



2025/4

9.1.2025

**COMMISSION IMPLEMENTING REGULATION (EU) 2025/4
of 17 December 2024**

**imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on
imports of titanium dioxide originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 13 November 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of titanium dioxide ('TiO₂'), originating in the People's Republic of China ('the country concerned', 'China' 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* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 29 September 2023 by the European Titanium Dioxide Ad Hoc Coalition ('the complainant'). The complaint was made on behalf of the European Union ('the Union' or 'the EU') industry of TiO₂ 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) 2024/1617 ⁽³⁾ of 6 June 2024 ('the registration Regulation').

1.3. Provisional measures

- (4) In accordance with Article 19a of the basic Regulation, on 13 June 2024, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days.
- (5) Three users, namely Plastika Kritis SA ('Plastika Kritis'), Munksjö Paper AB ('Munksjö') and Felix Schoeller GmbH & Co. KG ('Felix'), made comments which did not pertain to the accuracy of the calculations.

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

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of titanium dioxide ('TiO₂'), originating in the People's Republic of China (OJ C, C/2023/786, 13.11.2023, ELI: <http://data.europa.eu/eli/C/2023/786/oj>).

⁽³⁾ Commission Implementing Regulation (EU) 2024/1617 of 6 June 2024 making imports of titanium dioxide originating in the People's Republic of China subject to registration (OJ L, 2024/1617, 7.6.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1617/oj).

- (6) Plastika Kritis, a producer of masterbatch white, claimed that no dumping is taking place according to their knowledge. They further reiterated previous claims that the proposed anti-dumping duties will have catastrophic consequences for the Union masterbatch industry.
- (7) In particular, Plastika Kritis claimed that masterbatches from other third countries will become much more competitive in both the Union and export markets since they will continue to have access to cheap TiO₂ from China. In addition, they argued that due to limited capacity of the Union industry, there will be insufficient supply of TiO₂ if the measures are imposed. Finally, in case of retroactive application of the duties, users will suffer even bigger losses since the lead time on deliveries from China increased due to the attacks on commercial vessels in the Red Sea in the first half of 2024.
- (8) These comments are addressed in the relevant sections of this Regulation in the context of analysis of the Union interest and retroactive collection of duties (see Sections 7.3.2 and 8.3).
- (9) Munksjö and Felix, producers of decor paper, submitted comments, disagreeing with the Commission's decision not to grant end-use exemption to imports of laminate-grade TiO₂ and reiterating their earlier claims on why the conditions to grant it are met.
- (10) They further claimed that without such end-use exemption their situation will continue to worsen even despite the Commission initiating an anti-dumping investigation against Chinese imports of decor paper on 14 June 2024. ⁽⁴⁾ The reason being that the imposition of anti-dumping duties in the present investigation will both increase their cost of production and decrease the price of TiO₂ on Chinese domestic market, thus further decreasing the cost of production for Chinese decor paper producers. Neither of these developments will, however, be taken into account when reaching the conclusions in the decor paper case, since the investigation period of that case ends prior to imposition of duties in the present investigation.
- (11) These comments are addressed in Section 7.3.4.
- (12) On 11 July 2024, the Commission imposed provisional anti-dumping duties on imports of TiO₂ originating in China by Commission Implementing Regulation (EU) 2024/1923 ⁽⁵⁾ ('the provisional Regulation').

1.4. Subsequent procedure

- (13) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), multiple interested parties filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation. These include:
 - (a) the complainant;
 - (b) users of the product: Siegwerk Druckfarben AG & CO. KGaA ('Siegwerk'), Plastika Kritis, Munksjö, Felix, Teknos Group Oy ('Teknos'), Flint Group GmbH ('Flint'), Akzo Nobel Sourcing BV ('AkzoNobel'), PPG Industries Europe Sarl ('PPG'), Emil FreiLacke GmbH & Co KG ('Emil FreiLacke'), and Mauvilac;
 - (c) user associations: Asociación Española de Fabricantes de Pinturas y Tintas de Imprimir ('ASEFAP'), an association of Spanish producers of paints and printing inks; Confederation of European Paper Industries ('CEPI'), an association of paper producing companies (laminate paper and specialty applications paper); Hellenic Coatings Association ('HCA'), association of Greek paints and inks manufacturers; and European Council of the Paint, Printing Ink and Artists' Colours Industry ('CEPE'), an association of paints, printing inks and artists' colours producers in Europe;

⁽⁴⁾ Notice of initiation of an anti-dumping proceeding concerning imports of decor paper originating in the People's Republic of China, (OJ C, C/2024/3695, 14.6.2024, ELI: <http://data.europa.eu/eli/C/2024/3695/oj>).

