES\\_SEX\\_ECO\\_NB\\_Q](https://www.ilo.org/shinyapps/bulkexplorer51/?lang=en&segment=indicator&id=EAR_XEES_SEX_ECO_NB_Q).

3.4.1. *Factors of production*

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

Table 1

**Factors of production of lysine**

Factor of Production	Commodity Code	Source of data	Value (CNY)	Unit of measurement
<b>Raw materials</b>				
Corn/maize	1005 90/ 1005 90 11	GTA	2,180 <sup>(107)</sup>	kg
Ammonium Sulphate	3102 2100	GTA	1,555	kg
Hydrochloric acid	2806 1000	GTA	1,399	kg
Anhydrous Ammonia	2814 1000	GTA	4,422	kg
Cane molasses	1703 1000	GTA	4,603	kg
Other molasses	1703 9000	GTA	1,653	kg
Betaine hydrochloride	2923 90/ 2923 9010	GTA	19,639	kg
Sodium hydroxide	2815 12/ 2815 1200	GTA	2,350	kg
<b>Labour</b>				
Labour	[N/A]	ILO	20,1	Labour hour
<b>Energy</b>				
Coal	2701 1100	GTA	1,638	Kg
Electricity	2716 00	Electricity consumption tariffs of Colombian provider Enel.co <sup>(108)</sup>	1,18	kWh
Natural gas	2711 21	International prices of energy at globalprices.com <sup>(109)</sup>	CNY 4,28/m <sup>3</sup> (on the basis of CNY 0,4058 per kWh and 10,55 kWh produced per m <sup>3</sup> of gas)	Cubic meter

<sup>(107)</sup> Price adjusted to reflect the premium of non-GMO corn.

<sup>(108)</sup> <https://www.enel.com.co/es/personas/tarifas-energia-enel-distribucion.html/>

<sup>(109)</sup> [https://www.globalpetrolprices.com/natural\\_gas\\_prices/prices.com/natural\\_gas\\_prices/](https://www.globalpetrolprices.com/natural_gas_prices/prices.com/natural_gas_prices/)

Factor of Production	Commodity Code	Source of data	Value (CNY)	Unit of measurement
Steam at 13 bar	[N/A]	International prices of energy at <a href="http://globalprices.com">globalprices.com</a> <sup>(110)</sup>	364,33 CNY/tonne	Price of 897,8 kWh (quantity of gas in kWh required to produce 1 tonne of steam at 13 bar)
Water	[N/A]	Water tariffs of Colombian provider Aqueducto <sup>(111)</sup>	15,33	Cubic meter

**By-product**

Corn germ	1104 30	GTA	Pro rata (*)	
Corn protein powder	2309 90	GTA	Pro rata (*)	
Residues of starch manufacture and similar residues	2303 10	GTA	Pro rata (*)	
Corn bran/husk	2302 10	GTA	Pro rata (*)	
Cereal groat, meal and pellets of maize	1103 13	GTA	Pro rata (*)	

(\*) Pro Rata: See recital (188)

(179) For the conversion of Colombian Pesos (COP) prices to Chinese Yuan (CNY) the Commission used the 2023 conversion rate of COP to USD available in the World Bank site and the conversion rates for USD and CNY available via the European Central Bank. The conversion rate was 1 CNY = 0,001637 COP.

(180) The complainant commented on the production efficiency and quantities of factors of production needed. As the Commission has verified the quantities and factors of production needed with on-site visits, it will use in the calculation of the normal value the quantities and FOPs reported by the exporting producers and verified by the Commission.

(181) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount, the Commission used the sampled exporting producers' reported costs of manufacturing that had not been included in the individual FOP above, such as depreciation, cost for quality control, and costs for maintenance. These costs include the cost for the microorganism used in the fermentation.

<sup>(110)</sup> [https://www.globalpetrolprices.com/natural\\_gas\\_prices/prices.com/natural\\_gas\\_prices/](https://www.globalpetrolprices.com/natural_gas_prices/prices.com/natural_gas_prices/)

<sup>(111)</sup> <https://www.acueducto.com.co>.

- (182) The amounts thereof were taken from the exporting producers questionnaire replies. The new amount for manufacturing overheads was expressed as a percentage of the reported manufacturing costs and has been applied to the recalculated manufacturing costs.

#### 3.4.2. *Raw materials*

- (183) 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 Colombia as reported in the GTA to which import duties were added. The 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 third countries listed in Annex 1 of Regulation (EU) 2015/755.<sup>(112)</sup> The remaining quantities were considered representative. The Commission decided to exclude imports from the PRC into the representative country, as it concluded in section 3.2 above 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.
- (184) The corn used in the production of lysine in the PRC is non-GMO. The complainant noted in their answer to the Second Note that Colombia imports corn mostly from the US and Brazil where GM adoption rates are high. Non-GMO corn carries a premium vis-à-vis GMO corn due to -amongst other reasons- lower yields, and higher production and compliance costs. The price of corn imported to Colombia was thus adapted to reflect the difference in price. The data used was the premium awarded for non-GMO corn in the US market sourced from the Fastmarkets.com site.
- (185) For coal, hydrochloric acid and other molasses, import quantities into Colombia were limited. Prices established on the basis of imports were therefore considered non representative. To establish a benchmark for these FOP the Commission used the weighted average of unit prices of imports originating in all countries excluding the PRC and countries listed in Annex 1 of Regulation (EU) 2015/755, as reported in the GTA with the world as their partner. In Table 1 no benchmark is reported for sulphuric acid which was listed in the Second Note because exporting producers were not using this raw material in their processes.
- (186) For a number of factors of production, the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the 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. After the Second Note, the list of FOP was further shortened due to the negligible contribution of some materials to the cost of production and the absence of import prices into Colombia from GTA. Therefore, the values of packaging material, aqueous solution of ammonia and compressed air were also added to the value of consumables.

#### 3.4.3. *By-products*

- (187) The Commission analysed the accounting practices of the sampled Chinese exporting producers pertaining to by-products and researched the prices available for them. The main categories of by-products reported are those that arise from the treatment of corn to produce glucose, e.g. corn germ, corn meal, corn husk. The complainant commented and provided evidence that the characteristics and uses of products included under these by-product categories are very diverse which is then reflected in the diversity of prices. The prices of these products are directly linked to the price of corn from which they are produced.

<sup>(112)</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.

(188) Thus, for those by-products in the absence of any other data available, the Commission has provisionally taken the ratio between the price in the PRC for the by-product compared to the price in the PRC for corn reported by the sampled exporting producers. This ratio has thereafter been applied to the price for corn in Colombia, as derived from the GTA to calculate the benchmark for these by-products.

#### 3.4.4. Labour

(189) The ILO publishes detailed information on wages in different economic sectors in Colombia. The Commission used the last publicly available data from ILO statistics <sup>(113)</sup> to determine the wages in the industry sector in Colombia. The average monthly value in the investigation period has been duly adjusted for other contributions by adding the social security paid by the employer including pension and professional risk tax: 12 % as employer contribution to the pension fund, 8,5 % for health insurance, and 6,5 % for payroll taxes <sup>(114)</sup> <sup>(115)</sup>. The average hourly labour cost per FTE amounts to 20,1 CNY/labour-hour.

(190) An exporting producer claimed that the solidarity contribution indicated in the Second Note is not applicable to employers and that the 8,5 % contribution for health and the 4-9% payroll tax are applicable only when employees' salaries exceed 10 minimum monthly wages.

(191) As the average monthly wage in industry exceeds the minimum monthly wage for 2023 in Colombia (1 160 000 COP plus 140 000 COP for transportation fees) the health and payroll tax contributions are applicable and the claim was rejected.

(192) The same producer also claimed that the average weekly hours in Colombia during the investigation period was 39,3 hours <sup>(116)</sup>. The Commission accepted this claim and the solidarity contribution was not included in the calculations and the average weekly hours used were adapted to 39,3 hours per week.

