



2024/1959

19.7.2024

**COMMISSION IMPLEMENTING REGULATION (EU) 2024/1959**

**of 17 July 2024**

**imposing a provisional anti-dumping duty on imports of erythritol 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> ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

**1. PROCEDURE**

**1.1. Initiation**

- (1) On 21 November 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of erythritol originating in the People's Republic of China ('the country concerned' or 'the PRC') on the basis of Article 5 of 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 9 October 2023 by Jungbunzlauer S.A. ('the complainant'). The complaint was made by the Union industry of erythritol 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) 2024/1608 <sup>(3)</sup> ('the registration Regulation').

**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 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.

**1.4. Comments on initiation**

- (6) Following initiation, the China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters ('CCC MC'), an organisation empowered by four exporting producers <sup>(4)</sup> to represent them in this investigation on injury, causality and Union interest aspects of the investigation, submitted comments related to the complaint and the initiation of the investigation, on material injury, on causality and on Union interest.

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

<sup>(2)</sup> OJ C, C/2023/1020, 21.11.2023, ELI: <http://data.europa.eu/eli/C/2023/1020/oj>.

<sup>(3)</sup> Commission Implementing Regulation (EU) 2024/1608 of 5 June 2024 making imports of erythritol originating in the People's Republic of China subject to registration (OJ L, 2024/1608, 6.6.2024, ELI: [http://data.europa.eu/eli/reg\\_impl/2024/1608/oj](http://data.europa.eu/eli/reg_impl/2024/1608/oj)).

<sup>(4)</sup> Baolingbao Biology Co., Ltd., Dongxiao Biotechnology Co., Ltd., Sanyuan Biotechnology Co., Ltd and Yusweet Co., Ltd.

- (7) CCCMC claimed that the complainant did not submit information as required by 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.
- (8) In particular, CCCMC claimed that the complainant omitted to address properly productivity, wages to personnel, real factors affecting prices. Moreover, it argued that the complaint partly lacked data on employment (no breakdown of administrative staff and direct labour on the manufacturing of erythritol), return on investments, ability to raise capital or investments and actual and potential effect on cash flow.
- (9) 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.
- (10) According to Article 5(2) of the basic Regulation, a complaint shall contain such information as is reasonably available to the complainant. 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 <sup>(9)</sup>.
- (11) The Commission noted that the non-confidential summary of the complaint did contain the relevant factors and indices having a bearing on the state of the industry, as required by Article 5(2) of the basic Regulation. Economic factors listed in Article 3(5) of the basic Regulation are referred to in Article 5(2)(d) of that Regulation by the way of an example ('such as'). It follows that Article 5(2) does not require all these economic factors to be included at the stage of the complaint. Therefore, this claim was rejected.
- (12) CCCMC also claimed that the Commission failed to examine and to consider publicly known challenge of 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.
- (13) 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 complainant to determine whether there was sufficient evidence to justify the initiation. As this was indeed performed by the Commission, the claim of CCCMC was rejected.
- (14) Regarding significant market distortions in China, the CCCMC firstly claimed that the complaint relied on the Commission Staff Working Document of 2017 which is relevance is doubtful as it was published around 5 years prior to the initiation of the proceeding and that because the report has been prepared with the specific purpose of facilitating Union industries to lodge a request in the area of trade measures, it is partial and not objective. Secondly, CCCMC claimed that the references and analogies from other investigations is not legally sound as it consists of a substitution of facts for the product concerned with findings of other products such as citric acid, sulphanilic acid or monosodium glutamate.
- (15) The Commission noted that, as shown in section 3.2. below, the fact that the Commission Staff Working Document was issued in December 2017 does not undermine its value in identifying the market distorting factors that continue to be relevant for the product concerned. Regarding the use of findings of other investigations, again the findings on closely related markets and industries can be relevant for the production and sales of the product concerned in China, as shown in section 3.1. below. These claims of CCCMC were therefore rejected.
- (16) Moreover, CCCMC claimed that its rights of defence were severely infringed because:
- (i) The open version of the complaint treats statistics on import volumes and prices as confidential which are disclosed in ranges and indexes;

<sup>(9)</sup> Judgment of the General Court of 11 July 2017, *Viraj Profiles Ltd v Council of the European Union*, Case T-67/14, ECLI:EU:T:2017:481, para. 98.

- (ii) The injury factors are not disclosed in a meaningful form allowing an objective understanding of the data submitted in confidence;
  - (iii) The applicant marked Annexes pertinent to export prices, as non-susceptible to summarisation;
  - (iv) The applicant withheld most of the sources of information on which the complaint was based, mainly non-disclosing of data sources; and
  - (v) The applicant withheld a large portion of crucial data based on copyright considerations and due to alleged fear of retaliation.
- (17) On the above claims the Commission noted that as the Union industry consists of a single producer it is understandable that injury factors were given in ranges and in indexed form in the complaint. The examination of the allegations of CCCMC has shown that these indexes and ranges allowed for an understanding of the trends and levels of the data on the various injury indices submitted by the applicant in confidence. Also, regarding the non-disclosure of sources, as the actual data is now provided in section 4.3. below, this issue is remedied.
- (18) Other specific comments on normal value, injury, causation and Union interest which were not directly linked to the initiation are dealt with in the relevant sections below (Sections 3, 4 and 5).

#### 1.5. **Sampling**

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

##### *Sampling of Union producers*

- (20) Given the limited number of Union producers of erythritol, the Commission announced in the Notice of Initiation that it would make available questionnaires to the known Union producer, namely Jungbunzlauer S.A. This Union producer provided a questionnaire reply and no other Union producers made themselves known following the publication of the Notice of Initiation. Thus, the Commission did not have to resort to sampling.

##### *Sampling of importers*

- (21) 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.
- (22) No unrelated importers provided the requested information.

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

- (23) To decide whether sampling would be 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.
- (24) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample.
- (25) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available.
- (26) 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. No comments were received as regards sample selected.

**1.6. Individual examination**

- (27) One exporting producer in the PRC requested individual examination under Article 17(3) of the basic Regulation. However, this exporting producer did not submit a questionnaire reply to the Commission.

**1.7. Questionnaire replies and verification visits**

- (28) The Commission sent questionnaires to the Union producer, the sampled exporting producers in the PRC, the known importers and users. The same questionnaires were made available online on the day of initiation.
- (29) 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').
- (30) Questionnaire replies were received from the sole Union producer, three Chinese exporting producers and two users. No questionnaire replies were received from the GOC.
- (31) 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 producer

— Jungbunzlauer S.A., Marckolsheim, France

Exporting producers in the PRC

— Baolingbao Biology Co., Ltd., Yucheng City, Shandong Province

— Dongxiao Biotechnology Co., Ltd., Zhucheng City, Shandong Province

— Sanyuan Biotechnology Co., Ltd, Binzhou City, Shandong Province

- (32) The Commission performed a desk analysis of the information submitted by:

Users

— Bojati food GmbH, Oyten, Germany

— Rio Mints & Sweeteners BV, Utrecht, the Netherlands

**1.8. Investigation period and period considered**

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

**2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT****2.1. Product under investigation**

- (34) The product under investigation is erythritol, a four-carbon sugar alcohol (polyol) sweetener made from sugar or glucose, in its pure form or contained in blends containing less than 10 % of other products by weight ('the product under investigation').
- (35) The Chemical Abstracts Service (CAS) registry number for erythritol in its pure form is 149-32-6.
- (36) Erythritol is a natural, zero-calorie sweetener with zero glycaemic index. It is used mainly as sugar replacer in food and beverage products, either in its pure form or blended with other ingredients, such as the natural high intensity sweetener stevia. The main segment is tabletop sweeteners, followed by beverages, confectionery, bakery, sports nutrition and other food categories.

## 2.2. Product concerned

- (37) The product concerned is the product under investigation originating in the PRC, currently falling under CN code ex 2905 49 00 for erythritol in its pure form and CN codes ex 2106 90 92 and ex 2106 90 98 for blended products (TARIC codes 2905 49 00 15, 2106 90 92 65, and 2106 90 98 15) ('the product concerned').

## 2.3. Like product

- (38) 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 country concerned; and
  - the product under investigation produced and sold in the Union by the Union industry.
- (39) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

# 3. DUMPING

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

- (40) 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.
- (41) 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 erythritol. Four exporting producers submitted the relevant information.
- (42) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2. of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.
- (43) No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (44) In 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.
- (45) On 21 December 2023, 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').
- (46) 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 erythritol. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Brazil, Colombia and Thailand.

- (47) On the basis of the information collected during the investigation, apart from in the Union and the PRC, erythritol is produced, in industrial quantities, only in a country with a different level of economic development than the PRC, namely the USA.
- (48) Consequently, the Commission endeavoured to identify, in a representative country with a similar level of economic development as the PRC, a product in the same general category and/or sector of the product under investigation with (mostly) the same factors of production as erythritol.
- (49) The Commission first analysed sweeteners other than erythritol. However, the Commission found no sweeteners commercially produced by the same or similar production processes as/to erythritol. Erythritol is commercially produced via 'natural' fermentation of carbohydrates. However, artificial sweeteners such as sucralose, saccharin, aspartame, or Acesulfame-K are manufactured via an artificial chemical synthesis/process.
- (50) The Commission then analysed citric acid, a product in the same general category and/or sector of the product under investigation suggested by the complainant. Like erythritol, citric acid is an organic chemical product produced by fermentation of agricultural carbohydrates.
- (51) Both citric acid and erythritol are produced by a fermentation process with regulated steps followed by a crystallisation phase and the drying of the crystals. Even if the fermentation processes of both products differ in terms of microorganisms and yeast, there are common auxiliary materials, such as a defoamer, corn steep liquor or perlite. Thus, citric acid and erythritol have the same core input raw materials, relevant consumables in common and very similar production processes.
- (52) The Commission concluded that citric acid was an appropriate product in the same general category and/or sector as the product under investigation with a view to identifying an undistorted value in a representative country with a similar level of economic development as the PRC for the factors of production used in the production of erythritol.
- (53) The Commission received comments on the First Note from one of the sampled exporting producers (Dongxiao Biotechnology Co., Ltd.) as well as from the complainant.
- (54) On 11 April 2024, the Commission addressed the comments received from interested parties on the First Note in a Second Note to the file and informed parties in that note also on the relevant sources it intended to use for the determination of the normal value, with Colombia as the representative country. It further informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on Sucroal S.A, a producer of citric acid in the representative country ('the Second Note').
- (55) The Commission received comments to the Second Note from the Union Industry and from Dongxiao Biotechnology Co., Ltd. These have been addressed under respective heading under Section 3.3.3. below.
- (56) 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 further described in detail in Section 3.3. below.

### 3.2. Normal value

- (57) 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'.
- (58) 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').

- (59) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

### 3.2.1. Existence of significant distortions

- (60) 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.'

- (61) 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.

- (62) 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.

- (63) 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'.

- (64) Pursuant to this provision, the Commission issued a country report concerning the PRC ('the Report')<sup>(9)</sup>, which contains evidence of the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as selected sectors (such as the chemical sector). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report concerning the PRC was placed in the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report.

<sup>(9)</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, SWD(2017) 483 final/2 of 20 December 2017.