⁽⁵⁾ Commission Implementing Regulation (EU) 2024/1923 of 10 July 2024 imposing a provisional anti-dumping duty on imports of titanium dioxide originating in the People's Republic of China (OJ L, 2024/1923, 11.7.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1923/oj).

- (d) importers: AAKO B.V. ('AAKO'); and
 - (e) exporting producers: LB Group ('LB') as well as China National Coatings Industry Association ('CNCIA'), an association representing exporting producers.
- (14) The parties who so requested were granted an opportunity to be heard. Hearings took place with Munksjö, Felix, Plastika Kritis, Flint, ASEFAPI, Kleverkem SRL, CEPE, LB, Mauvilac and the complainant. No hearings with the Hearing Officer in trade proceedings were held.
- (15) The Commission continued to seek and verify all the information it deemed necessary for its definitive findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.
- (16) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of titanium dioxide originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (17) Parties who so requested were also granted an opportunity to be heard. Hearings took place with CEPE and LB. No parties requested the intervention of the Hearing Officer.

1.5. **Claims on initiation**

- (18) In the absence of any comments, the Commission confirmed recital (6) of the provisional Regulation.

1.6. **Sampling**

- (19) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (7) to (13) of the provisional Regulation.

1.7. **Individual examination**

- (20) In the absence of any comments, the Commission confirmed its conclusions set out in recital (14) of the provisional Regulation.

1.8. **Questionnaire replies and verification visits**

- (21) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (15) to (19) of the provisional Regulation.

1.9. **Investigation period and period considered**

- (22) In the absence of any comments, the Commission confirmed its conclusions set out in recital (20) of the provisional Regulation.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

- (23) The Commission described the product under investigation, the product concerned and the like product in recitals (21) to (26) of the provisional Regulation. In the absence of any comments, the Commission confirmed its conclusions set out in those recitals of the Provisional Regulation.

2.1. **Claims regarding product scope**

- (24) Following provisional findings, several parties contested the Commission's conclusions on requests related to the product scope. Some parties also brought forward new claims on product scope.
- (25) In addition, as stated in recital (33) of the provisional Regulation, since several product scope claims were made after the deadline to submit those claims, the Commission was not able to consider them at provisional stage. These claims have now been assessed and are addressed in the appropriate subsections below.

2.1.1. *Masterbatch White*

- (26) In the absence of any comments on extending the product scope to Masterbatch White ('MW'), recitals (34) to (37) of the provisional regulation are confirmed.

2.1.2. *Claims on the PCN structure*

- (27) In its comments on the provisional Regulation, AkzoNobel claimed that the Commission failed to address AkzoNobel's proposal to amend the PCN structure, and that the Commission should consider refining the PCN by adding more categories to the 'TiO₂ content per weight' field of the PCN.
- (28) The Commission analysed all claims concerning the amendment of the PCN structure and stated in recital (42) of the provisional Regulation that no evidence had been provided to demonstrate that the chemicals in the coating would affect prices. The same conclusion applies to AkzoNobel's claim summarized in recital (27). No evidence had been submitted that refining the PCN by adding more categories to the TiO₂ content by weight would be necessary to ensure a fair price comparison.
- (29) Furthermore, as stated in recital (43) of the provisional Regulation, none of the exporting producers objected to the proposed PCN structure on the ground that it would result in an unfair price comparison, either because the PCNs do not differentiate products based on the chemicals that go into the coating or that they are insufficiently granular in the 'TiO₂ content per weight' field. The Commission thus had no basis to conclude that it would be necessary to make this field more granular in order to ensure a fair price comparison under Article 2(10) of the basic Regulation.
- (30) The Commission therefore considered this claim unfounded and rejected AkzoNobel's proposal.
- (31) In the absence of any new arguments and evidence to the above, the Commission confirmed the findings from recitals (38) to (44) of the provisional Regulation.

2.1.3. *Product exclusion requests*

- (32) At the outset the Commission recalled that it follows from the Court's settled case-law that the purpose of the definition of the product concerned in an anti-dumping investigation is to aid in drawing up the list of the products which will, if necessary, be subject to the imposition of anti-dumping duties. For the purposes of that process, the Commission may take account of a number of factors, such as, inter alia, the physical, technical, and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality.⁽⁶⁾ It is also settled case-law that in defining the product concerned the Commission enjoys a broad discretion.⁽⁷⁾
- (33) The examination of whether a specific product has been validly included in the list of products which will, if necessary, be subject to the imposition of anti-dumping duties must be carried out in the light of the characteristics of the product concerned as defined by the Commission, not in the light of the characteristics of the products comprising the product concerned or its subcategories.⁽⁸⁾ Products which are not identical in all respects may, because they correspond to the factors which the Commission took into account in defining the product concerned, come within the definition of that product and, in that context, be the subject of an anti-dumping investigation.⁽⁹⁾

⁽⁶⁾ See for instance judgments of 13 September 2010, *Whirlpool Europe v Council*, T-314/06, ECLI:EU:T:2010:390, paragraph 138, and of 17 December 2010, *EWRIA and Others v Commission*, T-369/08, ECLI:EU:T:2010:549, paragraph 82.