#### 3.4.5. Electricity

(193) The Commission used relevant electricity price rates for industrial users as published by major electricity provider in Colombia, Enel <sup>(117)</sup> in its website.

(194) An exporting producer noted that the electricity used by the Chinese factories is at a voltage higher than that corresponding to Nivel 2 <sup>(118)</sup> for industry in Colombia. Accordingly, the Commission adapted the benchmark to reflect prices for Nivel 3. No additional charges were added as price reported covers all expenses. The price per kWh taken from this source amounted to CNY 1,18.

#### 3.4.6. Natural gas

(195) The Commission used the price of gas for businesses in Colombia as published by GlobalPetroPrices <sup>(119)</sup> on its website. The Commission used the average price of natural gas for businesses in Colombia in 2023 (i.e. 53 Euro per MWh or CNY 405,8 per MWh). These rates include all taxes, fees, and other components of the gas bill. It is noted that 1 m<sup>3</sup> of natural gas ≈ 10,55 kWh. Therefore, the nominal cost of one cubic meter of natural gas is CNY 4,281 per cubic meter.

<sup>(113)</sup> ILOSTAT Data Explorer Mean nominal monthly earnings of employees by sex and economic activity – Sector Industry.

<sup>(114)</sup> <https://www.dlapiperintelligence.com/goingglobal/tax/index.html?t=19-employment-taxes>.

<sup>(115)</sup> <https://taxsummaries.pwc.com/colombia/individual/other-taxes>; <https://actualicese.com/cuanto-le-cuesta-a-un-empleador-la-contratacion-de-un-trabajador-que-devengue-un-salario-minimo/>.

<sup>(116)</sup> See dataset “Mean weekly hours actually worked per employed person by sex and economic activity – ISIC Level 2 – Annual”, [https://rshiny.ilo.org/dataexplorer/54/?lang=en&segment=indicator&id=EAP\\_2WAP\\_SEX\\_AGE\\_RT\\_A](https://rshiny.ilo.org/dataexplorer/54/?lang=en&segment=indicator&id=EAP_2WAP_SEX_AGE_RT_A).

<sup>(117)</sup> See <https://www.enel.com.co/es/personas/tarifas-energia-enel-distribucion.html>. For each month, prices are reported for Tarifas de energía eléctrica (\$/kWh) Sector no residencial/Nivel 2/Industrial sin contribucion/Doble horario (day and the night).

<sup>(118)</sup> <https://www.enel.com.co/content/dam/enel-co/espa/C3%B1ol/2-1-6-normas-tecnicas/otros-documentos/NIVELES%20DE%20TENSI%C3%93N.pdf>

NIVELES DE TENSIÓN DE CONEXIÓN PARA CARGAS DE CLIENTES..

<sup>(119)</sup> [https://www.globalpetrolprices.com/natural\\_gas\\_prices/](https://www.globalpetrolprices.com/natural_gas_prices/)

#### 3.4.7. Steam

- (196) The cost of steam has been determined by using the cost of natural gas expressed as kWh and the quantity of gas expressed as kWh that is required to produce 1 tonne steam. In their response to the Second Note, the Union industry noted that in the calculation for steam included in the Second Note the Commission did not take into account that the steam pressure used for lysine production is 13 bar. Therefore, the Commission took account of generally recognized energy conversion rates <sup>(120)</sup> to calculate that 897,8 kWh are needed to convert 1 tonne of water to steam at 13 bar. This is equal to 85,1 m<sup>3</sup> of natural gas required to produce 1 tonne of steam. As the cost of natural gas is 405,8 CNY per MWh, the cost of producing 1 tonne of steam at 13 bar is 364,33 CNY.

#### 3.4.8. Water

- (197) The cost of water was determined on the basis of the cost of water from a Colombian water supplier <sup>(121)</sup>, taking into account variable costs per m<sup>3</sup> and fixed costs distributed between the quantities of consumption of water. An exporter requested that only the “tariffas por consume” be used. However fixed prices, despite making a very small contribution are part of the fixed costs for water in Colombia, thus the comment was rejected.

#### 3.4.9. Manufacturing overhead costs, SG&A costs, profits and depreciation

- (198) 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.
- (199) The Commission used the latest available 2023 data for the Colombian company Sucroal S.A. as a basis for the establishment of the SG&A costs and profit rates to construct normal value. As the data extracted from Orbis and reported in the Second Note had been updated, and in order to ensure that the calculations were based on the latest available data, the Commission obtained the latest financial data from the Colombian authorities <sup>(122)</sup> and will use these data for the calculations.
- (200) The Commission considered that the rates so established would lead to amounts for SG&A costs and for profit within the meaning of Article 2(6a) of the basic Regulation that are reasonable for the ex-works level of trade.
- (201) Meihua, an exporting producer requested that the net profit should be used rather than the profit before tax. They claimed that the net profit would reflect more accurately the real financial situation of the company in the representative country. As the pre-tax profit offers insight into the operational efficiency, whereas the net profit is dependent on the actual tax circumstances of Colombia and therefore not transferable to the tax conditions in China, the Commission considers that it is reasonable to use the pre-tax profit for the calculation of the normal value. Meihua also claimed that as the Commission includes the impact of taxes, e.g. in the calculation of labour cost, it is fair to include the impact of taxes in the assessment of the financial performance of the company in the representative country. The Commission notes that the profit is used for the calculation of the ex-works price and to compare it with the export price which is by necessity not including the impact of taxes as these are imposed at the end of the fiscal year. Therefore, including the net rather than the pre-tax profit would create an imbalance. Thus, the Commission rejected this claim.

<sup>(120)</sup> Benchmark the Fuel Cost of Steam Generation. Available at <https://www.energy.gov/eere/amo/articles/benchmark-fuel-cost-steam-generation> (last viewed 19 November 2024).

<sup>(121)</sup> <https://www.acueducto.com.co>.

<sup>(122)</sup> Supersociedades is an official body linked to the Colombian Ministry of Commerce, Industry and Tourism, as noted in <https://www.supersociedades.gov.co/web/nuestra-entidad>.



- (202) Both Eppen and Meihua had noted that the data provided by Sucroal include “other operating costs” and requested that more detailed data is provided to ensure that these do not include expenses such as freight, handling, insurance and banking costs that are excluded during the calculation of the ex-works export price. The latest financial data of Sucroal obtained from the Colombian authorities as explained in recital (199) indicate that the “other operating expenses” cover “distribution costs”, “Administration costs” and “other costs”. No further breakdown was readily available for the SG&A costs of Sucroal.
- (203) The manufacturing overheads incurred by the sampled exporting producers were expressed as a share of the costs of manufacturing actually incurred by these exporting producers. This percentage was applied to the undistorted costs of manufacturing.

### 3.5. Calculation

- (204) 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.
- (205) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the sampled exporting producers. These consumption rates provided by the applicant were verified during the verification. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in Section 3.4.
- (206) In order to arrive at the undistorted costs of production, the Commission first added manufacturing overheads to the undistorted cost of manufacturing, on the basis of the ratio between manufacturing overheads and costs of material as reported by each manufacturer.
- (207) Next, the Commission applied rates for the SG&A cost and profit as described in Section 3.4.9). The latter were determined on the basis of the financial statements of Sucroal as explained in recital (199).
- (208) To the costs of production established as described in the previous recital, the Commission applied SG&A costs and profit of Sucroal S.A. SG&A costs expressed as a percentage of the Costs of Goods Sold (“COGS”) and applied to the undistorted costs of production, amounted to 23,3 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 9,5 %.

### 3.6. Export price

- (209) One sampled exporting producer exported to the Union directly to independent customers. The other made certain exports through a related company acting as an importer.
- (210) For the exports of the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (211) For the exports of the product concerned to the Union through a related company acting as an importer, by one sampled exporting producer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.