- (65) The complainant relied on the evidence contained in the Report to stress out the relevance of the below-mentioned distortions in the context of EU anti-dumping proceedings concerning food ingredients. Moreover, the complainant pointed out that US trade authorities have too documented significant distortions of prices and costs in the PRC both in general and in the chemical sector in particular, with regard to bio-chemical products such as erythritol, citric acid or sodium gluconate.
- (66) The complainant also referred to Commission findings in several recent investigations concerning the chemical sector in the PRC, which confirmed the existence of significant distortions with regard to prices and costs in the PRC, namely the investigations concerning sodium gluconate <sup>(7)</sup>, certain polyvinyl alcohols <sup>(8)</sup>, sulphanilic acid <sup>(9)</sup>, citric acid <sup>(10)</sup> and monosodium glutamate <sup>(11)</sup>.
- (67) Consequently, since the producers investigated in the above-mentioned cases are active in the same sector as the producers of erythritol, the complaint submitted that the conclusions with respect to the existence of significant distortions reached in the above investigations apply also to erythritol producers in the PRC.
- (68) The complaint indicated that domestic prices and costs of erythritol in the PRC cannot be accepted since they are at odds with the notion of free play of market forces but rather result from the complex and all-encompassing state intervention.
- (69) Significant market distortions in the chemical sector, in particular the sector of erythritol, are regularly confirmed by the PRC's actions as documented by formal acts, as well as subsequent actions of private and state-owned companies.
- (70) For instance, several erythritol producers are located in provinces where significant distortions exist, such as Hebei, which has put in place specific support schemes for the chemical sector, or Shandong, which published a Notice of a Plan Fostering the Building of a Strong Agricultural Province (2021-2025), that includes several politically guided and market-distorting provisions for the agricultural sector. In the same vein, Heilongjiang has its own Five-Year-Plan ('FYP') on Developing Corn Processing Industry, while the FYP on Strategic and Emerging Industries of Jilin promotes biochemical industrialization.
- (71) Moreover, the complainant indicated that companies manufacturing erythritol often publish on their websites statements referring to factors underpinning the distortions. For example, the website of Sanyuan Biotechnology Co. Ltd., the PRC's largest erythritol producer, stated that their products were identified as national key new products. The same company, along with many other erythritol producers – such as the second largest, Baolingbao Biology Co., Ltd – received numerous national or provincial awards and titles connected to the field of work (for example: National Sugar Engineering Technology Research Center, National Quality Award, National Green Factory), which, according to the complainant is a sign of close connection between the state and companies active in the erythritol sector.

<sup>(7)</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 (OJ L 100, 13.4.2023, p. 16).

<sup>(8)</sup> Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1).

<sup>(9)</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 (OJ L 85, 12.3.2021, p. 154).

<sup>(10)</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 (OJ L 129, 15.4.2021, p. 73).

<sup>(11)</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 (OJ L 132, 19.4.2021, p. 63).



- (72) Furthermore, most erythritol producers are members of the China Food Additive and Ingredients Association ('CFAA') and they or their suppliers are also members of the China Starch Industry Association ('CSIA').
- (73) Referring to the above-mentioned sodium gluconate investigation, the complainant pointed out that according to the PRC's 14<sup>th</sup> FYP, which covers the period from 2021 to 2025, the PRC is determined to keep a 'tight supervision on the chemical industry'. Similarly, the complainant recalled that the investigations concerning certain polyvinyl alcohols, sulphanilic acid, citric acid and monosodium glutamate concluded that the PRC interferes with business decisions through the Chinese Communist Party ('CCP') cells present in enterprises, state owned and private alike. The CCP is reported to exercise pressure not only on state-owned but also on private companies to follow party discipline. In 2017, party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies.
- (74) The complainant emphasized that in the sodium gluconate investigation, the Commission noted that the above-mentioned distortions could also be observed with respect to other chemicals, concluding that the entire chemical and petrochemical sector in the PRC was affected by distortions in the sense of Article 2(6a)(b) of the basic Regulation. The Commission found that the system of planning in the PRC generally resulted in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces.
- (75) Moreover, pointing out that the producers in the above-mentioned Commission investigations are the same as those in the erythritol sector, the complaint recalled the following elements resulting in significant distortions.
- (76) First, the chemical sector, including the erythritol 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, were found to have an important proportion of direct and indirect state shareholding.
  - Similarly, in 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.
- (77) Second, the state presence in erythritol companies also allows the authorities to interfere with prices and/or costs:
- 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 erythritol producers are members of the CFAA and they or their suppliers are members of the CSIA, they have to follow the overall leadership of the CCP and organize party activities in their companies, in line with the CFAA/CSIA Articles of Association.
- (78) Third, the GOC pursues public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces:
- In the sodium gluconate investigation, the industry was found to be covered by several plans, directives and other 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 defined in the FYP on Developing the Raw Materials Industry, which set out to foster the preparation of comprehensive industry chains of bio-based materials.

- The PRC involvement into developing the chemical industry is also apparent from the Guiding Opinions to Promote the High-Quality Development of the Petrochemical and Chemical Industries during the FYP, which include the objectives to speed up the transformation and upgrading of the industry and improve its competitiveness and which refers to a catalogue of technologies and products that the petrochemical and chemical industry is encouraged to promote and apply.
  - The 2018 Notice of Several Policy Measures to Support the High-Quality Development of Agricultural Products' Deep Processing lists numerous policy goals set by the state authorities, such as to optimize the industry structure; to organise and promote the coordinated development of the intensive processing of agricultural products with their primary processing and comprehensive use and ensure connexion with upstream and downstream industries such as the production of specific raw materials etc.
- (79) Fourth, much like in any other sector in the Chinese economy, the chemical sector is subject to the distortions resulting from the discriminatory application or inadequate enforcement of Chinese bankruptcy, corporate and property rules:
- The sodium gluconate investigation concluded that the Chinese bankruptcy and property laws generate distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC.
- (80) Fifth, wage costs are distorted in the chemical sector as well:
- The sodium gluconate investigation concluded that the sector was affected, both directly and indirectly, by distortions of wage costs.
- (81) Sixth, erythritol producers have access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the state:
- 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.
- (82) The complainant 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.
- (83) In conclusion, the complainant argued that significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the erythritol sector.
- (84) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so 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>(12)</sup>, which relies on publicly available sources.
- (85) That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product 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 the PRC.

<sup>(12)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, SWD(2024) 91 final of 10 April 2024.

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

- (86) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people' <sup>(13)</sup>.
- (87) 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>(14)</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.
- (88) 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>(15)</sup>.
- (89) 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.
- (90) 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.
- (91) 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>(16)</sup> This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC.
- (92) 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.
- (93) 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>(17)</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.
- (94) 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.
- (95) 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.
- (96) Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.).

<sup>(13)</sup> Updated Report – Chapter 2, p. 7.

<sup>(14)</sup> Updated Report – Chapter 2, p. 7-8.

<sup>(15)</sup> Updated Report – Chapter 2, p. 10, 18.

<sup>(16)</sup> Available at: [http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm) (accessed on 8 April 2024).

<sup>(17)</sup> Updated Report – Chapter 2, p. 29-30.

- (97) 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>(18)</sup>.
- (98) Second, on the level of allocation of financial resources, the financial system of the PRC 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>(19)</sup>.
- (99) 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>(20)</sup>.
- (100) 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>(21)</sup>.
- (101) 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>(22)</sup>.
- (102) 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>(23)</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*
- (103) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.
- (104) The sector of the product concerned is mainly served by private companies, such as: Sanyuan Biotechnology Co., Ltd. <sup>(24)</sup>; Dongxiao Biotechnology Co., Ltd <sup>(25)</sup>; Baolingbao Biology Co., Ltd. <sup>(26)</sup>; Zhejiang Huakang Pharmaceutical Co., Ltd. <sup>(27)</sup>

<sup>(18)</sup> Updated Report – Chapter 4, p. 57, 92.

<sup>(19)</sup> Updated Report – Chapter 6, p. 149-150.

<sup>(20)</sup> Updated Report – Chapter 6, p. 153-171.

<sup>(21)</sup> Updated Report – Chapter 7, p. 204-205.

<sup>(22)</sup> Updated Report – Chapter 8, p. 207-208, 242-243.

<sup>(23)</sup> Updated Report – Chapter 2, p. 19-24, Chapter 4, p. 69, p. 99-100, Chapter 5, p. 130-131.

<sup>(24)</sup> <http://sanyuanbz.com/> (accessed on 8 April 2024).

<sup>(25)</sup> <http://www.cndongxiao.com/> (accessed on 8 April 2024).

<sup>(26)</sup> [https://www.blb-cn.com/index/index/about\\_us#](https://www.blb-cn.com/index/index/about_us#) (accessed on 8 April 2024).

<sup>(27)</sup> <https://www.huakangpharma.com/> (accessed on 8 April 2024).

- (105) However, CCP interventions into operational decision making have become the norm not only in State owned enterprises ('SOEs'), but also in private companies <sup>(28)</sup>, with CCP claiming leadership over virtually every aspect of the country's economy. Indeed, the State's influence by means of CCP structures within companies effectively results in economic operators being under the government's control and policy supervision, given how far the State and Party structures have grown together in the PRC.
- (106) Moreover, the sector of the product concerned 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>(29)</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>(30)</sup>.
- (107) Government control and policy supervision can be also observed at the level of the relevant industry associations <sup>(31)</sup>.
- (108) For instance, CFAA states in Art. 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>(32)</sup>. The Party Branch of CFAA <sup>(33)</sup> is further set to 'continuously enhance business research capabilities, [...] strengthen the Party building work of industry associations and fully implement the general requirements for Party building in the new era' <sup>(34)</sup>.
- (109) Sanyuan Biotechnology Co., Ltd., Baolingbao Biology Co., Ltd. and Zhejiang Huakang Pharmaceutical Co., Ltd. are among the members of CFAA <sup>(35)</sup>. Not only, Baolingbao Biology Co., Ltd. and Zhejiang Huakang Pharmaceutical Co., Ltd. are among the members of some of CFAA's Professional Committees <sup>(36)</sup>.

<sup>(28)</sup> Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law. See updated Report – Chapter 3, p. 47-50.

<sup>(29)</sup> [http://www.moa.gov.cn/gk/cwggk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cwggk_1/nybt/202206/t20220610_6402146.htm), paragraph 20 (accessed on 8 April 2024).

<sup>(30)</sup> [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 8 April 2024).

<sup>(31)</sup> Updated Report – Chapter 2, p. 24-27.

<sup>(32)</sup> [https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI\\_FIC\\_INTRODUCTION&chapter.param.paramCode=UTI\\_FIC\\_INTRODUCTION\\_2&type=](https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI_FIC_INTRODUCTION&chapter.param.paramCode=UTI_FIC_INTRODUCTION_2&type=) (accessed on 8 April 2024).

<sup>(33)</sup> <https://www.cfaa.cn/> (accessed on 8 April 2024).

<sup>(34)</sup> See: [https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI\\_CATEGORY\\_7&chapter.id=2286&type=](https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI_CATEGORY_7&chapter.id=2286&type=) (accessed on 8 April 2024).

<sup>(35)</sup> For Sanyuan Biotechnology Co., Ltd. see <https://www.cfaa.cn/lxweb/queryCompanyAllDetail.action?companyInfo.id=13137> (accessed on 8 April 2024). For Baolingbao Biotechnology Co., Ltd. and Zhejiang Huakang Pharmaceutical Co., Ltd. see [https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI\\_FIC\\_INTRODUCTION&chapter.param.paramCode=UTI\\_FIC\\_INTRODUCTION\\_3&type=](https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI_FIC_INTRODUCTION&chapter.param.paramCode=UTI_FIC_INTRODUCTION_3&type=) (accessed on 8 April 2024).