⁽⁷⁾ See, to that effect, judgments of 17 March 2016, *Portmeirion Group*, C-232/14, ECLI:EU:C:2016:180, paragraphs 46 and 47, and of 10 October 2012, *Gem-Year and Jinn-Well Auto-Parts (Zhejiang) v Council*, T-172/09, ECLI:EU:T:2012:532, paragraph 62.

⁽⁸⁾ See judgment of 18 November 2014, *Photo USA Electronic Graphic v Council*, T-394/13, ECLI:EU:T:2014:964, paragraph 30.

⁽⁹⁾ See, to that effect, judgments of 18 November 2014, *Photo USA Electronic Graphic v Council*, T-394/13, ECLI:EU:T:2014:964, paragraph 31, and of 28 February 2017, *JingAo Solar and Others v Council*, T-157/14, ECLI:EU:T:2017:127, paragraph 112 and the case-law cited.

- (34) According to the case-law, a claim that the product concerned is ill defined must be based on arguments which show that either the Commission erred in its assessment with regard to the factors it held to be relevant or that the application of other more relevant factors required that the definition of the product concerned be restricted. ⁽¹⁰⁾
- (35) As explained in recitals (24) and (25), several parties introduced requests for product exclusion after the deadline to submit product scope claims or contested the provisional conclusion of the Commission concerning their request. To examine these product exclusion requests, as stated in recital (45) of the provisional Regulation, the Commission examined (i) the basic physical, chemical and technical characteristics of those product types, (ii) their end-use and interchangeability, (iii) end-customer perception. For the sake of completeness, the Commission also considered other elements which could potentially justify a product exclusion based on Union interest considerations such as: (iv) impact of duties on the user, (v) alternative sources of supply, and (vi) impact of exemption on duties. No parties contested the elements which the Commission examined to assess product exclusion request.

2.1.3.1. Requests that were not considered at the provisional stage

2.1.3.1.1. Uncoated TiO₂ for non-white pigments

- (36) Sun Chemical Ltd. ('Sun Chemical') made its product exclusion request in a submission late at the provisional stage of the investigation. In the same submission, they requested an end-use exemption for uncoated TiO₂ grades if and when used as an intermediate to produce other non-white pigments that contain the conversion of the crystalline structure. This request was thus, as explained in recital (62) of the provisional Regulation and indicated in recital (25) above, not considered at the provisional stage of the investigation.
- (37) Sun Chemical provided only some information on the basic physical, chemical, and technical characteristics of this product, end-use and interchangeability, impact that the duties would have on their business, and the impact of potential exemption on duties, but not on end-customer perception of changes to the product or alternative sources of supply.
- (38) In addition, Sun Chemical did not provide a questionnaire reply nor submitted the relevant and verifiable data, which would allow the Commission to properly assess the claim, in an alternative format. It follows that Sun Chemical failed to substantiate their request even on the first three elements listed in recital (32) above, nor was the Commission able to verify any of the information presented.
- (39) For example, the Commission had no information on the share of imports from China in Sun Chemical's supply mix. Furthermore, due to absence of evidence, the Commission could not verify the claimed share of TiO₂ in Sun Chemical's cost of production and was thus not able to draw an accurate conclusion on what impact the duties may have on them.
- (40) Equally, the Commission did not have verified information on which types of TiO₂ Sun Chemical purchases and which products they use them in. The Commission was therefore unable to verify either the interchangeability, specificity of use, or the potential undermining of effectiveness of the duties if the product exclusion or end-use exemptions would be granted.
- (41) Furthermore, Sun Chemical claimed that the distinguishing chemical and physical characteristics of the TiO₂ that it purchases for the production of non-white pigments are that it has no coating and must have a low value of heavy metals. They did not, however, specify what threshold of heavy metals that is and how could it be measured by the customs, to ensure traceability in case of granting a product exclusion. On top of this, information on the file show that uncoated TiO₂ is used in other industries too, such as ceramics production and for use in food, pharma, and cosmetic products.

⁽¹⁰⁾ Judgments of 28 February 2017, *JingAo Solar and Others v Council*, T-157/14, ECLI:EU:T:2017:127, paragraph 100, and of 28 February 2017, *Canadian Solar Emea and Others v Council*, T-162/14, ECLI:EU:T:2017:124, paragraph 99.

- (42) In view of the foregoing, Sun Chemical failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding uncoated TiO₂ for non-white pigments or that an end-use exemption was warranted. Moreover, uncoated TiO₂ falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory TiO₂ imported from the PRC is not in competition with any other product available on the Union market. The request was therefore rejected.