(212) Considering the lack of information on profit from cooperating independent importers, the Commission relied provisionally on the profit at the level of 6,89 % considered reasonable in a previous investigation concerning imports of certain polyvinyl alcohols originating in the PRC <sup>(123)</sup>. Indeed, in the current proceeding only one co-operating importer reported profit in its sales of the product concerned. As a result, it was impossible to use the profit of the cooperating importer while preserving the confidential nature of its data. Thus, the level of profit of 6,89 % was considered reasonable, as it was realised by unrelated importers involved in the trade of chemical products.

### 3.7. Comparison

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

#### 3.7.1. Adjustments made to the normal value

(214) As explained in recital (204), the normal value was established at the *ex-works* level of trade by using costs of production together with amounts for SG&A costs and for profit, which were considered to be reasonable for that level of trade. Therefore, no adjustments were necessary to net the normal value back to the *ex-works* level.

(215) The Commission found no reasons for making any allowances to the normal value, nor were such allowances claimed by any of the sampled exporting producers.

#### 3.7.2. Adjustments made to the export price

(216) In order to net the export price back to the *ex-works* level of trade, adjustments were made on the account of transport, insurance, handling and loading, as well as packing.

(217) Allowances were made for the following factors affecting prices and price comparability: credit costs and bank charges.

(218) Furthermore, in those cases where the products were sold from the producer to other companies in the same group and then exported to the Union, adjustments were made, pursuant to Article 2(10)(i) of the basic Regulation for the mark-up received by the related traders, whenever the traders were considered to performed functions similar to those of an agent working on a commission basis. The mark-up was calculated as the addition of SG&A expenses and of accruing profits. The SG&A costs were based on the data provided by the related traders, whereas the profit used was 6,89 %, as explained in recital (212) above.

(219) A sampled exporting producer requested, by referring to a recent ruling of the General Court, <sup>(124)</sup> that the SG&A ratio of Sucroal should be adjusted in order to exclude certain selling, general and administrative category of expenses that may be included within its own export price, when the comparison is carried out on an *ex-works* basis. It further claimed that if the Commission cannot identify these expenses in the “Other operating expenses” category of Sucroal’s financial information, it should refrain from making any adjustment to its export price to remove SG&A expenses that are part of the export price. As explained in recital (213) the Commission chose to compare the export price and the normal value at *ex-works* level of trade. As explained in recital (204), the normal value was established at *ex-works* level of trade by using costs of production together with amounts for SG&A costs and for profit, which were considered to be reasonable for that level of trade. Therefore, no adjustments were necessary to net the normal value back to the *ex-works* level.

<sup>(123)</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, recital 352. ELI: [http://data.europa.eu/eli/reg\\_impl/2020/1336/oj](http://data.europa.eu/eli/reg_impl/2020/1336/oj).

<sup>(124)</sup> Case T-762/20, Sinopec Chongqing SVW Chemical and Others v Commission, EU:T:2024:113, paras 126-139.

- (220) In its judgement in *CCCME* <sup>(125)</sup>, which was subsequent to the judgement in *Sinopec*, the General Court first recalled that in accordance with the case-law, if a party claims adjustments under Article 2(10) of the basic Regulation in order to make the normal value and the export price comparable for the purpose of determining the dumping margin, that party must prove that its claim is justified. The burden of proving that the specific adjustments listed in Article 2(10)(a) to (k) of the basic regulation must be made lies with those who wish to rely on them. <sup>(126)</sup> It follows that, in that case, as in this investigation, it was for the interested parties, in accordance with that case-law, to demonstrate the need for the adjustment requested in support of evidence which they adduced during the investigation. <sup>(127)</sup>
- (221) The General Court then held that it should be noted that although the practice of making adjustments may prove to be necessary, under Article 2(10) of the basic Regulation, to take account of differences between the export price and the normal value which affect their comparability, such deductions cannot be made with respect to a value which has been constructed and which is not, therefore, genuine. That value is not generally affected by factors which might damage its comparability, because it has been artificially established. <sup>(128)</sup> Moreover, as in the case of *CCCME*, in the case at hand the construction of the normal value per product type on an 'ex-works' basis included a reasonable amount for SG&A costs and there was no information available showing that the SG&A costs of Sucroal concerned included the expenses at issue. Consequently, in view of the Commission's discretion in the application of Article 2(10) of the basic Regulation, <sup>(129)</sup> the Commission's approach adhered to the most recent case-law concerning unsubstantiated claims that amounts for SG&A costs used in the construction of the normal value under article 2(6a)(a), which are considered by the Commission to be reasonable for the ex-works level of trade, contain transport costs.
- (222) Finally, and independently from the judgment in *CCCME*, the proposed solution that the relevant cost items are maintained in the export-price would not address the issue identified by the exporting producer. Even if SG&A costs of Sucroal contained the relevant cost items (and this has not been demonstrated) it is virtually impossible that the value of these items would be comparable to those of the sampled exporting producers. Removing them would therefore not address the claimed asymmetry between the normal value and the export price. The claim was therefore rejected.

### 3.8. Dumping margins

- (223) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (224) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.
- (225) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation was measured by the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of data in the sampling form as reported by the non-sampled exporting producers, and verified data in the questionnaire replies by the sampled exporting producers.

<sup>(125)</sup> Judgement of 2 October 2024, *CCCME and Others v Commission*, T-263/22, EU:T:2024:663, .

<sup>(126)</sup> Judgement of 2 October 2024, *CCCME and Others v Commission*, T-263/22, EU:T:2024:663, para. 183.

<sup>(127)</sup> Judgement of 2 October 2024, *CCCME and Others v Commission*, T-263/22, EU:T:2024:663, para. 185.

<sup>(128)</sup> Judgement of 2 October 2024, *CCCME and Others v Commission*, T-263/22, EU:T:2024:663, para. 188.

<sup>(129)</sup> Judgement of 2 October 2024, *CCCME and Others v Commission*, T-263/22, EU:T:2024:663, para. 184.

- (226) The level of cooperation in this case was considered high because the total exports of the cooperating exporting producers, sampled and non-sampled, accounted for the totality of imports during the investigation period.
- (227) On this basis, the Commission considered it appropriate to establish the dumping margin for all non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.
- (228) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin (%)
Meihua Group:	84,8
— Jilin Meihua Amino Acid Co., Ltd	
— Xinjiang Meihua Amino Acid Co., Ltd	
— Meihua Holdings Group., Ltd	
— Meihua International Trading (Hong Kong) Limited	
Eppen Group:	58,3
— Heilongjiang Eppen Biotech Co., Ltd	
— Eppen Asia Pte. Ltd..	
Other cooperating companies	71,6
All other imports originating in the People's Republic of China	84,8

#### 4. INJURY

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

- (229) The like product was manufactured by one producer in the Union during the investigation period. It constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (230) As the data relating to the injury assessment was derived from only one Union producer, the figures for the injury analysis are given in ranges for reasons of confidentiality. However, the indexes are based on the actual data and not on the ranges.
- (231) The total Union production during the investigation period was in the range of 11 000 to 13 000 tonnes. The Commission established the actual figure on the basis of a verification of the audited reports of the Union industry, namely Eurolysine.

##### 4.2. Union consumption

- (232) The Commission established the Union consumption on the basis of (i) the verified sales of the Union industry; and (ii) the imports from the country concerned and from all other third countries.
- (233) Union consumption developed as follows:

Table 2

##### Union consumption (tonnes in HCl equivalent)

	2020	2021	2022	IP
Total Union consumption	[465 000 – 510 000]	[470 000 – 515 000]	[450 000 – 495 000]	[410 000 – 450 000]
Index	100	102	97	89

Source: Eurostat (lysine HCl, liquid lysine), Eurolysine (lysine sulphate)

- (234) To compare the different types of lysine, the Commission noted that one tonne of lysine HCl typically contains 78 % of lysine whereas one tonne of liquid lysine typically contains 50 % of lysine. The Commission therefore considers that one tonne of liquid lysine is equivalent to 0,641 tonne of lysine HCl. Similarly, one tonne of lysine HCl typically contains 78 % of lysine whereas one tonne of lysine sulphate typically contains 55 % of lysine. The Commission therefore considers that one tonne of lysine sulphate is equivalent to 0,705 tonne of lysine HCl.
- (235) On this basis, the Commission calculated the Union consumption of lysine in HCl equivalent and noted a drop in the Union consumption, with an overall decrease of the Union consumption of 11 % over the period considered. The general decrease in the Union consumption was consequential to the severe bird flu in the Union combined with the reduction of the lysine demand from the pig sector <sup>(130)</sup>, which has a direct effect on the lysine consumption.
- (236) For the purpose of correct comparison of the lysine HCl, liquid lysine and lysine sulphate, all Union-produced and imported lysine volumes throughout this regulation have been converted to HCl equivalent using the conversion rates set out in the recital (234).