<sup>(36)</sup> They are both members of the Sweetener Professional Committee and the Functional Sugar Ingredients Professional Committee, and Baolingbao Biology Co., Ltd. is also a member of the Nutritional Enhancers and Special Nutritional Foods Professional Committee. See [https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI\\_FIC\\_INTRODUCTION&chapter.param.paramCode=UTI\\_FIC\\_INTRODUCTION\\_4](https://www.cfaa.cn/lxweb/showSecondaryPage.action?subLanmuVo.paramRoot=UTI_FIC_INTRODUCTION&chapter.param.paramCode=UTI_FIC_INTRODUCTION_4) (accessed on 8 April 2024).

- (110) CSIA, according to Art. 2 of its Articles of Association, pursues the goal to ‘publicize and implement national industrial policies, serve the industry wholeheartedly, and promote industrial production’. In addition, Art. 3 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 – just like in the case of CFAA – ‘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>(37)</sup>.
- (111) Dongxiao Biotechnology Co., Ltd., Biotlogy Co., Ltd. and Zhejiang Huakang Pharmaceutical Co., Ltd. are among the members of CSIA’s executive council <sup>(38)</sup>.
- (112) Similar provisions are found also in the Articles of Associations of China Biological Fermentation Industry Association (‘CBFIA’) <sup>(39)</sup>. Baolingbao Biology Co., Ltd. and Zhejiang Huakang Pharmaceutical Co., Ltd. are both vice-chairmen of CBFIA <sup>(40)</sup>.
- (113) Consequently, privately owned producers in the sector of the product concerned are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance.
- 3.2.4. *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*
- (114) 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.
- (115) According to the PRC’s company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(41)</sup>) and the company shall provide the necessary conditions for the activities of the Party organisation.
- (116) 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>(42)</sup>, including exercising pressure on private companies to put ‘patriotism’ first and to follow Party discipline <sup>(43)</sup>.
- (117) Already in 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies <sup>(44)</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.
- (118) 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>(45)</sup> was released, which further expanded the role of the Party committees in private enterprises.

<sup>(37)</sup> <https://www.siacn.org/dl/IOa-252B22.html> (accessed on 8 April 2024).

<sup>(38)</sup> For Dongxiao Biotechnology Co., Ltd., see <https://siacn.org.cn/hys/C04ke8i8V6FKwm58AiHi8kZLWAqQfQJGMbT7hpaoM-fyhfo=.html> (accessed on 8 April 2024). For Baolingbao Biology Co., Ltd. see <https://siacn.org.cn/hys/iRjtpftfyhfnlZnu6t27hP-Xu7asXt46rxUsrzpUWSRfyhfRrLA=.html> (accessed on 8 April 2024). For Zhejiang Huakang Pharmaceutical Co., Ltd. see <https://siacn.org.cn/hys/SWj57c6UUhw8Rgkzb+016qfKa9gWhP3BQaNR0qBW3Tw=.html> (accessed on 8 April 2024).

<sup>(39)</sup> <http://www.cfia.org.cn/> (accessed on 8 April 2024).

<sup>(40)</sup> <http://www.cfia.org.cn/site/term/3.html> (accessed on 8 April 2024).

<sup>(41)</sup> Updated Report – Chapter 3, p. 40.

<sup>(42)</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>(43)</sup> Updated Report – Chapter 3, p. 41.

<sup>(44)</sup> Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 8 April 2024).

<sup>(45)</sup> General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era: [www.gov.cn/zhengce/2020-09/15/content\\_5543685.htm](http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm) (accessed on 8 April 2024).

- (119) 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>(46)</sup>.
- (120) The investigation confirmed that overlaps between managerial positions and CCP membership / Party functions exist also in the erythritol sector. To provide an example, the General Manager of Dongxiao Biotechnology Co., Ltd. holds CCP positions and is also a representative at the current 14<sup>th</sup> People's Congress of Shandong (elected in January 2023) <sup>(47)</sup>. The company's Chairman of the Trade Union, who also is CCP member, when asked about the relationship between Party building and enterprise development, said: 'Party building leads the enterprise, and the Party and enterprise are integrated and strong' <sup>(48)</sup>.
- (121) Additionally, several members of the board of directors of directors of Sanyuan Biotechnology Co., Ltd., the largest producer of the product concerned, are CCP members <sup>(49)</sup>. The same applies to Baolingbao Biology Co., Ltd. <sup>(50)</sup> and Zhejiang Huakang Pharmaceutical Co., Ltd., whose chairman is not only a CCP member and the company's Party secretary, but also a Representative at the 14<sup>th</sup> People's Congress of Zhejiang <sup>(51)</sup>.
- (122) 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>(52)</sup>. Thus, the state presence in firms, in the erythritol 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*
- (123) 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.
- (124) Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(53)</sup>.
- (125) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.

<sup>(46)</sup> *Financial Times* (2020) – Chinese Communist Party asserts greater control over private enterprise: <https://on.ft.com/3mYxP4j> (accessed on 8 April 2024).

<sup>(47)</sup> [https://baike.baidu.com/item/%E9%83%AD%E4%BC%A0%E5%BA%84/62571344?fr=ge\\_al](https://baike.baidu.com/item/%E9%83%AD%E4%BC%A0%E5%BA%84/62571344?fr=ge_al) (accessed on 8 April 2024).

<sup>(48)</sup> [https://www.sohu.com/a/588371216\\_121332524](https://www.sohu.com/a/588371216_121332524).

<sup>(49)</sup> <http://paper.bzrb.net/bzrb/20210616/html/e076d227693fe26ee3cd4b65a598615d.pdf> and [https://vip.stock.finance.sina.com.cn/corp/view/vCI\\_CorpManagerInfo.php?stockid=301206&Pcode=30793729&Name=%B8%DF%C1%C1](https://vip.stock.finance.sina.com.cn/corp/view/vCI_CorpManagerInfo.php?stockid=301206&Pcode=30793729&Name=%B8%DF%C1%C1) (both accessed on 8 April 2024).

<sup>(50)</sup> See the 2023 Annual Report, p. 49-50, available at 9827581.PDF (sina.com.cn) (accessed on 8 April 2024).

<sup>(51)</sup> [https://baike.baidu.com/item/%E9%99%88%E5%BE%B7%E6%B0%B4/7847517?fr=ge\\_al](https://baike.baidu.com/item/%E9%99%88%E5%BE%B7%E6%B0%B4/7847517?fr=ge_al) (accessed on 8 April 2024).

<sup>(52)</sup> Updated Report – Chapter 14, Sections 14.1 to 14.3.

<sup>(53)</sup> Updated Report – Chapter 4, p. 56-57, 99-100.

- (126) The 2022 key policies of the Ministry of Finance and the Ministry of Agriculture and rural affairs mentioned above (see recital (106)) 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>(54)</sup>.
- (127) The 14<sup>th</sup> FYP on promoting the modernization of agriculture and rural areas <sup>(55)</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>(56)</sup>. According to the 14<sup>th</sup> FYP on developing the planting sector at national level <sup>(57)</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>(58)</sup>.
- (128) The CSIA's 14<sup>th</sup> FYP <sup>(59)</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>(60)</sup>.
- (129) The 14<sup>th</sup> FYP on the development of bio-economy <sup>(61)</sup> 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>(62)</sup>.
- (130) On the province level, similarly, according to the Hebei 14<sup>th</sup> FYP on strategic and emerging industries <sup>(63)</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>(64)</sup>.

<sup>(54)</sup> [http://www.moa.gov.cn/gk/cwggk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cwggk_1/nybt/202206/t20220610_6402146.htm), paragraphs 6 and 15 (accessed on 8 April 2024).

<sup>(55)</sup> [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 8 April 2024).

<sup>(56)</sup> Ibid., Section II.1.

<sup>(57)</sup> [http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113\\_6386808.htm](http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113_6386808.htm) (accessed on 8 April 2024).

<sup>(58)</sup> Ibid., Section III.1.3.

<sup>(59)</sup> Available at: <https://www.siacn.org/dl/DyZXItsx00.html> (accessed on 8 April 2024).

<sup>(60)</sup> Ibid., Section I.1.2.

<sup>(61)</sup> [https://www.ndrc.gov.cn/xxgk/jd/jd/202205/t20220509\\_1324417.html](https://www.ndrc.gov.cn/xxgk/jd/jd/202205/t20220509_1324417.html).

<sup>(62)</sup> Ibid., Section III.6.

<sup>(63)</sup> <http://lvsefazhan.cn/index.php/guozijianguan/408.html> (accessed on 8 April 2024).

<sup>(64)</sup> Ibid., Section IV.3.



(131) Furthermore, in 2024, Shandong issued a major policy to promote, upgrade and develop the corn industry <sup>(65)</sup>, providing important tax support for research and development. This tax support has benefitted, for instance, Sanyuan Biotechnology Co., Ltd., whose legal representative said: ‘As regards the company’s position on the international track, it is inseparable from the strong support of the tax department [...] The upgraded tax incentives give us full motivation for research and development. The company’s 50 000-ton erythritol production capacity project has been put into production, and the market share is expected to further increase’ <sup>(66)</sup>.

(132) 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.

(133) 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*

(134) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement.

(135) 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>(67)</sup>.

(136) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC <sup>(68)</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>(69)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(70)</sup>.

(137) 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 erythritol, sector. The present investigation revealed nothing that would call those findings into question.

(138) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product concerned.

<sup>(65)</sup> [https://www.sohu.com/a/756699103\\_121769698](https://www.sohu.com/a/756699103_121769698).

<sup>(66)</sup> Article released on 4 April 2024, source Binzhou Taxation Bureau, available at: [https://shandong.chinatax.gov.cn/art/2023/4/4/art\\_216\\_691244.html](https://shandong.chinatax.gov.cn/art/2023/4/4/art_216_691244.html) accessed on 8 April 2024).

<sup>(67)</sup> Updated Report – Chapter 6, p. 171-179.

<sup>(68)</sup> Updated Report – Chapter 9, p. 260-261.

<sup>(69)</sup> Updated Report – Chapter 9, p. 257-260.

<sup>(70)</sup> Updated Report – Chapter 9, p. 252-254.

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

- (139) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation, in particular those on freedom of association and on collective bargaining <sup>(71)</sup>.
- (140) 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>(72)</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.
- (141) 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>(73)</sup>. Those findings lead to the distortion of wage costs in the PRC.
- (142) No evidence was submitted to the effect that the erythritol 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 the PRC).

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*

- (143) Access to capital for corporate actors in the PRC is subject to various distortions.
- (144) First, the Chinese financial system is characterised by the strong position of state-owned banks <sup>(74)</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>(75)</sup> and they regularly implement public policies designed by the GOC.
- (145) 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>(76)</sup>. While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

<sup>(71)</sup> Updated Report – Chapter 13, p. 360-361, 364-370.

<sup>(72)</sup> Updated Report – Chapter 13, p. 366.

<sup>(73)</sup> Updated Report – Chapter 13, p. 370-373.

<sup>(74)</sup> Updated Report – Chapter 6, p. 137-140.

<sup>(75)</sup> Updated Report – Chapter 6, p. 146-149.

<sup>(76)</sup> Updated Report – Chapter 6, p. 149.

- (146) 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>(77)</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>(78)</sup>
- (147) 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>(79)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(80)</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.
- (148) 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.
- (149) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 <sup>(81)</sup>. Official media in the PRC have recently reported that the CCP called for 'guiding the loan market interest rate downwards' <sup>(82)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (150) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, 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.
- (151) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

<sup>(77)</sup> See official policy document of the China Banking and Insurance Regulatory Commission of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 8 April 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>(78)</sup> See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020: [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (accessed on 8 April 2024).

<sup>(79)</sup> Updated Report – Chapter 6, p. 157-158.