2.1.3.1.2. Food-grade TiO₂

- (43) CEPI made this product exclusion request after the deadline to make product scope claims has passed. This request could thus, as explained in recital (64) of the provisional Regulation and indicated in recital (25) above, not be considered at the provisional stage of the investigation. CEPI did not make additional claims on this request in its submission on the provisional Regulation. The complainant opposed this product exclusion request.
- (44) CEPI provided only some information on the basic physical, chemical, and technical characteristics of this product, end-use and interchangeability, end-customer perception of changes to the product, and alternative sources of supply, but not on the impact of potential exemption on duties or what impact the duties would have on users.
- (45) CEPI has shown that food-grade TiO₂ has a special chemical characteristic, insofar that it has to meet the low heavy metal content and other requirements for E-171 food additives, set out by the Commission Regulation (EU) No 231/2012.⁽¹¹⁾ These thresholds, furthermore, could be easily checked by the customs authorities by the standard methods used to test food additives.
- (46) While CEPI did not specifically address the issue of end-use and interchangeability, the Commission noted in this respect that the heavy metals threshold for food-grade TiO₂ is stipulated by law.⁽¹²⁾ No other grade of TiO₂ which exceeds those thresholds could legally be used as food additive (E-171).
- (47) CEPI further claimed that only two or three Union producers are able to provide food grade TiO₂, and only in limited volumes.
- (48) The complainant contested the notion that food-grade TiO₂ could be distinguished from other types of TiO₂ based on the presence of phosphorus in the coating or based on differences in production processes. The Commission noted that CEPI never made such claims and thus dismissed the complainant's arguments as moot.
- (49) On the basis of the available evidence, the Commission found that, even if the food-grade TiO₂ has to meet specific requirements for E-171 additives, it cannot be concluded that it does not share the basic physical, chemical, and technical characteristics with other types of TiO₂. It is merely a sub-type of the latter. According to the information available to the Commission, it is a product which requires the same main raw materials as other applications, only of higher purity, and a production line better protected from introducing contaminants during the production process in order to achieve the required regulatory thresholds.
- (50) The Commission also noted that CEPI did not provide any estimate of what the share of food-grade TiO₂ in the total TiO₂ demand could be. The Commission could thus not assess the impact that this product exclusion could have on the effectiveness of the duties.
- (51) Furthermore, in absence of such estimates, it remains unclear whether or not the two or three Union producers, which CEPI claims are able to produce food-grade TiO₂, would be in a position to supply the Union demand for this grade. No additional evidence was provided in that regard, whereas the investigation has shown that sources of food-grade TiO₂ also exist in other third countries, such as Canada.

⁽¹¹⁾ Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council, OJ L 83, 22.3.2012, p. 1, ELI: <http://data.europa.eu/eli/reg/2012/231/oj>.

⁽¹²⁾ Commission Regulation (EU) No 231/2012.

- (52) The Commission therefore found no ground to argue that there are not sufficient sources of supply available for this type of product.
- (53) Finally, no other users of food-grade TiO₂ came forward in the investigation with any data on how anti-dumping duties would impact their business, nor was such evidence provided by CEPI or other sources. The Commission thus did not have any reliable information on the nature of an impact the duties could have on users of this type of TiO₂.
- (54) In view of the foregoing, CEPI failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding food-grade TiO₂. Moreover, food-grade TiO₂ falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory of TiO₂ imported from the PRC is not in competition with any other product available on the Union market.
- (55) The Commission could thus not conclude that the elements for product exclusion were met for food-grade TiO₂ and rejected this request.