### 4.3. Imports from the country concerned

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

- (237) As L-lysine hydrochloride and aqueous solution of L-lysine are imported under CN code 2922 41 00, the Commission relied for those two product groups on the Eurostat import data. However, lysine sulphate currently falls under 'basket' codes ex 2309 90 31 and ex 2309 90 96 for preparations of a kind used in animal feeding and it is not possible to assess import statistics from Eurostat. Therefore, import statistics of lysine sulphate, third product group, were based on import statistics of specialised market intelligence providers of Chinese and Indonesian trade statistics. <sup>(131)</sup>
- (238) The source of the data concerning the Chinese imports could not be disclosed at the request of the data provider. However, the Commission cross-checked the data provided by the Union industry with other available statistical sources (Eurostat and Surveillance) and with the sampling and questionnaire replies of the cooperating Chinese exporting producers.
- (239) To establish the market share of imports, the Commission analysed the different forms of lysine and applied the conversion rates set out in the recital (234). The Commission compared the import volumes converted to lysine HCl equivalent with the Union market consumption expressed in lysine HCl equivalent.
- (240) Imports into the Union from the country concerned developed as follows:

Table 3

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

	2020	2021	2022	IP
Volume of imports from China (tonnes)	304 015	294 812	285 083	329 052
Index	100	97	94	108

<sup>(130)</sup> The decrease in the Union consumption is evidenced in the Eurostat data (tables 2 and 3) and the verified data provided by the Union producer.

<sup>(131)</sup> Lysine sulphate is produced only in China and Indonesia.

	2020	2021	2022	IP
Market share (%)	[60 % -69 %]	[49 % -63 %]	[59 % -69 %]	[70 % -79 %]
Index	100	96	96	121

Source: Eurostat (lysine HCl, liquid lysine), Eurolysine (lysine sulphate)

- (241) Table 3 shows a decline in imports from China in 2021, which is attributed to the extraordinary circumstances linked to the Covid-19 crisis and China and the energy crisis. Between 2022 and the investigation period, however, the volume of imports increased by 15 %.
- (242) During the period considered, the imports of lysine from China, converted to HCl equivalent, increased by 25 037 tonnes, or 8%. This translated into an increase of 21% in the total market share of the Chinese imports into the Union during the same period.
- (243) CESFAC, Pinaluba and Vall Companys claimed that a volume increase by 8 % is not a significant absolute increase of Chinese imports of lysine, and that the market share increase of those imports, that it estimated at 5 percentage points, can neither be considered significant. The Commission disagreed. An import volume increase by 25 037 tonnes, by itself representing 8 % of Union consumption in the investigation period, is by all means significant. The Commission noted that the market share increase calculation made by CESFAC, Pinaluba and Vall Companys was erroneous and that it actually amounted not to 9 % (or 5 percentage points) but to 21%, as the above table shows. Such market share increase is significant.

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

- (244) The Commission established the prices of imports on the basis of Eurostat and a specialised market intelligence indicated in recital (237). Price undercutting of the imports was established on the basis of verified questionnaire replies of the samples exporting producers in the PRC.
- (245) The weighted price of imports into the Union from the country concerned developed as follows:

Table 4

#### Import prices (EUR/tonne)

	2020	2021	2022	IP
China	876	1 342	1 679	1 104
Index	100	153	192	126

Source: Eurostat (lysine HCl, liquid lysine), Eurolysine (lysine sulphate)

- (246) Import prices from China increased in 2021 and 2022. The Union industry claimed that, in the year 2020, the prices were recovering from the historical low observed in relation to the African swine fever in China. The prices increased in 2021 due to the energy crisis in China and Covid-19 restrictions, which triggered a shutdown of some of the lysine plants temporarily. The prices increased further in 2022, then decreased significantly in the investigation period.
- (247) The Chinese landed prices remained below the Union industry's prices throughout the period considered, with the exception of 2021 when China was impacted by domestic energy crises and Covid-19 restrictions and the exports of lysine to the Union decreased.

- (248) The Commission determined the price undercutting during the investigation period by comparing:
- (a) the weighted average prices per product type of the imports from the sampled cooperating Chinese producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for custom duties and post-importation costs; and
  - (b) the corresponding weighted average sales prices per product type of the Union industry charged to unrelated customers on the Union market, adjusted to an ex-works level.
- (249) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union industry's theoretical turnover during the investigation period. It showed a weighted average undercutting margin of between 38 % and 42 % by the imports from the country concerned on the Union market. Undercutting was found for 100 % of the imported volumes of the sampled companies.
- (250) The Commission further considered other price effects, in particular the existence of significant price suppression. As mentioned in the recitals (269) to (271), from 2022 onwards the Union industry saw a marked increase in its unit production costs, driven both by indirect costs on a per unit basis and the prices of energy and raw materials. Given that in the investigation period the price of imports from China decreased significantly, the Union industry was unable to increase its selling price to cover its cost of production. This price suppression further confirms that the dumped imports from China resulted in loss of profitability to the Union industry.

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

##### 4.4.1. General remarks

- (251) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (252) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. As Eurolysine is the sole Union producer of the like product, both sets of data were established on the basis of the verified questionnaire reply of Eurolysine and found to be representative of the economic situation of the Union industry.
- (253) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (254) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.4.2. Macroeconomic indicators

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

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

Table 5

#### Production, production capacity and capacity utilisation

	2020	2021	2022	IP
Production volume (tonnes)	[68 000 – 74 000]	[70 000 – 76 000]	[34 000 – 37 000]	[11 000 – 13 000]

	2020	2021	2022	IP
<i>Index</i>	100	103	52	17
Production capacity (tonnes)	[75 000 – 82 000]	[75 000 – 82 000]	[75 000 – 82 000]	[75 000 – 82 000]
<i>Index</i>	100	100	100	100
Capacity utilisation	86 %	89 %	45 %	15 %
<i>Index</i>	100	103	52	17

Source: Questionnaire reply Eurolysine

- (256) During the period considered, despite a slight increase in Union consumption in 2021 as shown in Table 2, the Union industry's production volume decreased dramatically onwards. The Union production fell sharply to only 17 % of its 2020 volume in the investigation period. The Union industry was not able to compete against dumped imports from China, which in the investigation period came in at prices significantly below the Union industry's cost of production. The Union industry therefore had to adjust the production to a very low sales volume, resulting in a temporary suspension of production.
- (257) This decrease in the production volumes was more significant than the 14% decrease in the Union consumption over the period considered. The temporary increase in production volumes observed in 2021 is attributable to the unfavourable export conditions in China, as explained in recital (241) and (247) above.
- (258) The reported production capacity figures refer to installed capacity, which remained stable during the period considered. Besides lysine, the Union producer also manufactures other specialty products, such as valine, arginine or tryptophan. The plant is, however set up to produce [77 %-87 %] of lysine and [13 %-23 %] of other specialty products.