<sup>(80)</sup> Updated Report – Chapter 6, p. 150-152, 156-160, 165-171.

<sup>(81)</sup> OECD (2019), *OECD Economic Surveys: China 2019*, OECD Publishing, Paris, p. 29, available at: [https://doi.org/10.1787/eco\\_surveys-chn-2019-en](https://doi.org/10.1787/eco_surveys-chn-2019-en) (accessed on 8 April 2024).

<sup>(82)</sup> [http://www.gov.cn/xinwen/2020-04/20/content\\_5504241.htm](http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm) (accessed on 8 April 2024).

- (152) 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*

- (153) 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.
- (154) 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 particular in section 3.2.2. above. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, erythritol producers being subject to those rules as any other economic operator in the PRC. The distortions have therefore a direct bearing on the cost structure of the product concerned.
- (155) 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.
- (156) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (157) 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*

- (158) CCCMC submitted comments, in particular regarding the application of Article 2(6a) of the basic Regulation. CCCMC claimed that for a number of reasons the application of Article 2(6a) of the basic Regulation is incompatible with Article 2.2. of the WTO Anti-Dumping Agreement.
- (159) The Commission reiterated its view that Article 2(6a) of the basic Regulation is fully in line with the EU's obligations under the WTO law, in particular the provisions of the ADA. The Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level and, if established, it renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation provides for the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country.

### 3.2.11. Conclusion

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

## 3.3. Representative country

### 3.3.1. General remarks

- (163) 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>(83)</sup>;
  - Production of the product under investigation in that country;
  - Availability of relevant public data in the representative country; and
  - 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.
- (164) As explained in recitals (40) to (56), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources.
- (165) 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

- (166) In the First Note on production factors, the Commission identified Colombia, Brazil, Thailand, Argentina, Ecuador, Mexico, Peru, South Africa and Türkiye as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis.
- (167) However, as explained in recitals (40) to (52) above, the product under investigation appears to be produced only in countries none of which is a country with a level of economic development similar to the PRC in accordance with the criteria mentioned in recital (163) above.

<sup>(83)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

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

(168) In the First Note, the Commission concluded that citric acid was an appropriate proxy product in the same general category and/or sector as the product under investigation 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 erythritol. No interested party contested this conclusion.

(169) 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.

### 3.3.4. *The relevant readily available data in the potential representative countries*

(170) In the First Note, the Commission investigated which financial data are readily available for the countries referred to in recital (166). The Commission found such data in Orbis for one company in Ecuador, one company in Colombia, one company in Mexico, one company in Peru, one company in South Africa, one company in Argentina, eight companies in Türkiye, four companies in Brazil and six companies in Thailand. The financial statements available to the Commission concerning all companies in Argentina, Ecuador, Mexico, Peru, South Africa and Türkiye and a few companies in Brazil and Thailand were not suitable because they were either incomplete and/or too old, or they revealed that the company concerned was lossmaking.

(171) The Commission then analysed the following three possible representative countries with a similar level of economic development to the PRC in which citric acid is produced and for which financial statements showing profits were available: Brazil, Colombia and Thailand. The Commission noted the existence, at that point in time, of readily available financial data from Orbis for the year 2022 for one citric acid manufacturer in Brazil (Cargill Agricola S.A.), one citric acid manufacturer in Colombia (Sucroal S.A.) and three citric acid manufacturers in Thailand (Sunshine Biotech International Co Ltd.; Cofco Biochemical (Thailand) Co Ltd.; Thai Industrial Citric Co Ltd.), plus, for the year 2020, of one citric acid manufacturer in Brazil (Primary Products Ingredients Brasil S.A.).

(172) In comments on the First Note no party proposed possible representative countries with a similar level of economic development to the PRC in which citric acid is produced other than those three.

(173) In its comments on the First Note, Dongxiao Biotechnology Co., Ltd. called for the use of Brazil while proposing to use Thailand to find an undistorted value for glucose only. The company argued that this was in line with the Commission's practice in R728 – Expiry Review on Grain-oriented Flat-rolled Silicon-electrical Steel, where the Commission used Brazil as the representative country but found the undistorted value for hydrogen by using data of the largest exporting country of hydrogen worldwide (Canada).

(174) The Commission first noted that its past administrative practice is not binding for the purpose of assessing compliance with the provisions of the basic Regulation<sup>(84)</sup>. Moreover, glucose imports into Thailand originate almost exclusively from the PRC, which disqualifies the use of these data.

(175) In its comments on the First Note, Dongxiao Biotechnology Co. Ltd. called for the use of Brazil as a representative country on the grounds that Brazil had production of products similar to products under investigation i.e. citric acid; that the Brazilian company Cargill Agricola S.A. was profitable for the year 2022, which covers part of the investigation period (from 1 October 2022 to 30 September 2023); that Brazilian import data (for surrogating purpose) of almost all known Factors of Production could be found in the attachment to the First note, and that the Commission's First Note indicated no trade distortions in Brazil affecting inputs for the production of the product under investigation.

<sup>(84)</sup> E.g. Judgment of 6 July 2022, *Zhejiang Hangtong Machinery Manufacture and Ningbo Hi-Tech Zone Tongcheng Auto Parts v Commission*, T-278/20, ECLI:EU:T:2022:417, para. 70.

- (176) The complainant put into question the appropriateness of financial data from the two Brazilian companies in the First Note (i.e. Cargill Agricola S.A. and Primary Products Ingredients Brasil S.A.) on the grounds that both belong to groups and that the influence of the group on the financial data was difficult to assess. It also noted that both manufacture and/ or sell a diverse range of products. With regard to Cargill Agricola S.A., the complainant added that Cargill Agricola S.A.'s turnover was about 150 times the turnover of the Colombian company Sucroal S.A. (for a similar production capacity) and that Cargill Agricola S.A. had the financial profile of a trading company. Concerning Primary Products Ingredients Brasil S.A., the complainant noted a change of ownership and the absence of 2022 financial data published.
- (177) The complainant also put into question the appropriateness of financial data from the three Thai companies in the First Note (i.e. Sunshine Biotech International Co. Ltd.; Cofco Biochemical (Thailand) Co. Ltd. and Thai Industrial Citric Co. Ltd.). For the complainant, without more detailed and independently audited data, the data of the first two, Chinese-owned companies in Thailand was hardly reliable for the determination of undistorted values. Moreover, in its view the influence of the groups to which Sunshine Biotech International Co. Ltd. and Cofco Biochemical (Thailand) Co. Ltd. belong would have an impact on the company data and performance that is uncertain without detailed independent audit reports on the companies and the groups. In addition, the complainant stated that the two companies would be export-oriented with the main objective of supplying citric acid to the USA to the extent Chinese-origin citric acid shipments are subject to high duties when imported in the USA. The complainant added that production volumes in Thailand were small in comparison to production in the PRC and estimated citric acid consumption in Thailand at 30 000-40 000 tonnes per year.
- (178) In view of the above, the complainant called for the use of Colombia rather than Brazil and Thailand.
- (179) The Commission agreed with the complainant that the financial data of the Brazilian company Primary Products Ingredients Brasil S.A. was not the most appropriate to the extent that it is outdated. The data in question covered the financial year 2020 whereas the investigation period covers the period from 1 October 2022 to 30 September 2023.
- (180) In the Second Note, the Commission further investigated which financial data is available for the countries identified in the Note of 21 December 2023, namely Brazil, Colombia and Thailand. The information available to the Commission at that stage was the same as the one described in the First Note (see recital (171)), except for the fact that the Commission obtained more detailed and publicly available information for 2022 for the Colombian citric acid producer Sucroal S.A. (from Supersociedades, as explained in recital (222)). No such level of detail was available for the other companies in the other potential representative countries.
- (181) In view of the above, the Commission considered that the financial information available for the Colombian company Sucroal S.A. was the most appropriate to be used. Moreover, the turnover of Sucroal S.A. is between the turnover of the biggest and the smallest Chinese producers of erythritol in the sample. No party contested these three facts nor put forward financial information from any alternative companies.
- (182) In its comments on the Second note Dongxiao Biotechnology Co. Ltd. questioned the use of SG&A and profit from Sucroal S.A. Those comments are addressed in section 3.4.9. below and do not alter the conclusion in the recital above.

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

- (183) 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*

- (184) 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

- (185) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.
- (186) 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>(85)</sup> ('GTA') to establish the undistorted cost of raw materials. The Commission also stated that it would use publicly available electricity prices from Colombia <sup>(86)</sup> for determining prices of electricity as well as for gas and steam (using conversion tables between m<sup>3</sup>/tonne and kWh), and ILO Statistics <sup>(87)</sup> for determining labour costs.
- (187) 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'. Further, 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.

#### 3.4.1. Factors of Production

- (188) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production ('FOP') 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

| Factor of Production          | Commodity Code              | Source of data                  | Value (CNY) | Unit of measurement |
|-------------------------------|-----------------------------|---------------------------------|-------------|---------------------|
| <b>Main Raw Materials</b>     |                             |                                 |             |                     |
| Corn/maize                    | 1005 90 11/<br>1005 90 0090 | GTA                             | 2,138       | kg                  |
| Corn/maize, Organic           | 1005 90 11/<br>1005 90 0090 | GTA Value + 20 % <sup>(1)</sup> | 2,565       | kg                  |
| Corn starch                   | 1108 12 0000                | GTA                             | 6,294       | kg                  |
| Corn starch, organic          | 1108 12 0000                | GTA Value + 20 % <sup>(2)</sup> | 7,553       | kg                  |
| Glucose/Glucose monohydrate   | 1702 30 10/<br>1702 30 0000 | GTA                             | 7,448       | kg                  |
| <b>Ancillary materials</b>    |                             |                                 |             |                     |
| Active yeast                  | 2102 10 0000                | GTA                             | 22,889      | kg                  |
| Inactive yeast <sup>(3)</sup> | 2102 20 11                  | GTA                             | 49,569      | kg                  |
| Ammonium citrate              | 2918 15 0000                | GTA                             | 17,525      | kg                  |

<sup>(85)</sup> Global Trade Atlas, Available at <https://connect.ihsmarket.com/gta/home>.

<sup>(86)</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 2/Industrial sin contribucion/Doble horario (day and the night).