2.1.3.1.3. Exclusion of TiO₂ produced applying the chloride process

- (56) AkzoNobel made a request that TiO₂ produced by applying the chloride process ('chloride process TiO₂') should be excluded from the scope of the investigation after the deadline to make product scope claims has already passed. As indicated in recital (66) of the provisional Regulation and in recital (25) above, the request could thus not be considered at the provisional stage of the investigation.
- (57) First, AkzoNobel claimed, at the outset, that the chloride process TiO₂ and TiO₂ produced using the sulphate process ('sulphate process TiO₂') are not substitutable.
- (58) To substantiate this claim, AkzoNobel described how chloride process TiO₂ in paints offers better weather resistance, a deeper colour perceived as whiter due to its blueish hue (compared to yellowish hue of sulphate process TiO₂), and the resulting differences in applications between the two (chloride process TiO₂ is only used for outdoor applications, while for indoor applications both chloride and sulphate process TiO₂ are used).
- (59) AkzoNobel further argued that, if chloride process TiO₂ and sulphate process TiO₂ were substitutable, paints and coatings industry would have already made the switch to sulphate TiO₂ to reduce production costs. The fact that demand for chloride TiO₂ remains strong, shows that they are not substitutable.
- (60) Second, AkzoNobel claimed that chloride process TiO₂ should be excluded from the scope of the investigation, considering that the majority of production in (and also imports from) China are of sulphate process, while the majority of production and consumption in the Union is of chloride process TiO₂.
- (61) Third, AkzoNobel claimed, based on its own purchase data, that there are differences in price between Chinese chloride process TiO₂ and Chinese sulphate process TiO₂, as well as chloride process TiO₂ from other sources.
- (62) AkzoNobel claimed that, due to the above two elements, the injury and causation analysis must be distorted.
- (63) In its comments on the provisional Regulation, AkzoNobel essentially reiterated the above arguments.
- (64) AkzoNobel challenged the Commission's conclusion that the main distinction on the market is between anatase and rutile TiO₂. To that end, AkzoNobel pointed to several market intelligence reports which it previously provided, which allegedly show that the main distinction is actually on chloride and sulphate process TiO₂.

- (65) Finally, AkzoNobel did not contest the Commission's conclusion from recitals (68) and (69) of the provisional Regulation but claimed that even with Chinese imports being 66 % sulphate process TiO₂, they are not competing with 90 % of EU production which is chloride process based. Thus, injury and causation analyses are inevitably distorted (except for calculations done at PCN level) to the detriment of Chinese TiO₂ imports.
- (66) In analysing AkzoNobel's request, the Commission noted that its request for product exclusion essentially rests on the claim that a) chloride and sulphate process TiO₂ are not substitutable, b) there is a difference in price between the TiO₂ types derived from each of the processes, and c) that majority of TiO₂ produced and coming from China is of sulphate process, while the majority of production and consumption in the Union is of chloride process TiO₂.
- (67) The Commission examined the evidence described in recital (64) above and noted that those reports merely show how much capacity under each of the two production processes individual producers are estimated to have. The fact that two different production processes exist, and their respective capacities are tracked, is not pertinent to the question whether the market players make a key distinction on that basis or not.
- (68) Therefore, no new evidence was brought forward to contest Commission's conclusion that the market generally differentiates TiO₂ as anatase or rutile. To the contrary, a non-sampled exporting producer Guanxi Jinmao Titanium Co., Ltd., even made a product exclusion request for anatase TiO₂, claiming significant differences and lack of substitutability between anatase and rutile TiO₂.
- (69) As concerns AkzoNobel's claim that chloride and sulphate process TiO₂ have different applications, the Commission first noted that AkzoNobel made that claim on the basis of the indoor vs. outdoor applications of its own products, relevant only in the paints and coatings industry. Other industries could buy both chloride and sulphate process TiO₂ to use interchangeably in the same applications (as is the case, e.g., in production of decor paper or masterbatches). On top of that, even AkzoNobel itself stated in its questionnaire reply that for some applications of their products, they use both chloride and sulphate process TiO₂.
- (70) Therefore, even if there would be a clear-cut split between using only chloride process TiO₂ in some applications of paints and coatings and only sulphate in others (*quod non*), this was claimed for a single type of use and is not necessarily the case for all the other industries. The Commission thus rejected this argument.
- (71) Indeed, the investigation has shown that there are multiple downstream industries using TiO₂ products which have been tailored to perform well in a specific application or even several applications.
- (72) Within each user industry there are multiple products for different applications: architectural paints, industrial coatings (within paints and coatings industries), laminate papers for different surfaces of the furniture or flooring (decor paper industry), graphic inks for narrow web labels, for flexible packaging, and for paper and board applications (graphic ink industry), to list only some.
- (73) Within each of the listed segments of the market, and even individual applications, users will often have multiple formulations of their products, depending on the specific end-use and customer needs.
- (74) The investigation has also shown that users will often test specific TiO₂ grades offered by TiO₂ producers for performance in the formulations they use and accordingly create one or more recipes/formulas which for their products will perform in a specific way. Such product will thus be sold for a specific use within an application.
- (75) The performance of those products will depend, among other things, on the type of TiO₂ they use, including TiO₂ particle size, crystal morphology (anatase or rutile), whether the TiO₂ molecules are coated or uncoated and whether the TiO₂ was produced via chloride process or the sulphate process.