#### 4.4.2.2. Sales volume and market share

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

Table 6

#### Sales volume and market share

	2020	2021	2022	IP
Sales volume on the Union market (tonnes)	[52 000 – 57 000]	[68 000 – 75 000]	[31 000-34 000]	[7 500 – 9 000]
<i>Index</i>	100	132	63	16
Market share	10,7 %	14 %	7 %	1,9 %
<i>Index</i>	100	130	65	18

Source: Questionnaire reply Eurolysine

- (260) The Union industry sales volume on the Union market first grew in 2021 by 32% compared to 2020, mainly due to the aforementioned decrease in pressure exerted by imports from China. In 2021, as Chinese exporting producers faced obstacles on the domestic market and exports of lysine to the Union decreased, the Union industry's EU sales and market share saw a stable increase. Since 2022, the Union industry's EU sales decreased significantly. In the investigation period, the sales volume contracted dramatically by –84 % as compared to 2020.



(261) The market share also reflects such reality. In view of the strong increase of Chinese exports, the Union share contracted significantly, decreasing by 82% over the period considered.

#### 4.4.2.3. Growth

(262) The Union consumption slightly decreased during the period considered and the sales volume of the Union industry in the Union market decreased sharply. The Union industry thus experienced a significant 9 percentage points loss of market share. At the same time, the market share of the imports from the country concerned increased by 22% during the same period.

#### 4.4.2.4. Employment and productivity

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

Table 7

#### Employment and productivity

	2020	2021	2022	IP
Number of employees (FTE)	[160 - 180]	[130 - 150]	[135 - 155]	[60 - 75]
<i>Index</i>	100	80	88	42
Productivity (tonnes/FTE)	[400 - 440]	[520 - 570]	[230 - 260]	[150 - 180]
<i>Index</i>	100	129	59	42

Source: Questionnaire reply Eurolysine

(264) The Union industry decreased its workforce throughout the period considered, as its production and sales volumes decreased. A striking drop occurred during the investigation period when the Union manufacturer had to temporarily stop the production of the product under investigation.

(265) Productivity followed the changes in production and employment. Over the period considered, the productivity decreased by 58%, with a temporary increase in 2021 thanks to the increase in Union's industry's production and sales due to lower imports of the product concerned from China.

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

(266) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.

(267) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

## 4.4.3. Microeconomic indicators

## 4.4.3.1. Prices and factors affecting prices

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

Table 8

**Sales prices in the Union**

	2020	2021	2022	IP
Average unit sales price in the Union on the total market (EUR/tonne)	[1 000 – 1 200]	[1 100 – 1 300]	[1 800 – 2 000]	[2 200 – 2 500]
<i>Index</i>	100	112	175	205
Unit cost of production (EUR/tonne)	[1 200 – 1 400]	[1 500 – 1 800]	[2 200 – 2 600]	[2 800 – 3 200]
<i>Index</i>	100	127	192	241

Source: Questionnaire reply Eurolysine

- (269) Table 8 above shows that during the period considered the sales prices increased continuously, driven mainly by increasing costs of electricity and steam, the principal raw materials (such as sugar, ammonia, or ammonium sulphate) and fixed cost. This was particularly pronounced since 2022 when the Union industry suffered the peak in energy prices and the EU lysine consumption started to fall, see recital (235).
- (270) During the entire period considered, the average unit sales price was below the unit cost of production, with the gap between the two widening year after year.
- (271) The unit cost of production saw a major increase of 141 % during the period considered. This was particularly pronounced in 2022, when the energy prices peaked, and the investigation period, when the fixed costs were divided on a lower volume of production.

## 4.4.3.2. Labour costs

- (272) The average labour costs of the applicant developed over the period considered as follows:

Table 9

**Average labour costs per employee**

	2020	2021	2022	IP
Average labour costs per employee (EUR)	[68 000 – 75 000]	[70 000 – 77 000]	[67 000 – 74 000]	[73 000 – 80 000]
<i>Index</i>	100	106	98	111

Source: Questionnaire reply Eurolysine

- (273) During the period considered, the average wage per employee increased by 11 %. The increase had been more marked in the investigation period, with a yearly increase of 13 %.

#### 4.4.3.3. Inventories

- (274) Stock levels of the Union industry developed over the period considered as follows:

Table 10

#### Inventories

	2020	2021	2022	IP
Closing stocks (tonnes)	[12 000 – 15 000]	[3 000 – 5 000]	[3 000 – 5 000]	[3 000 – 5 000]
<i>Index</i>	100	35	28	33
Closing stocks as a percentage of production (%)	[18-20]	[6-8]	[9-11]	[35-37]
<i>Index</i>	100	34	53	190

Source: Questionnaire reply Eurolysine

- (275) The level of inventories in absolute terms decreased by 65 % in 2021 when the Union industry was able to increase their sales volumes and market share due to the temporary fall in Chinese imports. As the Union industry began to further lose its market position in 2022 and in the investigation period, the volume of inventories increased again and not all foreseen production was sold. The overall decrease in the inventories is linear with the decrease in Union production. The increase of closing stocks as a percentage of production is linear with the low volume of production in the investigation period.

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

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

Table 11

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

	2020	2021	2022	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[- 10 to - 14]	[- 19 to - 23]	[- 20 to - 24]	[- 28 to - 32]
<i>Index</i>	- 100	- 165	- 155	- 220
Cash flow (EUR 000)	[- 8 500 000 to - 10 500 000]	[- 12 000 000 to - 14 000 000]	[- 13 000 000 to - 15 000 000]	[- 7 000 000 to - 9 000 000]
<i>Index</i>	- 100	- 129	- 130	- 78

	2020	2021	2022	IP
Investments (EUR 000)	[5 000 000 - 7 000 000]	[3 000 000 – 5 000 000]	[4 000 000 -6 000 000]	[4 000 000 -6 000 000]
<i>Index</i>	100	88	93	88
Return on investments (%)	[- 14 to - 18]	[- 28 to - 32]	[- 20 to - 24]	[- 7 to - 11]
<i>Index</i>	- 100	- 179	- 128	- 60

Source: Questionnaire reply Eurolysine

- (277) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the entire period considered, the Union industry was severely loss-making. It incurred a considerable loss in the investigation period when production was stopped for four months in view of the continued increase in the dumped imports and lower prices, leading to lost sales and temporary suspension of production. During the period considered, its profitability decreased by 120 percentage points.
- (278) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed followed the similar pattern to that of profitability throughout the period considered. Although less pronounced than the high losses, the cash flow remained negative during the entire period considered. During the investigation period, the level of sales from stock represented around 20 % of the total sales, which – while being higher than during the previous periods - contributed to a less negative cash flow compared to the previous years.
- (279) Net investments decreased, with a slight increase in 2021, by 12 % during the period considered. The difficult economic situation of the Union industry and resulting lack of profitability is the main reason for lack of new investments in the lysine production.
- (280) The return on investments is the profit in percentage of the net book value of investments. In light of the developments described above, the return on investments (fixed assets used for the production) was negative during the period considered. The seemingly improving trend is attributed to lower loss in profitability than in the previous years, caused by low production in the investigation period.
- (281) The Union industry's ability to raise capital had been severely affected by the significant negative levels of cash flow and profitability reached in the period considered.

#### 4.4.4. Conclusion on injury

- (282) All the main injury indicators showed a negative trend and most of them were consistently negative during the period considered, whereas the situation of the Union industry sharply deteriorated further in the investigation period.
- (283) The production volume and sales volume of the Union industry decreased by a staggering 83 % and 84 % respectively. Consequently, the market share of the Union industry dropped from 11 % in 2020 to 2 % in the investigation period.
- (284) In addition, the Union industry was faced with a significant increase in the cost of production, which rose by 141 % over the period considered. It could not pass on this cost increase to the customers – on strongly declining sales volumes, the Union industry could increase average prices by no more than 105%. As a result, the situation of the Union industry, which already incurred double-digit losses in the first year of the period considered, deteriorated strongly and in the investigation period it had to temporarily stop production in order to limit the damage. This dramatic worsening of the situation of the Union industry was also reflected in the development of other key indicators as employment, cash flow and return on investments.