<sup>(87)</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).



|                                                                  |              |     |         |    |
|------------------------------------------------------------------|--------------|-----|---------|----|
| Ammonium liquor <sup>(4)</sup>                                   | 2814 1000    | GTA | 4,798   | kg |
| Ammonium Sulphate <sup>(5)</sup>                                 | 3102 2100    | GTA | 1,65    | kg |
| Amylase/ $\alpha$ -amylase/<br>Saccharifying<br>enzyme/Cellulase | 3507 90 9000 | GTA | 97,257  | kg |
| Activated carbon in any<br>form                                  | 3802 10 0000 | GTA | 25,351  | kg |
| Polydimethylsiloxane<br>(Defoamer)                               | 3910 0000    | GTA | 72,375  | kg |
| Magnesium Carbonate                                              | 2519 1000    | GTA | 14,757  | kg |
| Magnesium sulphate                                               | 2833 21 00   | GTA | 9,751   | kg |
| Citric acid                                                      | 2918 14 0000 | GTA | 15,282  | kg |
| Salt <sup>(6)</sup>                                              | 2501 0000    | GTA | 0,474   | kg |
| Monk Fruit sweetener                                             | 2938 90 9090 | GTA | 500,721 | kg |
| Stevia                                                           | 2938 90 9090 | GTA | 500,721 | kg |

**Labour**

|        |       |     |    |             |
|--------|-------|-----|----|-------------|
| Labour | [N/A] | ILO | 18 | Labour Hour |
|        |       |     |    |             |

**Energy**

|             |       |                                                                                                                                                                     |                                                                                                                                |                                              |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| Natural gas | [N/A] | <a href="https://www.globalpetrol-prices.com/natural_gases_prices/">https://www.globalpetrol-prices.com/natural_gases_prices/</a>                                   | RMB 3,85/m <sup>3</sup> (on the basis of 0,3658 per kWh and it takes 10,55 kWh per m <sup>3</sup> of gas) (or 5,364,43 per MT) | Cubic meter                                  |
| Electricity | [N/A] | <a href="https://www.enel.com.co/es/personas/tarifas-energia-enel-distribucion.html">https://www.enel.com.co/es/personas/tarifas-energia-enel-distribucion.html</a> | RMB 1,3646 per kWh                                                                                                             | kWh                                          |
| Steam       | [N/A] | <a href="https://www.globalpetrol-prices.com/natural_gases_prices/">https://www.globalpetrol-prices.com/natural_gases_prices/</a>                                   | RMB 263,55 (based on price of 1 m <sup>3</sup> of gas to produce 1 tonnes of steam)                                            | Cubic meter of gas required to produce steam |
| Water       | [N/A] | <a href="https://www.acueduc-to.com.co">https://www.acueduc-to.com.co</a>                                                                                           | RMB 16,93                                                                                                                      | Cubic meter                                  |

**By-product/Waste**

|                                                   |              |     |                    |    |
|---------------------------------------------------|--------------|-----|--------------------|----|
| Yeast                                             | 2102 10 0000 | GTA | 1-4 <sup>(7)</sup> | kg |
| Filtration residue (protein) aimed at animal feed | 2308 0000    | GTA | 1,363              | kg |

|                                       |           |     |       |    |
|---------------------------------------|-----------|-----|-------|----|
| Erythritol mother liquor              | 2905 4900 | GTA | 0,1   | kg |
| Corn steep Water/Corn germ/Corn fibre | 2303 1000 | GTA | 5,049 | kg |
| Liquid protein/Protein powder         | 2308 0000 | GTA | 1,363 | Kg |

- (<sup>1</sup>) The mark-up for *organic* corn/maize is based on the weighted average difference in prices between purchased corn/maize of standard quality and purchase corn/maize of *organic* quality from sampled exporting producers in the PRC.
- (<sup>2</sup>) The mark-up for *organic* corn starch is based on the weighted average difference in prices between purchased corn starch of standard quality and purchased corn starch of *organic* quality from sampled exporting producers in the PRC.
- (<sup>3</sup>) Inactive yeast was added to the list of FOPs after the issuing of the Second Note.
- (<sup>4</sup>) Ammonium liquor was added to the list of FOPs after the issuing of the Second Note.
- (<sup>5</sup>) Ammonium Sulphate was added to the list of FOPs after the issuing of the Second Note.
- (<sup>6</sup>) Salt was added to the list of FOPs after the issuing of the Second Note.
- (<sup>7</sup>) Company specific values due to its ratio between its price of primary material and its price of waste material derived therefrom.

(189) After the issuing of the Second Note, the list of FOPs was further shortened due to absence of import prices into Colombia from GTA. The values thereof were therefore added to the value of consumables:

- Phosphates of potassium, i.e. potassium dihydrogen phosphate or dipotassium phosphate
- Anti-scale agents

(190) The Commission has 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 and costs for maintenance.

(191) Moreover, in addition to the manufacturing overheads reported, the Commission also included costs incurred for research & development to the extent they had not been included in the manufacturing costs.

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

#### 3.4.2. Raw materials

(193) 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 which include applicable import duties in Colombia for the respective HS Code.

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

- (195) 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 countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council <sup>(88)</sup>. The remaining quantities were considered representative.
- (196) The Commission decided to exclude imports from the PRC into the representative country as it concluded in recitals (60) to (157) 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.
- (197) 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, as also explained in recital (187).
- (198) Annex I of the First Note listed the various raw materials reported by the cooperating exporting producers at a 6-digit HS code level or more detailed level if available.
- (199) In its comments on the First Note, Dongxiao Biotechnology Co. Ltd. submitted that import prices of a third country reflect neither the actual domestic prices in that country, nor the purchase prices in the country concerned and that, therefore, the Commission should also be open to accept other publicly available sources of data, such as the domestic sales price in a third country or other international prices. Dongxiao Biotechnology Co., Ltd. added that the price of a domestically purchased input should be replaced by an import price on an FOB basis.
- (200) The Commission noted that Article 2(6a)(a) of the basic Regulation prescribes the use of corresponding data in an appropriate representative country 'provided that the relevant data are readily available.'
- (201) The Commission did not have at its disposal data on domestic prices in the potential representative countries. By contrast, data on import prices in the potential appropriate representative countries are readily available and the Commission has therefore used GTA as the source of this data. Furthermore, the Commission considers that, through forces of competition, the import prices into the potential representative countries were an accurate reflection of the relevant domestic prices.
- (202) Moreover, the Commission has also excluded data on imports into the representative country from the PRC to determine the relevant benchmark prices. As long as the import quantities of the factors of production are sufficiently representative and there are no other specific circumstances rendering them unsuitable, there is no objective reason to exclude them.
- (203) Therefore, in the absence of evidence to the contrary, the Commission rejected the party's claims while noting that it is the Commission's practice to adjust import prices for import taxes to reflect the market price of the factor of production in question in the representative country.
- (204) During the on-the-spot verification of the exporting producers' questionnaire replies, the Commission cross-checked the correspondence between the Chinese and the Colombian nomenclatures. The result of the refined correspondence was presented in the Second Note.
- (205) In response to the Second Note, Dongxiao Biotechnology Co. Ltd. argued that the price for the FOP Glucose represents glucose in its solid form and that the price must reflect the percentage of solid glucose in the glucose syrup used. The Commission agreed and has made a correction of the benchmark price for the company thereto.
- (206) With regard to import duties applicable to the imports of the FOPs, these have been included in the benchmark price used.

<sup>(88)</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.

### 3.4.3. *By-products*

- (207) The Commission analysed the accounting practices of the sampled Chinese exporting producers pertaining to by-products and waste. As a result, the Commission has used the quantities of waste products sold and reduced the Cost of Manufacturing, using Colombian prices of the HS code if available.
- (208) For those waste products for which only a price for the primary product was available, in the absence of any other data available, the Commission has provisionally taken the ratio between the price in the PRC for the waste product compared to the price in the PRC for the primary product reported by the exporting producers. The ratio there between has thereafter been applied to the price for the primary product in Colombia, as derived from the GTA.

### 3.4.4. *Labour*

- (209) The Commission used the last publicly available data from ILO statistics <sup>(89)</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 percent as employer contribution to the pension fund, 8,5 percent for health insurance, 1-2 percent for the Solidarity Pension Fund and 4-9 percent for payroll taxes <sup>(90)</sup> <sup>(91)</sup>. The average hourly labour cost per FTE amounts to 18 CNY/man-hour.
- (210) The number of hours reported in the questionnaire reply has been adjusted when warranted as the number of hours worked during a day at the factory was 12 rather the 8 hours.

### 3.4.5. *Electricity*

- (211) The Commission used relevant electricity price rates for industrial users as published by major electricity provider in Colombia Enel <sup>(92)</sup> in its website. The Commission used the industrial electricity prices in the investigation period and then added 10 % <sup>(93)</sup> in order to account for other bill elements such as distribution charges.
- (212) The price per kWh taken from this source amounted to USD 0,18/kWh, or CNY 1,24 + 10 % for distribution charges.
- (213) In its response to the Second Note Dongxiao Biotechnology Co., Ltd. questioned the use of electricity prices from Colombia as allegedly being inflated, partly due to the use of renewable energy sources rather than coal. Also, in the company's view, the source of electricity in Colombia is not comparable with and unrepresentative of the type of electricity that Dongxiao Biotechnology Co., Ltd. actually uses.
- (214) The Commission dismissed this argument as unsubstantiated. No publicly available source allowed the Commission to establish to what extent Colombia electricity prices would be inflated, neither was there a reliable benchmark to compare them. Moreover, the fact that the sources of electricity generation in Colombia and PRC do not mirror each other is not a reason to reject electricity prices in Colombia.

<sup>(89)</sup> <http://www.ilo.org>.

<sup>(90)</sup> <https://www.dlapiperintelligence.com/goingglobal/tax/index.html?t=19-employment-taxes>.

<sup>(91)</sup> <https://taxsummaries.pwc.com/colombia/individual/other-taxes>; <https://www.papayaglobal.com/countrypedia/country/colombia/>; <https://tradingeconomics.com/colombia/social-security-rate>; <https://actualicese.com/cuanto-le-cuesta-a-un-empleador-la-contratacion-de-un-trabajador-que-devengue-un-salario-minimo/>.

<sup>(92)</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 2/Industrial sin contribucion/Doble horario (day and the night).

<sup>(93)</sup> Estimate based on the comparison of electricity rates published by Enel versus electricity prices including all items in the electricity bill such as the distribution and energy cost, various environmental and fuel cost charges and taxes as published for Colombia in [https://www.globalpetrolprices.com/electricity\\_prices/](https://www.globalpetrolprices.com/electricity_prices/).

#### 3.4.6. *Natural gas*

(215) The Commission used the price of gas for businesses in Colombia as published by GlobalPetroPrices<sup>(94)</sup> on its website. The Commission used the average of the data available in the complaint (i.e. the average for a large gas consumer for the period second half of 2022 plus first half of 2023 the price amounting to 44,29 EUR per MWh) and the price of natural gas for businesses in Colombia in June 2023 (i.e. 0,053 Euro per kWh). 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  $\approx$  10,55 kWh and the cost of 1 kWh had been estimated to CNY 1,24 + distribution charges above.

#### 3.4.7. *Steam*

(216) The cost of steam has been determined by using the cost of natural gas and the the quantity of gas needed to produce steam. Taking account of generally recognized energy conversion rates and conversion rates from heat to steam, the Commission calculated that 68,29 m<sup>3</sup> of natural gas are required to produce 1 tonne of steam.

#### 3.4.8. *Water*

(217) The cost of water was determined on the basis of cost of water from a Colombian water supplier<sup>(95)</sup>, taking into account variable costs per m<sup>3</sup> and a fixed costs distributed between the quantities of consumption of water.

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

(218) 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 ('SG&A') 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.

(219) The Commission used the Colombian company Sucroal S.A. as a basis for the establishment of the SG&A and profit rates to construct normal value. The Commission considered that the rates so established would lead to reasonable amounts for SG&A costs and for profit within the meaning of Article 2(6a) of the basic Regulation at the ex-works level.

(220) Manufacturing overheads were not separately identified in the available Profit and Loss account figures and were found to be included in the cost of goods sold. The value for manufacturing overheads was based on the company specific data as explained in recital (190) and applied on the undistorted cost of manufacturing, with the addition of Cost incurred for Research & Development as allocated to the company in its Profit and Loss account figures.

(221) In its response to the Second Note Dongxiao Biotechnology Co. Ltd. questioned the use of SG&A and profit from Sucroal S.A. arguing that the company's figures were not solid, that publicly available sources<sup>(96)</sup> showed an abnormal growth in terms of Sucroal S.A.'s operating profit (EBIT) and net profit; and it requested confirmation of whether SG&A of that company was affected by donations of OAL, Sucroal S.A.'s main shareholder, to political parties.