- (76) The interplay of all these elements will, among other factors, also naturally have an impact on the price.
- (77) The Commission thus concluded that there is no convincing evidence to justify that chloride process TiO₂ should be removed from the product scope on the basis of basic physical, chemical, and technical characteristics sufficiently different from sulphate process TiO₂. Both chloride and sulphate process TiO₂ are used in the same industries, sometimes even in the same applications.
- (78) Further, there are ample alternative sources of supply since, as AkzoNobel itself stated, the majority of the Union industry production capacity is based on chloride process, as is the case in North America.
- (79) As the Commission already concluded in recital (433) of the provisional Regulation and confirmed in the section 7.3.3 below, AkzoNobel would not be significantly affected by the duties and could absorb them. On the other hand, excluding more than a third of imports of the product under investigation from the product scope is likely to have a significant impact on the effectiveness of the measures.
- (80) In view of the foregoing, AkzoNobel failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding chloride process TiO₂. Moreover, chloride process TiO₂ falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory of TiO₂ imported from the PRC is not in competition with any other product available on the Union market. The Commission thus rejected the request to exclude chloride process TiO₂ from the product scope.
- (81) AkzoNobel also reiterated its claims that the Commission should conduct separate injury and causation analyses for chloride and sulphate process TiO₂, on the grounds of the arguments presented in recitals (60), (61), and (65) above.
- (82) AkzoNobel did not, however, bring forward new arguments or evidence in support of that assertion.
- (83) The Commission also confirmed its conclusion in recital (69) of the provisional Regulation that, only because the Chinese producers currently produce more TiO₂ using the sulphate process does not mean that this will remain the case in the future. Furthermore, as explained in recital (90) of the provisional Regulation, the investigation has shown that the Chinese industry is committed to accelerate the transition from the sulphate process to the chloride process to produce TiO₂.
- (84) The Commission thus maintained its conclusion in recitals (70) and (71) of the provisional Regulation and rejected this request.

2.1.3.1.4. Exclusion of anatase TiO₂

- (85) A non-sampled exporting producer Guanxi Jinmao Titanium Co., Ltd. ('Jinmao Titanium') made a request to exclude anatase TiO₂ from the scope of the investigation. This request was made at a very late stage of the investigation, after the provisional Regulation was already published. No parties commented on this request.
- (86) As the Commission already highlighted in recital (62) of the provisional Regulation, the comments on product scope should have been submitted in the early stages of the investigation, in order to allow sufficient time to assess their merit and to give the opportunity to other interested parties to react to them.
- (87) The Commission nonetheless examined the request in light of the information available at this stage.
- (88) Anatase TiO₂ can only be produced via the sulphate process, as Jinmao Titanium pointed out. Jinmao Titanium submitted that the Union producers' sulphate process production capacity is much lower than the chloride process and is insufficient to meet the Union demand for anatase products, while market dynamics and Union regulations incentivise Union producers to invest in chloride production facilities.

- (89) Jinmao Titanium further claimed that anatase products differ significantly from other products (i.e., rutile) across the following metrics: hardness, relative density, refractive index, scattering power, chemical stability, band gap energy, and photocatalytic activity, citing several academic sources to that end. Jinmao Titanium claimed that these properties shape end-users' perceptions and determine their suitability for various applications.
- (90) In addition, Jinmao Titanium noted that the market participants commonly distinguish between whether a product is anatase or rutile and that this has an effect on the price.
- (91) Furthermore, they claimed that there is limited substitutability between anatase and rutile products. While in some fields, rutile can replace anatase, this substitution is rarely practised for economic feasibility.
- (92) Jinmao Titanium thus concluded that the Union users and applications which rely more on anatase products would avoid increased costs and higher consumer prices if anatase TiO₂ was excluded from the product scope. At the same time, there is limited risk of circumvention since anatase does not directly compete with Union production of rutile grades.
- (93) The Commission first noted that the claim on insufficient capacities in the Union to satisfy demand for anatase TiO₂ was not corroborated by any evidence. While in the investigation period ('IP') the Union capacity was indeed marginally lower than the total Union demand for TiO₂ overall, it was not shown that there would be a particular lack of capacity as regards anatase TiO₂ products. The Commission thus rejected this argument as unsubstantiated.
- (94) Concerning the arguments on alleged differences between anatase and rutile products, their substitutability, end-uses, pricing, and customer perceptions, the Commission already concluded in recitals (71) to (76) above that all of those elements are affected by a number of factors in each individual application of products containing TiO₂. Depending on the application, distinction between rutile and anatase TiO₂ can be relevant to a larger or a lesser degree.
- (95) Furthermore, Jinmao Titanium itself admits that there is indeed a degree of substitutability of rutile and anatase products even in the same applications.
- (96) The Commission thus could not conclude that the potential specificities of anatase TiO₂ in any of those elements would warrant a product exclusion.
- (97) Finally, no evidence was submitted to show that volume of imports of anatase TiO₂ to the Union was not significant. On the basis of the information available to the Commission, up to 30 % of total imports in the investigation period could potentially be anatase TiO₂. Given that the Union industry also sells anatase products, such exclusion could thus have a significant impact on the effectiveness of the duties.
- (98) In view of the foregoing Jinmao Titanium failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding anatase TiO₂. Moreover, anatase TiO₂ falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory TiO₂ imported from the PRC is not in competition with any other product available on the Union market. The Commission rejected this request.