- (285) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (286) As already explained in recital (250) above, the Commission concluded that Chinese dumped imports were exerting price suppression on Union industry throughout the period considered.

## 5. CAUSATION

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

### 5.1. Effects of the dumped imports

- (288) As set out in recital (242), the import volumes of the product concerned from China increased by 8%, expressed in lysine HCl equivalent, translating into an increase of 13 percentage points in the market share of the Chinese imports into the Union during the period considered. During the same period, as set out in recitals (260) and (261), the Union industry was not able to compete with the Chinese exporting producers and saw its sales volume decrease by 84% and its market share by 82 %. This happened in a context where Union consumption fluctuated and decreased overall by 11 % during the period considered.
- (289) As shown in recital (249), the Chinese imports were significantly undercutting the Union industry prices in the investigation period and their prices were below the prices of the Union industry throughout the period considered, leading to an increasing deterioration of the situation of the Union industry. Chinese imports also led to price suppression during the period considered, when the Union industry was incapable of selling above its cost of production in view of the pressure derived from the dumped imports. The price suppression was particularly pronounced in the investigation period.
- (290) As shown in Table 12, the increasing market share of Chinese imports also coincides with both the market share of the Union producer and third country imports decreasing sharply in the investigation period.
- (291) Therefore, the Commission concluded that a significant increase in dumped imports from China at prices that were significantly undercutting Union prices, caused material injury to the Union industry.

### 5.2. Effects of other factors

#### 5.2.1. Imports from third countries

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

Table 12

#### Imports from third countries

Country		2020	2021	2022	IP
Indonesia	Volume (tonnes)	56 107	62 436	51 142	35 619
	Index	100	111	91	63

Country		2020	2021	2022	IP
	Market share	[8%-11%]	[12%-15%]	[10%-14%]	[5%-9%]
	Average price (EUR/tonne)	1 007	1 271	2 228	1 443
	<i>Index</i>	100	126	221	143
USA	Volume (tonnes)	50 508	50 257	48 947	26 914
	<i>Index</i>	100	100	97	53
	Market share	[8%-11%]	[8%-11%]	[8%-11%]	[5%-8%]
	Average price (EUR/tonne)	1 030	1 268	1 592	1 145
	<i>Index</i>	100	123	154	111
South Korea	Volume (tonnes)	25 213	13 856	47 750	25 519
	<i>Index</i>	100	55	189	101
	Market share	[4%-6%]	[2%-5%]	[9%-13%]	[4%-8%]
	Average price (EUR/tonne)	1 037	1 632	2 240	1 540
	<i>Index</i>	100	157	216	148
Brazil	Volume (tonnes)	1 932	6 928	10 494	12 952
	<i>Index</i>	100	359	543	655
	Market share	[0%-1%]	[1%-2%]	[2%-3%]	[2%-3%]
	Average price (EUR/tonne)	858	1 206	2 278	1 480
	<i>Index</i>	100	141	266	173
Total of all third countries except the country concerned	Volume (tonnes)	133 760	133 476	158 333	100 704
	<i>Index</i>	100	100	118	75
	Market share	[23%-28%]	[23%-28%]	[30%-35%]	[20%-25%]
	Average price (EUR/tonne)	1 020	1 305	2 038	1 393
	<i>Index</i>	100	128	200	137

Source: Eurostat (lysine HCl, liquid lysine), Eurolysine (lysine sulphate)

- (293) The Commission noted that in the investigation period, imports from Indonesia represented the biggest share of imports into the Union from third countries other than the PRC. The Commission further noted that Indonesia exports predominantly liquid lysine, followed by lysine sulphate (6 % of Indonesian imports in the investigation period).
- (294) The volume of imports from the by far largest sources other than China in 2020, Indonesia and the USA, and from all third countries combined have been strongly declining throughout the period considered, except for 2022 when Brazil and South Korea improved their market share according to Eurostat. Import volumes from Indonesia and the USA follow a trend similar to the one observed for Union industry sales – an increase in imports in 2021, and then decreasing sharply in 2022 and in the investigation period. Imports from all other third countries (Brazil and South Korea) which increased their market position in 2022 also lost market share in the investigation period compared to 2022.
- (295) The Commission observed that, in 2021 and 2022, the import price from the USA was lower than Chinese import price. However, the US import price decreased significantly during the investigation period in comparison with previous years, suggesting a price suppression exerted by the dominant imports from China.
- (296) By contrast, the Commission established that the landed prices of totality of Chinese imports decreased significantly, that is by 66 % in the investigation period and undercut the Union industry's prices by 40,2 % in the investigation period.
- (297) The Commission then examined the significance of imports from China, from Indonesia, US, Brazil and South Korea in the total Union market. As tables 3 and 12 above show, the total volume of imports from China in the investigation period are three times higher than those from the other third countries. Furthermore, imports from Indonesia and US lost market share in the investigation period. In contrast, Chinese imports are the only ones that gained market share between 2022 and the investigation period.
- (298) The Commission noted that the average Chinese price was below the import prices from other third countries, dragging down also prices from third countries to a level below the cost of production of the Union industry. In view of the relatively low volumes of imports per country, much lower volumes than from China, with a decreasing tendency and at higher prices than China but at lower prices than the Union industry, the Commission therefore concluded that the impact of imports from Indonesia, US, Brazil and South Korea cannot individually be regarded as significant.

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

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

Table 13

#### Export sales

	2020	2021	2022	IP
Export volume (tonnes)	[12 000 – 14 000]	[9 500 -11 000]	[3 500 – 5 000]	[1 000-1 500]
<i>Index</i>	100	72	46	26
Average price (EUR/tonne)	[1 100 – 1 450]	[1 200 – 1 500]	[2 000 – 2 400]	[1 800 – 2 300]
<i>Index</i>	100	117	180	169

Source: Questionnaire reply Eurolysine.

- (300) The export volume of the Union industry was relatively small over the period considered, accounting for 20 % of the Union industry sales in the first year of the period considered. Since then, they have decreased linearly with the decrease in production. The average sales prices for exports also followed a similar trend to that of domestic sales, i.e. they increased as a result of higher cost of production.

(301) Therefore, on the basis of the relatively small volumes throughout the period considered and trends similar to those observed for the Union industry's sales in the Union, the Commission provisionally concluded that the export performance of the Union industry did not attenuate the causal link between the dumped imports from the country concerned and the material injury found.

### 5.2.3. *Other factors*

(302) CESFAC, Pinaluba and Vall Companys and CCCMC claimed that the injury was caused by the Union industry's imports of lysine from the Chinese exporting producers, which constituted about 10 % - 15 % of its sales in the Union.

(303) The Commission confirmed that the Union industry imported limited volumes of lysine from China and South Korea for further distribution on the Union market to improve its cash flow position. However, these volumes gradually declined from 2020 onwards and no such imports were anymore made in 2023. On that basis, the claim was rejected.

(304) The same parties further pointed at the substantial increase in the Union cost of production, driven mainly by the increase in cost of sugar beet and electricity, as a possible cause of injury.

(305) As set out in recital (269), the Union industry's cost of production increased due to price increases of energy and raw materials such as sugar beet, ammonia, or ammonium sulphate. In normal market circumstances, manufacturers can reflect cost increases in its sales prices. In 2021, the Union industry could to some extent increase its prices in reaction to the increase in the cost of production. However, in 2022 and during the investigation period, given the very low level of prices of imports from China and even strong drop thereof in the investigation period, as reported in Table 4, this was no longer possible. It is thus not the increase of costs as such, but, due to the massive presence on the market of unfairly traded low-priced imports from China, the Union industry's inability to accurately reflect these cost increases in its sales prices that caused injury.

(306) CESFAC, Pinaluba, Vall Companys and CCCMC claimed that the injury is partially caused by the decrease in the Union's consumption of lysine.