(222) The Commission had based its findings on readily available information. Since the full financial report for Sucroal S.A. is not publicly or readily available the Commission could only disclose the profit and loss data as provided by Supersociedades<sup>(97)</sup>. Moreover, Dongxiao Biotechnology Co. Ltd. did not present any alternative source for detailed readily available financial data for Sucroal S.A. The press release submitted by Dongxiao Biotechnology Co. Ltd. displays OAL's companies donating to political parties<sup>(98)</sup>; that list did not include Sucroal S.A. The arguments against the use of readily available financial data from Sucroal S.A. as presented in the Second Note were therefore dismissed.

<sup>(94)</sup> [https://www.globalpetrolprices.com/natural\\_gas\\_prices/](https://www.globalpetrolprices.com/natural_gas_prices/).

<sup>(95)</sup> <https://www.acueducto.com.co>.

<sup>(96)</sup> [https://www.emis.cn/php/company-profile/CO/Sucroal\\_SA\\_en\\_1214927.html](https://www.emis.cn/php/company-profile/CO/Sucroal_SA_en_1214927.html).

<sup>(97)</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>.

<sup>(98)</sup> <https://www.lasillavacia.com/silla-nacional/asi-donaron-las-empresas-a-los-partidos-politicos-en-2023/>.

### 3.5. Calculation

- (223) 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.
- (224) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. 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 Colombia, as listed under Recital (188).
- (225) Once the undistorted manufacturing cost were established, the Commission applied rates for the manufacturing overheads, SG&A cost, and profit as noted in recitals (218) to (220). They were determined on the basis of the financial statements of Sucroal S.A.
- (226) Then the Commission added manufacturing overheads and depreciation to the undistorted cost of manufacturing in order to arrive at the undistorted costs of production.
- (227) 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 15,4 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 18,3 %.

### 3.6. Export price

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

### 3.7. Comparison

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

### 3.8. Dumping margins

- (231) 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. 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.
- (232) For all other exporting producers in the PRC, first determined the level of cooperation of the exporting producers. The level of cooperation is calculated as 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.
- (233) The export volumes 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.
- (234) The level of cooperation in this case was not considered high because the total exports of the cooperating exporting producers, sampled and non-sampled, constituted 74,9 % of the total imports during the investigation period.

- (235) On this basis, the Commission considered it appropriate to establish the dumping margin for all non-cooperating exporting producers on the basis of the representative sales transactions of the sampled exporting producer with the highest dumping margin found. The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

| Company                          | Provisional dumping margin |
|----------------------------------|----------------------------|
| Baolingbao Biology Co., Ltd.     | 31,9 %                     |
| Dongxiao Biotechnology Co., Ltd. | 76,9 %                     |
| Sanyuan Biotechnology Co., Ltd.  | 187,5 %                    |
| Other cooperating companies      | 162,0 %                    |
| All other companies              | 235,6 %                    |

#### 4. INJURY

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

- (236) 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.
- (237) 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 actual data and not on the ranges.
- (238) The total Union production during the investigation period was in the range of 1 940 to 2 340 tonnes. The Commission established the actual figure on the basis of a verification of the audited reports of the only known Union producer, namely Jungbunzlauer S.A. As indicated in recital (20), given the existence of only one known Union producer, the Commission did not have to resort to sampling.

##### 4.2. Union consumption

- (239) The Commission established the Union consumption on the basis of: (i) the verified sales of the only known Union producer; and (ii) the imports from the country concerned and from all other third countries, notably the United States.
- (240) Union consumption developed as follows:

Table 2

##### Union consumption (tonnes)

|                         | 2020            | 2021            | 2022            | Investigation period |
|-------------------------|-----------------|-----------------|-----------------|----------------------|
| Total Union consumption | [14 000-16 800] | [19 460-23 350] | [16 240-19 500] | [15 400-18 480]      |
| Index                   | 100             | 139             | 116             | 110                  |

Source: Questionnaire reply of the known Union producer, information provided by the complainant.

- (241) On this basis, following strong growth in 2021 and a subsequent drop which may have been caused by stockpiling due to feared supply shortages in the context of COVID-19 or unexpected consumer behaviour, Union consumption increased by 10 % over the period considered.

4.3. Imports from the country concerned

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

- (242) As erythritol currently falls under ‘basket’ CN code 2905 49 00 for erythritol in its pure form and CN codes 2106 90 92 and 2106 90 98 for blended products, it was not possible to assess import statistics from Eurostat. Instead, import statistics were based on data of specialised market intelligence providers of Chinese and USA trade statistics to which the complainant has a subscription.
- (243) 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 complainant with other available statistical sources (Eurostat and Surveillance) and with the sampling and questionnaire replies of the cooperating Chinese exporting producers.
- (244) CCCMC claimed that the only acceptable approach for the Commission’s analysis of import data (volume, value) from China would be that based on official Eurostat statistics with a TARIC breakdown for the trade in erythritol.
- (245) In this respect it is noted that the TARIC codes for erythritol were created only on the date of initiation of the proceeding. Consequently, import data for the period considered could not be derived directly from Eurostat, as indicated in recital (242). The claim was dismissed.
- (246) The market share of the Chinese imports was established by comparing import volumes with the Union market consumption (see Table 2 above).
- (247) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (tonnes) and market share

|                                         | 2020    | 2021    | 2022    | Investigation period |
|-----------------------------------------|---------|---------|---------|----------------------|
| Volume of imports from the PRC (tonnes) | 9 660   | 14 546  | 11 922  | 13 168               |
| Index                                   | 100     | 151     | 123     | 136                  |
| Market share (%)                        | [62-70] | [67-76] | [66-74] | [77-87]              |
| Index                                   | 100     | 108     | 106     | 124                  |

Source: Specialised market intelligence, Sampling and Questionnaire replies of cooperating exporting producers.

- (248) Table 3 shows that during the period considered imports from the PRC increased in absolute terms by 3 508 tonnes, or 36 %. This translated into an increase of 17 percentage points in the total market share of the Chinese imports into the Union during the same period.
- 4.3.2. Prices of the imports from the country concerned and price undercutting
- (249) The Commission established the prices of imports on the basis of the specialised market intelligence indicated in recital (242). Price undercutting of the imports was established on the basis of verified questionnaire replies of the sampled exporting producers in the PRC.
- (250) The average price of imports into the Union from the country concerned developed as follows:



Table 4

**Import prices (EUR/tonne)**

|                               | 2020       | 2021       | 2022       | Investigation period |
|-------------------------------|------------|------------|------------|----------------------|
| Price of imports from the PRC | 1 856      | 2 453      | 1 938      | 1 572                |
| <i>Index</i>                  | <i>100</i> | <i>132</i> | <i>104</i> | <i>85</i>            |

Source: Specialised market intelligence, Sampling and Questionnaire replies of cooperating exporting producers.

(251) The average price of the Chinese imports first increased in 2021, reaching 2 453 EUR/tonne (from 1 856 EUR/tonne in 2020) and then decreased to 1 938 EUR/tonne in 2022 and further to 1 572 EUR/tonne during the investigation period. During the period considered, the decrease of the average unit price of the Chinese imports amounted to 15 %. Chinese import prices were constantly below the Union industry's sales prices, as shown in Table 8.

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

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

(253) 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 known Union producer's theoretical turnover during the investigation period. It showed a weighted average undercutting margin of between [40,0 % and 60,0 %] by the imports from the country concerned on the Union market. Undercutting was found for 100 % of the imported volumes of the sampled companies.

(254) The Commission further considered other price effects, in particular the existence of significant price suppression. As mentioned in recital (277), 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 same period the price of imports from the PRC 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 the PRC resulted in loss of profitability to the Union industry.

(255) CCCMC in its comments relating to material injury claimed that the Union market is segmented into two distinctive parts, i.e. erythritol market for the use in food production and erythritol market for the use in cosmetics and pharmaceutical production. It further claimed that the Union and US industries have exclusive access to the most lucrative cosmetic/pharmaceutical segments and that they should be distinguished and analysed separately and that the sales of the Union industry to cosmetic/pharmaceutical industries to be deducted from the overall injury analysis.

(256) The investigation has found that the Union industry did not enjoy any exclusivity in supplying cosmetic and pharmaceutical customers. Any company that wishes to place a substance on the EU market may submit a registration of that substance with the European Chemicals Agency (ECHA).

- (257) The investigation also found that erythritol for the cosmetic/pharmaceutical segment is the same product as the one for the food segment, with the former only required to pass certain additional tests as compared to the latter. If these additional tests are performed on food grade erythritol, it becomes fully interchangeable with the cosmetic/pharmaceutical grade erythritol. It should also be noted that the importance of the cosmetic/pharmaceutical segment is marginal, accounting for less than 4 % of the sales of the Union industry, and less than 1 % of Union consumption. Consequently, this claim was rejected.

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

##### 4.4.1. General remarks

- (258) 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.
- (259) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic and the microeconomic indicators on the basis of data contained in the complaint and the questionnaire reply of the known Union producer. As no other Union producers are known to the Commission, both sets of data were found to be representative of the economic situation of the Union industry.
- (260) 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.
- (261) 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

- (262) 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            | Investigation period |
|------------------------------|-----------------|-----------------|-----------------|----------------------|
| Production volume (tonnes)   | [9 700-11 700]  | [13 500-16 300] | [11 060-13 340] | [1 940-2 340]        |
| Index                        | 100             | 139             | 114             | 20                   |
| Production capacity (tonnes) | [11 700-14 100] | [13 500-16 300] | [18 430-22 230] | [18 430-22 230]      |
| Index                        | 100             | 116             | 160             | 160                  |
| Capacity utilisation         | 83 %            | 100 %           | 60 %            | 10 %                 |
| Index                        | 100             | 120             | 75              | 12                   |

Source: Jungbunzlauer S.A. questionnaire reply.

- (263) During the period considered, despite a slight increase in Union consumption as shown in Table 2, the Union industry's production volume decreased dramatically. Although Union production increased in 2021, and remained also in 2022 above the level of 2020, it then fell to only 20 % of the 2020 level in the investigation period. The Union industry was not able to compete against dumped imports from the PRC, which as from 2022 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 an almost complete suspension of production.
- (264) The reported production capacity figures refer to installed capacity, which increased by 60 % during the period considered. This expansion reflected an expectation by the Union industry of continued growth in the Union consumption, and production at full capacity in 2021.
- (265) During the period considered, capacity utilisation first grew in 2021, reaching 100 % given strong growth in the Union consumption, but then dropped sharply to reach only 10 % in the investigation period. This was driven by an almost complete suspension of production in the investigation period.

#### 4.4.2.2. Sales volume and market share

- (266) 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          | Investigation period |
|-------------------------------------------|---------------|---------------|---------------|----------------------|
| Sales volume on the Union market (tonnes) | [4 200-5 200] | [5 000-6 200] | [4 115-5 095] | [2 440-3 020]        |
| <i>Index</i>                              | 100           | 119           | 98            | 58                   |
| Market share (%)                          | [28-36]       | [24-31]       | [24-31]       | [15-20]              |
| <i>Index</i>                              | 100           | 85            | 84            | 55                   |

Source: Jungbunzlauer S.A. questionnaire reply.

- (267) The Union industry sales volume on the Union market first grew in 2021, and then returned in 2022 to a level comparable with 2020. In the investigation period the sales volume contracted significantly, translating in a total decrease of 42 % during the period considered.
- (268) During the period considered, the Union industry's market share in terms of Union consumption was on a constantly decreasing trend, which accelerated in the investigation period, decreasing by 45 % over the period considered.

#### 4.4.2.3. Growth

- (269) The Union consumption slightly increased during the period considered, while the sales volume of the Union industry in the Union market decreased sharply. The Union industry thus experienced a significant 13-16 percentage point loss of market share. At the same time, the market share of the imports from the country concerned increased by 15-17 percentage points during the same period.