2.1.3.1.5. TiO₂ used in sunscreens

- (99) After the provisional measures were imposed, AAKO B.V. ('AAKO'), a small importer of coated TiO₂ used in sunscreens asked for a product exclusion for this type of TiO₂.

- (100) AAKO claimed that this type of TiO₂ had special physical, chemical and technical characteristics, insofar that only specific grades of TiO₂ can be used in sunscreens. The chemicals that can be contained in the coating of those grades and their level are defined by Annex VI to the Cosmetic Products Regulation. ⁽¹³⁾
- (101) This requires suppliers' grades to be tested and approved for specific formulas, and they cannot be freely replaced by other suppliers.
- (102) Furthermore, AAKO claimed that the price of the types of TiO₂ they import is around eight times higher than standard uncoated TiO₂ grades, making the markets for coated and uncoated TiO₂ practically incomparable.
- (103) The Commission noted that the above request contained limited information and it was submitted at a very late stage in the proceeding.
- (104) The Commission also noted on the outset that the TiO₂ which AAKO describes is not the only coated TiO₂ on the market. To the contrary, majority of TiO₂ types available on the Union market contain some form of chemical coating.
- (105) Furthermore, the Commission acknowledged that the composition of TiO₂ used in sunscreens is regulated by law, and it thus stands to reason that switching suppliers requires extensive testing.
- (106) However, as the investigation has shown, testing TiO₂ before being used in any of the users' formulas/applications is not unique to this sector. Many other users have shown that reformulations of their products require prior testing. Therefore, the Commission could not conclude that TiO₂ used in sunscreens had special physical, chemical and technical characteristics which would warrant a product exclusion.
- (107) In addition, AAKO did not provide any information or evidence on potential lack of supply within the Union or alternative sources of supply.
- (108) Finally, no producers of sunscreen came forward in this investigation opposing the measures indicating that the duties would not have a major impact on their business.
- (109) In view of the foregoing AAKO failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding TiO₂ used in sunscreens. Moreover, TiO₂ used in sunscreens falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory TiO₂ imported from the PRC is not in competition with any other product available on the Union market. The Commission rejected AAKO's request for product exclusion.

2.1.3.2. Requests that were considered at the provisional stage

2.1.3.2.1. Laminate-grade TiO₂

- (110) After the publication of the provisional Regulation, a hearing was held with Munksjö and Felix. They jointly submitted comments on the Commission's findings in the provisional Regulation. CEPI also submitted comments, requesting the Commission to reassess its conclusions on the exclusion of laminate-grade TiO₂.
- (111) Munksjö and Felix reiterated their claims on product exclusion or alternatively end-use exemption, providing new additional evidence and argued that all criteria which the Commission considered for these requests in previous cases were met. The Commission thus reassessed its conclusions in light of new evidence.

⁽¹³⁾ Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (recast) (OJ L 342, 22.12.2009, p. 59, ELI: <http://data.europa.eu/eli/reg/2009/1223/oj>); and Commission Regulation (EU) 2021/850 of 26 May 2021 amending and correcting Annex II and amending Annexes III, IV and VI to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products (OJ L188, 28.5.2021, p. 44, ELI: <http://data.europa.eu/eli/reg/2021/850/oj>).