(307) Table 2 confirms that over the period considered, consumption of lysine fell by 55 000 – 60 000 tonnes or 11 %. However, whereas consumption decreased, Chinese imports increased by 25 000 tonnes over the same period. As a consequence, the Union industry's market share, which was 10,7 % at the beginning of the period considered, plummeted to below 2 % in the investigation period.

(308) A decline of Union industry's sales volumes proportionate to the decrease in consumption would have been in the order of 6 000 to 8 000 tonnes, whereas now, due to the opposite development of Chinese imports, it amounted to 44 500 – 48 000 tonnes. The decrease in consumption as such cannot be regarded as significant.

(309) CESFAC, Pinaluba, Vall Companys and CCCMC further claimed that the Union producer had shifted a substantial volume of production capacity from lysine to so-called 'specialty amino acids' due to the volatility of the lysine market and that the Union industry had converted 40 000 tonnes of the lysine installed capacity to 'specialty products', such as valine, arginine and tryptophan, thus consciously withdrawing from the Union lysine market.



- (310) As seen in Table 5, the Commission noted, first, that the lysine production capacity of the Union producer remained stable during the period considered. The specialty products are manufactured by auxiliary facilities unrelated to the lysine production. The Union industry increased the production of specialty amino acids during the period considered in order to mitigate the substantial losses it incurred on the production and sales of lysine. The production capacity of these specialty amino acids is, however, separate from the production process of lysine and should not be considered interchangeable. As mentioned in recital (258), the complainant's main economic activity is the production of lysine. The production capacity of the specialty amino acids is limited in comparison to the production capacity of lysine. It is therefore likely that the potential termination of the lysine production would result in a termination of the production of other specialty amino acids. The Commission therefore considered that the increase in production of specialty amino acids does not contribute to the injury.
- (311) CESFAC, Pinaluba, Vall Companys and CCCMC claimed that the economic and financial underperformance of the Union industry started before the period considered and culminated in the Union industry's decision, in early 2024, to apply for insolvency proceedings before French courts. They claimed that the pre-existing financial difficulties are results of own business and financial decisions and strategies, in ways unrelated to any competitive pressure from Chinese lysine imports.
- (312) In reply to this claim, the Commission first noted that the claim was not substantiated as it did not specify which poor financial or business decisions the Union industry would have taken in the past that could explain its difficulties. Second, the Commission noted that manufacturers are not required to have a recent history of profitability in order to seek relief through trade defence measures. Third, indeed, already at the beginning of the period considered, the Union industry was loss-making, as shown in Table 11. Without drawing any conclusions as to the role of Chinese imports in the Union industry's situation in that year, the Commission however noted that Chinese imports already had a very significant presence in 2020, accounting for a market share of more than 50 %. More importantly, it noted that since then, Chinese imports further increased substantially in the Union market whereas the spread between the Union industry sales prices and the Chinese import prices increased dramatically, from EUR [125-325]/tonne in 2020 to EUR [1 097-1 397]/tonne in the investigation period.
- (313) On that basis, it is clear that the situation of the Union industry as it developed in the period considered cannot be attributed to mismanagement. The claim was rejected.

### 5.3. Conclusion on causation

- (314) The above analysis shows that, whilst the Union market was contracting, there was a major increase in the volume of the imports originating in China during the period considered. The low prices of dumped Chinese imports prevented the Union industry from increasing its prices to sustainable levels, resulting in a situation of continuous and increasing loss-making. Moreover, the Union industry also lost significant market share to Chinese imports and due to the severe loss of sales it even had to temporarily halt production in 2023. The Commission established thus a causal link between the dumped imports from China and the injury suffered by the Union industry.
- (315) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of these factors on the Union industry's negative developments were, however, not significant.
- (316) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury is overall and it consists, inter alia, of loss of production, sales, market share, profitability and employment.

## 6. LEVEL OF MEASURES

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

### 6.1. Injury margin

- (318) The injury would be removed if the Union industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.
- (319) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country concerned, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (320) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. As the Union industry suffered losses during the entire period considered and the Union industry data could not be used, the Commission established a reasonable profit margin at 6 %.
- (321) The Union industry provided evidence that its level of investments, research and development (R&D) and innovation during the period considered would have been higher under normal conditions of competition. The Commission verified this information based on investment plans and postponed projects. Indeed, the claims of the Union industry were found to be warranted. To reflect this in the target profit, the Commission calculated the difference between investments, R&D and innovation ('IRI') expenses under normal conditions of competition as provided by the Union industry and verified by the Commission with actual IRI expenses over the period considered. Such difference, expressed as a percentage of turnover, was 4,69 %.
- (322) Such percentage of 4,69 % was added to the basic profit of 6 % mentioned in the recital (319), leading to a target profit of 10,69 %.
- (323) The Union producer did not produce significant quantities of the product concerned during the investigation period. Therefore, its production costs were not considered appropriate for the purposes of establishing the target price. These costs were affected by a significant increase in fixed costs per unit caused by sales volume losses (both on the domestic and export markets) which also translated into production volume losses. The Union producer also stopped the production of lysine for 4 months in the investigation period. Therefore, the Commission considered the production volume in 2022 (adjusted to December 2023 inflation index for France) as appropriate for this investigation.
- (324) On this basis, the non-injurious weighted average price is in the range of 2 800 to 3 300 EUR per tonne, resulting from applying the above-mentioned profit margin of 10,69 % to the cost of production during the investigation period of the sole Union producer.
- (325) In accordance with article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available, the Commission established an additional cost of [240-270] EUR/tonne. This was added to the non-injurious price mentioned in recital (324).
- (326) On this basis, the Commission calculated a non-injurious price of [3 040-3 570] EUR/tonne for the like product of the Union industry by applying the above-mentioned target profit margin (see recital (324)) to the cost of production of the Union industry during the investigation period and then adding the adjustments under Article 7(2d) on a type-by-type basis..
- (327) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union industry on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(328) The injury elimination level for 'other cooperating companies' and for 'all other imports originating in China' is defined in the same manner as the dumping margin for these companies and imports (see Section 3.3. above).

## 6.2. Calculation

Company	Dumping margin (%)	Injury margin (%)
Meihua Group:	84,8	158,9
— Jilin Meihua Amino Acid Co., Ltd		
— Xinjiang Meihua Amino Acid Co., Ltd		
— Meihua Holdings Group., Ltd		
— Meihua International Trading (Hong Kong) Limited		
<b>Eppen Group</b>	58,3	155,9
— Heilongjiang Eppen Biotech Co., Ltd		
— Eppen Asia Pte. Ltd.		
Other cooperating companies	71,6	157,5
All other imports originating in the People's Republic of China	84,8	158,9

## 7. UNION INTEREST

(329) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation.

(330) 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.

### 7.1. Interest of the Union industry

(331) The sole producer of lysine in the Union, which lodged the complaint, cooperated fully in the investigation and expressed its interest to the imposition of measures.

(332) The investigation has shown that the Union producer is suffering material injury caused by the dumped imports from the country concerned. These imports exercised significantly price depression, forcing the Union industry to sell below costs. As a result, the Union industry was making significant losses. Chinese imports still severely undercut the Union industry's prices, and the volume increase of these imports caused a significant loss of Union industry sales volumes and market share.

(333) The imposition of measures would likely prevent a further surge of imports from China at very low prices and enable the industry to start its recovery process. Without measures, Chinese producers will continue to dump the product concerned on the Union market and it will not take long before the Union industry can cease operations.

(334) As the Union industry is able to supply only about 20 % of the Union consumption, following the imposition of anti-dumping provisional measures, it is expected that Chinese imports to the Union will continue, but the sales volumes and prices of the Union industry on the Union market will rise, thus improving profitability and other financial indicators of this industry and preventing closure.

(335) It was therefore concluded that imposing measures against China would be in the interest of the Union industry.