#### 4.4.2.4. Employment and productivity

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

Table 7

**Employment and productivity**

|                           | 2020      | 2021      | 2022      | Investigation period |
|---------------------------|-----------|-----------|-----------|----------------------|
| Number of employees (FTE) | [28-36]   | [26-34]   | [27-35]   | [25-32]              |
| <i>Index</i>              | 100       | 94        | 98        | 88                   |
| Productivity (tonne/FTE)  | [340-410] | [500-610] | [400-480] | [75-90]              |
| <i>Index</i>              | 100       | 149       | 117       | 22                   |

Source: Jungbunzlauer S.A. questionnaire reply.

- (271) During the period considered, employment in the Union decreased by 12 %. It should be noted though that while it almost completely suspended production in the investigation period as a result of very low sales volume caused by dumped imports, the known Union producer decided to keep employees temporarily on stand-by instead of laying them off. If the Union industry would have reduced the number of employees to reflect the decrease in production, the decrease in employment would have been much greater.
- (272) Productivity during the period considered follows closely the trend observed for production: after an increase in 2021, a decrease takes place in 2022, followed by a collapse in the investigation period. The decision of the known Union producer not to lay off employees despite an almost complete suspension of production, impacts the indicator observed during the investigation period.

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

- (273) 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.
- (274) 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

- (275) 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          | Investigation period |
|-----------------------------------------------------------------------|---------------|---------------|---------------|----------------------|
| Average unit sales price in the Union on the total market (EUR/tonne) | [2 650-3 180] | [2 700-3 240] | [3 260-3 910] | [3 310-3 980]        |
| <i>Index</i>                                                          | 100           | 102           | 123           | 125                  |
| Unit cost of production (EUR/tonne)                                   | [1 800-2 160] | [1 730-2 070] | [2 750-3 300] | [6 300-7 560]        |
| <i>Index</i>                                                          | 100           | 96            | 153           | 350                  |

Source: Jungbunzlauer S.A. questionnaire reply.

(276) Sales prices were rather stable between 2020 and 2021, saw a roughly 20 % increase in 2022 and then again remained fairly stable in the investigation period in comparison to 2022. With the exception of the investigation period, sales prices remained higher than the unit cost of production during the period considered.

(277) The unit production cost also remained rather stable between 2020 and 2021 but saw in 2022 a much greater increase (53 %) than that of sales prices. A further very high increase was observed in the investigation period, reflecting a big increase in indirect costs (manufacturing overhead costs) on a per unit basis following the decision of the known Union producer to keep employees temporarily on stand-by instead of laying them off when it almost completely suspended production, as mentioned in recital (271). Other fundamental drivers of the increase in the unit cost of production in the last two periods of the period considered, was an increase in the prices of energy and raw materials such as glucose and chemicals.

#### 4.4.3.2. Labour costs

(278) The labour costs of the known Union producer developed over the period considered as follows:

Table 9

#### Average labour costs per employee

|                                         | 2020            | 2021            | 2022            | Investigation period |
|-----------------------------------------|-----------------|-----------------|-----------------|----------------------|
| Average labour costs per employee (EUR) | [77 000-87 000] | [76 200-86 100] | [83 900-94 800] | [81 600-92 200]      |
| Index                                   | 100             | 99              | 109             | 106                  |

Source: Jungbunzlauer S.A. questionnaire reply.

(279) During the period considered, the average wage per employee increased by 6 %. The increase had been somewhat more marked until 2022, but in the investigation period wages decreased slightly, presumably reflecting lower remunerations in the context of almost completely suspended production.

#### 4.4.3.3. Inventories

(280) Stock levels of the known Union producer developed over the period considered as follows:

Table 10

#### Inventories

|                                                  | 2020        | 2021          | 2022          | Investigation period |
|--------------------------------------------------|-------------|---------------|---------------|----------------------|
| Closing stocks (tonnes)                          | [970-1 170] | [1 300-1 570] | [1 700-2 050] | [850-1 030]          |
| Index                                            | 100         | 134           | 175           | 88                   |
| Closing stocks as a percentage of production (%) | 10-12       | 10-12         | 15-18         | 45-54                |
| Index                                            | 100         | 96            | 153           | 449                  |

Source: Jungbunzlauer S.A. questionnaire reply.

- (281) The level of stocks was substantially higher in 2021 (by 34 %) and 2022 (by 75 %) than in 2020. As mentioned in recital (263), the known Union producer almost completely suspended production in the investigation period and supplied the very low sales volume by decreasing stock levels, which halved compared to 2022, reaching a level 12 % lower than that in 2020.

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

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

Table 11

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

|                                                                                  | 2020           | 2021           | 2022            | Investigation period |
|----------------------------------------------------------------------------------|----------------|----------------|-----------------|----------------------|
| Profitability of sales in the Union to unrelated customers (% of sales turnover) | [12-15]        | [15-18]        | [7-10]          | [- 38 to - 45]       |
| <i>Index</i>                                                                     | 100            | 120            | 64              | - 304                |
| Cash flow (EUR 000)                                                              | [9 500-10 000] | [9 800-10 300] | [2 300-2 600]   | [- 4 100 to- 4 600]  |
| <i>Index</i>                                                                     | 100            | 103            | 26              | - 46                 |
| Investments (EUR 000)                                                            | [4 800-5 800]  | [480-580]      | [21 500-26 000] | [2 400-2 900]        |
| <i>Index</i>                                                                     | 100            | 10             | 449             | 51                   |
| Return on investments (%)                                                        | 50-60          | 70-80          | 6-7             | [- 30 to - 35]       |
| <i>Index</i>                                                                     | 100            | 134            | 12              | - 55                 |

Source: Jungbunzlauer S.A. questionnaire reply.

- (283) The Commission established the profitability of the known Union producer 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. Profitability was at a very healthy level for the first two years of the period considered, but decreased significantly as of 2022, and turned into very high losses in the investigation period in view of the continued increase in the dumped imports and lower prices, leading to lost sales and an almost complete suspension of production.

- (284) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow followed a similar pattern to that of profitability throughout the period considered, notably a sharp decrease in 2022 and a significant negative value in the investigation period.

- (285) While investments decreased in 2021 from the previous year, Union consumption increased by 39 % (see Table 2). This strong growth in demand prompted the Union industry to take a decision to invest in expanding production capacity, which translated into a very high level of investments in 2022. However, by the time the expanded production capacity became available, the dumped imports had already started negatively affecting the sales and production of the Union industry, meaning those investments were never fully put into use. In the investigation period investment again decreased significantly.

(286) The return on investments is the profit in percentage of the net book value of investments. Consistent with the profitability, it was at a healthy level and growing trajectory in 2020 and 2021 but took a sharp downward turn in 2022 and reached a significant negative level in the investigation period.

(287) The known Union producer's ability to raise capital was severely hampered as its cash flow and profitability reached significant negative levels in the investigation period following an almost complete suspension of production.

#### 4.4.4. *Conclusion on injury*

(288) The Union industry performed well at the beginning of the period considered, with injury indicators generally at healthy levels and on an upward trend during 2020 and 2021. It enjoyed a high level of profitability in the context of growing demand, to which it responded with significant investments to expand production capacity.

(289) However, 2022 saw a sharp deterioration of the situation on the market for the Union industry, with a marked reversal of the previously positive trend across practically all injury indicators. This reversal further accentuated in the investigation period, when several injury indicators (in particular profitability, cash flow and return on investments) reached significant negative levels.

(290) The Union industry faced increasing costs of production that it was unable to pass on in the form of price increases given undercutting by imports from the PRC. It started losing sales volumes towards the end of 2022, which was reflected also in loss of market share of 45 % during the period considered. In reaction, it had to reduce and ultimately almost completely suspend production.

(291) The volume of imports from the PRC grew by 36 % during the period considered, gaining 17 percentage points in market share. Prices of imports from the PRC initially increased by 32 % in 2021, presumably driven by supply and transport bottlenecks during and shortly following the COVID-19 pandemic. However, in 2022 prices of imports from the PRC returned to a level close to that of 2020, and further decreased in the investigation period to a level 15 % lower than in 2020. In view of the low prices of the Chinese imports, the Union industry could not sell above its cost of production (which increased due to higher raw material and energy prices), leading to losses and an almost complete suspension of production in the investigation period.

(292) The only injury indicators which did not see significant deterioration during the period considered are production capacity, sales prices of the Union industry and labour costs. However, this reflects underlying factors that in fact further underscore the dramatic injury picture, notably the completion of previously started capacity expansion at a moment when production was almost completely suspended, a significant increase in the cost of production and a decision to keep employees temporarily on stand-by instead of laying them off, respectively.

(293) In summary, a 36 % increase in imports from PRC at prices that decreased by 15 % during the period considered and significantly undercut Union sales prices coincided with the Union industry seeing a dramatic reversal of its performance across the injury indicators, culminating in significant losses and an almost complete suspension of production in the investigation period.

(294) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## 5. CAUSATION

(295) 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 industry and cost increases in raw materials and energy prices.

5.1.       **Effects of the dumped imports**

- (296) As set out in recital (248), the import volume of the product concerned from the PRC increased by 36 %, translating into an increase of 17 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 (267) and (268), the Union industry saw its sales volume decrease by 42 % and its market share by 45 %. This happened in a context where Union consumption fluctuated and increased overall by 10 % during the period considered.
- (297) As shown in recital (253), the Chinese imports were significantly undercutting the Union industry prices, and the undercutting increased 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 IP, when the Union industry was incapable of selling above its costs in view of the pressure derived from the dumped imports.
- (298) Therefore, the Commission concluded that a significant increase in dumped imports from the PRC at prices that were significantly undercutting Union prices, caused material injury to the Union industry.

5.2.       **Effects of other factors**

- (299) The Commission also examined whether other known factors, individually or collectively, are capable of attenuating the causal link established between the dumped imports and the material injury provisionally found to exist to the effect that such link would no longer be genuine and substantial.

5.2.1.     *Imports from third countries*

- (300) The only other third country from which the product concerned is imported is the United States of America (USA). The volume of imports from the USA developed over the period considered as follows:

Table 12

**Imports from third countries**

| Country |                           | 2020          | 2021          | 2022          | Investigation period |
|---------|---------------------------|---------------|---------------|---------------|----------------------|
| USA     | Volume (tonnes)           | [375-470]     | [360-450]     | [505-635]     | [170-210]            |
|         | <i>Index</i>              | 100           | 96            | 135           | 45                   |
|         | Market share (%)          | [3-4]         | [2-3]         | [4-5]         | [1-2]                |
|         | Average price (EUR/tonne) | [2 600-3 100] | [3 460-4 120] | [3 900-4 650] | [3 460-4 120]        |
|         | <i>Index</i>              | 100           | 133           | 150           | 133                  |

Source: Specialised market intelligence.

- (301) As set out in recital (248), the import volume from the PRC increased 36 %, during the period considered. By contrast, the import volume from the USA decreased by 55 %, with its market share reaching only 1 % to 2 % in the investigation period.
- (302) Moreover, the prices of imports from the USA were significantly higher than the prices of imports from the PRC, and also somewhat higher than the price of the Union industry.
- (303) Therefore, the Commission provisionally concluded that aside from the fact that these imports were not made at prices below the prices of the Union industry, the import volumes were so low that they did not contribute to the material injury suffered by the Union industry.