## 7.2. Interest of unrelated importers

- (336) Three importers cooperated with the investigation by providing a reply to the questionnaire. Together, they accounted for 26 % of lysine imports from China.
- (337) Andres Pinaluba S.A, expressed concerns that adoption of anti-dumping measures on imports of lysine from China would create a serious risk of supply shortages in the EU market and presented evidence of past prolonged and persistent supply shortages of liquid lysine experienced before the entry in the market of Chinese lysine suppliers.
- (338) The Commission clarified that the purpose of anti-dumping duties is not to close the Union market for imports from the country concerned, but rather to tackle unfair market practices and restore the level playing field, precisely allowing for the normal functioning of the market. The Union producer and the third country non-Chinese exporting producers are unlikely to be able to supply the Union market fully. With the dominant position of the Chinese exporting producers, and the decreasing global position of other third-country producers, the antidumping measures will increase the Union industry's production and restore a level-playing field, without blocking Chinese imports. The Commission thus rejected the above arguments as unfounded.
- (339) Barentz, CESFAC, Pinaluba and Vall Companys further claimed that imposition of anti-dumping duties would also be contrary to the Union interest on environmental grounds, as the increase in the price of lysine would create an incentive for feed premixers and compounders to adjust the mix of feed materials and additives in order to increase the proportion of cheaper and protein-rich alternatives, such as soybean and crude protein feed additives.
- (340) The claim was rejected as the Commission noted that the soybean and crude protein feed additives inclusion rate in feed diets is primarily determined by the price of these raw materials, and the main price variation factors (quantity of the harvest, EUR to USD fluctuation, freight rate) are independent from the lysine price.

## 7.3. Interest of users

- (341) One user came forward in the investigation and provided a reply to the questionnaire. That company, Vall Companys Group, is active in the animal feed market, one of the three main markets for lysine. It accounted for less than 5 % of lysine imported from China in the investigation period. Vall Companys Group was afforded a hearing with the Commission and an on-spot verification of its questionnaire reply was undertaken.
- (342) Vall Companys Group claimed that the imposition of anti-dumping measures would result in (i) a significant increase in the cost of animal feed and other downstream products in the Union, (ii) create a serious risk of lysine supply shortage, (iii) significantly weaken competition in the Union market, creating conditions for anticompetitive conduct, and (iv) undermine the Union environmental policy.
- (343) Regarding the first point, Vall Companys submitted that lysine represents approximately [0 %-10 %] of the costs to produce animal feed. The user further explained that the cost of animal feed represents approximately 65 % of the costs to produce pork and poultry products, computing that lysine represents approximately [0%-5%] of the cost to produce pork and poultry products. The user claimed the portion of the costs of production is significant taking into consideration the nature of the meat industry and the fact that pork and poultry products are sold on commodity markets with low margins. Therefore, any increase in the costs of lysine will disproportionately affect the profit of meat producers and/or will negatively impact consumers in the form of higher prices of meat products.

- (344) The Commission recognized that the anti-dumping measures would have an impact on the price of lysine. However, as submitted by Eurolysine<sup>(132)</sup>, with regard to use for animal feed production, nutrition components in animal feed are selected depending on their nutritional contribution to feed and their price. As the industry uses mathematical models “least cost formulation principle”, the composition of feed changes in accordance with availability and price. Change in animal feed raw material prices over time has an impact of approximately 15 % on the feed formulas prices, while the impact of lysine price is 2 %. On that basis, the Commission considered that the impact of anti-dumping measures on animal feed producers will be limited.
- (345) With regard to the second point, this is already addressed in recital (338) above. The Commission further noted that, as regard the risk of anti-competitive conduct on the Union market, the continued existence of the Union industry, in addition to supply from the country concerned and other sources, is a guarantee rather than a threat for a competitive market. Concerning the claim that measures would undermine the environmental policy of the Union, this is addressed in recital (340) above.
- (346) Vall Companys Group also opposed the imposition of anti-dumping measures as it feared that it might have repercussions on access to the Chinese market for export of pork cuts produced in Spain, which it considered an important economic activity. It however could not substantiate the claim which, therefore, was rejected.
- (347) Absent of further information provided by users, in the light of the above, it is provisionally concluded that the imposition of any anti-dumping measures are unlikely to seriously affect the situation of the users.

#### 7.4. Conclusion on Union interest

- (348) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of lysine originating in the People’s Republic of China at this stage of the investigation.

### 8. PROVISIONAL ANTI-DUMPING MEASURES

- (349) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (350) Provisional anti-dumping measures should be imposed on imports of lysine originating in the People’s Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins (section 6.2 above). The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (351) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty (%)
Meihua Group: — Jilin Meihua Amino Acid Co., Ltd — Xinjiang Meihua Amino Acid Co., Ltd — Meihua Holdings Group., Ltd — Meihua International Trading (Hong Kong) Limited	84,8
Eppen Group: — Heilongjiang Eppen Biotech Co., Ltd — Eppen Asia Pte. Ltd.-	58,3

<sup>(132)</sup> Tron save number: t24.010168.

Company	Provisional anti-dumping duty (%)
Other cooperating companies listed in the Annex	71,6
All other imports originating in the People's Republic of China	84,8

- (352) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other imports originating in the People's Republic of China'. They should not be subject to any of the individual anti-dumping duty rates.
- (353) 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 application of individual anti-dumping duties is only applicable upon presentation of 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. Until such invoice is presented, imports should be subject to the anti-dumping duty applicable to 'all other imports originating in the People's Republic of China'.
- (354) 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.
- (355) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

## 9. REGISTRATION

- (356) As mentioned in recital (3), the Commission made imports of the product concerned subject to registration. Registration took place with a view to possibly collecting duties retroactively under Article 10(4) of the basic Regulation.
- (357) In view of the findings at provisional stage, the registration of imports should be discontinued.
- (358) No decision on a possible retroactive application of anti-dumping measures has been taken at this stage of the proceeding.

## 10. INFORMATION AT PROVISIONAL STAGE

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

(360) Comments were received from Eppen and Meihua. The comments received, however, did not concern the accuracy of the calculations, but rather to methodologies used by the Commission in the determination of their respective dumping margins. Those comments will therefore be considered, together with all other submissions, after the publication of provisional measures.

## 11. FINAL PROVISION

(361) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.

(362) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is imposed on imports of lysine and its esters, salts thereof, and feed additives, consisting of dry weight basis of 68 % or more, but not more than 80 % of L-lysine sulphate, and not more than 32 % of other components such as carbohydrates and other amino acids, currently falling under CN codes ex 2309 90 31, ex 2309 90 96, and 2922 41 00 (TARIC codes: 2309 90 31 41, 2309 90 31 49, 2309 90 96 41, 2309 90 96 49) and originating in the People's Republic of China.

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

Company	Provisional anti-dumping duty (%)	TARIC additional code
Meihua Group: — Jilin Meihua Amino Acid Co., Ltd — Xinjiang Meihua Amino Acid Co., Ltd — Meihua Holdings Group., Ltd — Meihua International Trading (Hong Kong) Limited	84,8	89IE
Eppen Group: — Heilongjiang Eppen Biotech Co., Ltd — Eppen Asia Pte. Ltd.	58,3	89IF
Other cooperating companies listed in the Annex	71,6	
All other imports originating in the People's Republic of China	84,8	8999

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 in tonnes) of lysine sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' Until such invoice is presented, the duty applicable to all other imports originating in the People's Republic of China shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

*Article 2*

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

*Article 3*

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Implementing Regulation (EU) 2024/2732 of 24 October 2024.
2. Data collected regarding products which entered the EU for consumption not more than 90 days prior to the date of the entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

*Article 4*

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 13 January 2025.

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



## ANNEX

**Cooperating exporting producers in the People's Republic of China not sampled**

Name	TARIC additional code
Anhui BBKA Biochemical Co., Ltd.	
CJ (Liaocheng) Biotech Co., Ltd.	
Dongxiao Biotechnology Co., Ltd.	
Qiqihar Longjiang Fufeng Biotechnology Co., Ltd.	