### 5.2.2. Export performance of the Union industry

(304) The volume of exports of the known Union producer developed over the period considered as follows:

Table 13

#### Export performance of the sampled Union producers

|                            | 2020          | 2021          | 2022          | Investigation period |
|----------------------------|---------------|---------------|---------------|----------------------|
| Export volume (tonnes)     | [5 600-7 000] | [7 200-9 000] | [5 800-7 200] | [780-980]            |
| Index                      | 100           | 129           | 103           | 14                   |
| Average price (EUR/tonnes) | [2 350-2 750] | [2 300-2 700] | [3 000-3 500] | [3 050-3 580]        |
| Index                      | 100           | 98            | 128           | 130                  |

Source: Jungbunzlauer S.A. questionnaire reply.

(305) The export volume of the Union industry was higher than its domestic sales, and followed a similar trend as its sales in the Union, however with an even sharper decrease in the investigation period. The United States has been by far the most important export market of the Union industry, and the main reason for the decrease in exports was an increase in imports from the PRC to the United States. The investigation found that Chinese exports to third country markets, including the United States, are also sold below the normal value. The Union industry could, thus not compete against such sales on the US market. The average sales price for exports also followed a similar trend than that of domestic sales, increasing as a result of higher cost of production.

(306) The loss of export sales volume had a negative effect on the production volume and capacity utilisation of the Union producer, thus further contributing to a significant increase in its fixed costs per unit produced. As explained in recital (324), this was taken into consideration when establishing the target price and therefore the injury margin.

(307) Therefore, 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. Cost increases in raw materials and energy prices

(308) CCCMC claimed that abnormal high energy prices in the EU and disruptions of maize corn supplies at competitive prices from Ukraine were two factors having a bearing effect on the performance of the Union industry.

(309) As set out in recital (277), the Union industry's cost of production increased due to price increases of energy and raw materials such as glucose and chemicals. Until 2022 the Union industry could to some extent increase its prices in reaction to the increase in the cost of production. However, during the investigation period, given decreasing prices of imports from the PRC, as set out in recital (248), this was no longer possible. In that context, in order to keep selling, the Union industry would have had to lower its selling prices to below the cost of production. Therefore, the cost increase did not attenuate the causal link.

### 5.2.4. Other factors

(310) CCCMC claimed that the broader competition on the Union market of sweeteners and an adverse scientific publication<sup>(99)</sup> should be two factors to be evaluated in the causation analysis of the proceeding.

<sup>(99)</sup> Witkowski, M., Nemet, I., Alamri, H. et al. The artificial sweetener erythritol and cardiovascular event risk. *Nat Med* 29, 710–718 (2023). <https://doi.org/10.1038/s41591-023-02223-9>.

- (311) The proposed factors suggested by CCCMC would have been relevant if they resulted in a contraction of demand for the product under investigation. However, as shown in Table 2 the demand increased over the period considered and there were no other indications that these two factors were having any negative effect on the situation of the Union industry.

### 5.3. Conclusion on causation

- (312) As set out in recitals (289) and (290), the Union industry saw from 2022 onwards a dramatic reversal of its good earlier performance, as evidenced across practically all injury indicators, which further accentuated in the investigation period, when several injury indicators (in particular profitability, cash flow and return on investments) reached significant negative levels.
- (313) This coincided with a significant increase in imports from PRC at prices that decreased by 20 % during the period considered and significantly undercut Union sales prices. Chinese imports also suppressed the prices of the Union industry during the IP.
- (314) 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 in terms of were however only limited, if any.
- (315) 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 consists notably of reduced sales, profits, production, market share, productivity, return on investments and utilisation of capacity.

## 6. LEVEL OF MEASURES

- (316) In the present case, the complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation.
- (317) Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation.
- (318) Then it examined whether the dumping margin of sampled exporting producers would be higher than their injury margin.

### 6.1. Injury margin

- (319) 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.
- (320) 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 PRC, 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 %.
- (321) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. The Commission considered that the combination of the profit of years 2020 and 2021 would be the appropriate target profit, in view of the fact that imports from the country concerned did not have an impact yet, on the profitability of the EU industry. Such profit margin was established at 15,5 %.

- (322) 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 by comparing it to the published accounts of a company in the same segment, i.e. production of lactic acid from fermented sugar. Indeed, the claims of the EU 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 EU Industry and verified by the Commission with actual IRI expenses over the period considered. Such difference, expressed as a percentage of turnover, was 0,53 %.
- (323) Such percentage of 0,53 % was added to the basic profit margin of 15,5 % mentioned in the recital (321), leading to a target profit of 16,03 %.
- (324) 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. As the sales of this producer were largely made from stocks produced in 2022, the production cost of that year (adjusted to September 2023 inflation index for France) <sup>(100)</sup>, was considered appropriate for this investigation.
- (325) On this basis, the non-injurious weighted average price is in the range of 3 200 to 3 700 EUR per tonne, resulting from applying the above-mentioned profit margin of 16,03 % to the cost of production during the investigation period of the sole Union producer.
- (326) 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).
- (327) Based on the evidence available, the Commission established an additional future cost in the range of 30 to 35 EUR per tonne. This was added to the non-injurious price mentioned in recital (325).
- (328) On this basis, the Commission calculated a non-injurious weighted average price in the range of 3 230 to 3 735 EUR per tonne for the like product of the Union industry by applying the above-mentioned target profit margin (see recital (323)) to the cost of production of the sole Union producer as described in recital (324) and then adding the adjustments under Article 7(2d).
- (329) 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 the PRC, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union producer 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.
- (330) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see Section 3.3. above).

| Company                                                         | Dumping margin (%) | Injury margin (%) |
|-----------------------------------------------------------------|--------------------|-------------------|
| Baolingbao Biology Co. Ltd                                      | 31,9               | 86,8              |
| Dongxiao Biotechnology Co. Ltd                                  | 76,9               | 169,2             |
| Sanyuan Biotechnology Co. Ltd                                   | 187,5              | 156,7             |
| Other cooperating companies                                     | 162,0              | 152,9             |
| All other imports originating in the People's Republic of China | 235,6              | 316,3             |

<sup>(100)</sup> 9d885442-f323-cdde-e149-17ed99a63a6f (europa.eu).

6.2. Conclusion on the level of the provisional measures

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

| Company                                                         | Provisional anti-dumping duty |
|-----------------------------------------------------------------|-------------------------------|
| Baolingbao Biology Co., Ltd.                                    | 31,9 %                        |
| Dongxiao Biotechnology Co., Ltd.                                | 76,9 %                        |
| Sanyuan Biotechnology Co., Ltd.                                 | 156,7 %                       |
| Other cooperating companies                                     | 152,9 %                       |
| All other imports originating in the People's Republic of China | 235,6 %                       |

7. UNION INTEREST

(332) Having decided to apply at this stage 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.

(333) 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

(334) The sole producer of erythritol in the Union lodged the complaint (see recital (2)), cooperated fully in the investigation and expressed its interest to the imposition of measures.

(335) The investigation has shown that the Union producer is suffering material injury caused by the dumped imports from the country concerned. These imports significantly undercut the Union producer's prices, in any event, exercised significant price suppression as shown by the underselling margins found, and caused significant loss of market share and profits towards the end of the period considered, and during the investigation period, as elaborated in recitals (258) to (315) above.

(336) The imposition of measures would likely prevent a further surge of imports from The PRC at very low prices. Without measures, Chinese producers will continue to dump the product concerned on the Union market preventing the Union industry from resuming full production, from selling at an adequate price and from generating a sufficient profit and thus causing further material injury to the Union industry.

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

7.2. Interest of unrelated importers

(338) The Commission did not receive responses from Union importers with the dedicated questionnaire.

(339) The Commission, thus, concluded that it is unlikely that the imposition of anti-dumping duties on erythritol originating in the PRC will have a permanent impact over the profitability of importers.

7.3. Interest of users

(340) Two users came forward in the investigation and provided a reply to the questionnaire.

- (341) However, with regard to their positions on the imposition of anti-dumping measures and on whether any increase on the price of erythritol could not be passed to their customers, the users only provided comments in the confidential version of their replies. The Commission is therefore not able to express its detailed assessment of those positions.
- (342) For the users in question, imports of erythritol from the PRC represent in value 3 % to 11 % in relation to their overall cost of goods sold. For other types of users the percentage would be lower. It should also be noted that 2021 was a record year in the Union for both erythritol consumption and imports from the PRC in absolute terms, despite the fact that import prices from the PRC were 56 % higher than in the investigation period (see Table 4). Hence, higher prices did not dissuade users or final consumers from consuming erythritol.
- (343) Thus, measures re-establishing a level playing field on the Union market would not be expected to have a significant negative impact on users or consumers. It is understood that the users in question would not oppose such measures destined to restore healthy competition between the Union and third country producers.
- (344) In the light of the above, it is provisionally concluded that the imposition of any anti-dumping measures are unlikely to affect seriously the situation of the users.

#### 7.4. Conclusion on Union interest

- (345) 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 erythritol originating in the country concerned at this stage of the investigation.

### 8. PROVISIONAL ANTI-DUMPING MEASURES

- (346) 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.
- (347) Provisional anti-dumping measures should be imposed on imports of erythritol 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 concluded that the appropriate level to remove injury should be the dumping margin.
- (348) 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 rate (%) |
|-----------------------------------------------------------------|----------------------------------------|
| Baolingbao Biology Co., Ltd.                                    | 31,9                                   |
| Dongxiao Biotechnology Co., Ltd.                                | 76,9                                   |
| Sanyuan Biotechnology Co., Ltd.                                 | 156,7                                  |
| Other cooperating companies                                     | 152,9                                  |
| All other imports originating in the People's Republic of China | 235,6                                  |

- (349) 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.

- (350) Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation or in the Annex, 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.
- (351) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'All other imports originating in the People's Republic of China'.
- (352) 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.
- (353) 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

- (354) 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.
- (355) In view of the findings at provisional stage, the registration of imports should be discontinued.
- (356) 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

- (357) In accordance with Article 19(a) 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.
- (358) Comments were received from the complainant and one exporting producer. The complainant's comments did not relate to the accuracy of the calculations. The exporting producer argued that a clerical error was made when adjusting the normal value for differences in indirect taxation. Based on this comment, the Commission corrected clerical errors in the calculations of the dumping margins for all three sampled exporting producers.

## 11. FINAL PROVISION

- (359) 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 in trade proceedings within a fixed deadline.

(360) 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 erythritol, in its pure form or contained in blends containing less than 10 % of other products by weight, currently falling under CN code ex 2905 49 00 for erythritol in its pure form and CN codes ex 2106 90 92 and ex 2106 90 98 for blended products (TARIC codes 2905 49 00 15, 2106 90 92 65, and 2106 90 98 15), 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 rate (%) | TARIC additional code |
|-----------------------------------------------------------------|----------------------------------------|-----------------------|
| Baolingbao Biology Co., Ltd.                                    | 31,9                                   | 89BG                  |
| Dongxiao Biotechnology Co., Ltd.                                | 76,9                                   | 89BH                  |
| Sanyuan Biotechnology Co., Ltd.                                 | 156,7                                  | 89BI                  |
| Other cooperating companies listed in the Annex                 | 152,9                                  |                       |
| All other imports originating in the People's Republic of China | 235,6                                  | C999                  |

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

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

5. Unless otherwise specified, the 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 Implementing Regulation (EU) 2024/1608.
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, 17 July 2024.

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

---



ANNEX

COOPERATING EXPORTING PRODUCERS IN THE PRC NOT SAMPLED

| Name                                          | TARIC additional code |
|-----------------------------------------------|-----------------------|
| Shandong Xiangchi Jianyuan Bio-Tech Co., Ltd. | 89BJ                  |
| Yusweet Co., Ltd.                             | 89BK                  |