- (112) First, the two users claimed that the Commission breached the obligation to examine with due care all information available to it, infringing the principle of equality of arms. They argued that the Commission selectively considered elements from the complainant's submissions while disregarding the two users' responses to these claims.
- (113) As indicated in recital (47) of the provisional Regulation, the Commission did not take into account the comments on product scope submitted by the complainant on 2 May 2024, nor those jointly submitted by Munksjö and Felix on 22 May 2024 and on 30 May 2024.
- (114) The Commission found that certain exporting producers advertised laminate-grade TiO_2 for use in PVC and durable plastics.⁽¹⁴⁾ However, Munksjö and Felix claimed that the Commission was in fact influenced by the comments the complainant made on 2 May 2024 in this respect, while disregarding the users' counterclaims on the same subject.
- (115) The Commission pointed out in that regard that the data referred to in recital (114) is publicly available online and the Commission was able to retrieve it without considering the comments made by the parties, including the comments submitted late by the complainant. In fact, in their answers to the questionnaire replies the users stated the exact product types that they purchased from individual suppliers, which the Commission checked against the information publicly available online.
- (116) Nonetheless, the Commission has in the definitive stage considered all the submissions, including those which arrived too late to be considered in the provisional phase and reassessed its findings in the light of any new facts and evidence presented therein.
- (117) Second, the users claimed that several conclusions that the Commission reached in the provisional Regulation were not supported by available evidence.
- (118) In that context, the two users first disputed the Commission's findings that laminate-grade TiO_2 shares the same basic physical, chemical, and technical characteristics with other TiO_2 types.⁽¹⁵⁾
- (119) They reiterated their claim that laminate-grade TiO_2 had specific physical characteristics, responding to the unique needs of decor paper industry, namely, ensuring superior lightfastness after saturation of the paper with a melamine-based resin and ensuring that the paper maintains its colour after impregnation. This element is of paramount importance to the use of decor paper in the decorative and furniture industries.
- (120) The users supplemented their claim setting out the specific chemical characteristics that laminate-grade TiO_2 possesses, which allow for such performance. It is the thick surface coating on the TiO_2 molecule, consisting primarily of the chemical elements phosphorus pentoxide (P_2O_5), aluminium oxide (Al_2O_3) and silicon dioxide (SiO_2), particularly high levels of P_2O_5 , which exceeds 0,5 % as ratio in the dry product compared to other TiO_2 grades.
- (121) CEPI put forward a similar argument, claiming that the fact that laminate-grade TiO_2 contains much higher concentration of phosphorus is what makes it uniquely suited for use in laminate-paper application, as well as clearly distinguishable from other TiO_2 types.
- (122) The users also pointed out a specific technical characteristic by which laminate-grade TiO_2 behaves differently from other types: it has electrical surface charge resulting from its thick surface coating, which helps the molecule attach to the wood pulp fibres. This same surface charge as well as particle size makes it unsuitable for other applications, such as architectural paint, as it results in "chalking" of the paint on the walls.
- (123) Finally, the users pointed out that there are simple, widely available methods to detect the presence and concentration of phosphorus in the coating, notably via an x-ray fluorescence (XRF) or inductively coupled plasma (ICP) test.
- (124) In its submission of 2 May 2024 referred to in recital (114), the complainant claimed and provided evidence that the presence of phosphorus in the coating cannot be a distinguishing feature because almost all TiO_2 products contain some level of phosphorus.

⁽¹⁴⁾ Recital (51) of the provisional Regulation.

⁽¹⁵⁾ Recital (51) of the provisional Regulation.

- (125) The complainant furthermore claimed that customs authorities would not be able to accurately identify the presence of phosphorus in TiO₂ imports and, even if they could, they would not be able to accurately distinguish between laminate-grade TiO₂ and other types.
- (126) The complainant added that different type of surface treatments that TiO₂ grades undergo do not require unique additional equipment or specialised technology, reinforcing further the argument that laminate-grade TiO₂ should not be considered a separate product.
- (127) The Commission analysed the additional information submitted by interested parties concerning the basic characteristics of laminate-grade TiO₂. The evidence submitted confirms the Commission's finding set out in recital (51) of the provisional Regulation that the presence of phosphorus is more significant in laminate-grade TiO₂ than in other types and that the distinguished nature of that coating makes laminate-grade TiO₂ suitable for decor paper production.
- (128) In their submission after the publication of the provisional Regulation, the users disagreed with the Commission's conclusion that several exporting producers advertise the same type of TiO₂ for use in decor paper production, but also PVC and durable plastics, indicating that it can be used for several purposes.
- (129) In that regard, in its submission of 2 May 2024, the complainant claimed that many TiO₂ producers offer products which are versatile in their use, i.e., can be qualified by different users for several distinct applications (coatings, plastic, laminate paper, etc.). To that end, they provided product data sheets for three different TiO₂ products manufactured by the Union producers and three more manufactured by producers in China.
- (130) In their submission on 22 May 2024, Felix and Munksjö contested this claim and provided evidence showing that several of the above TiO₂ grades could not, in fact, be used in decor paper production, while claiming that other grades are not even present on the Union market and is thus unknown whether they reach the standards required to be used in decor paper production.
- (131) Some of the products mentioned in recital (130) above were also the ones which users reported to have bought in their questionnaire replies, which the Commission cross-checked with the publicly available data. Specifically, on LR-952, a laminate-grade TiO₂ product produced by Lomon Billions, the users provided evidence that, contrary to the claim of the complainant and the Commission's conclusion in the provisional Regulation, it is not suitable for use in PVC and durable plastics. Lomon Billions website has since been updated in that regard.
- (132) Following the imposition of provisional duties, CEPI made a similar claim, arguing that laminate-grade TiO₂ would be unusable in other applications, as it would not properly disperse in plastic materials.
- (133) With all the newly submitted evidence, the Commission could not conclude that any of the TiO₂ product types claimed by the complainant are actually being sold in the Union market both for decor paper production and some other uses at the same time. Although some other TiO₂ product types are advertised (and, as the investigation has shown, indeed sold) for multiple purposes, the same was not demonstrated for the laminate-grade TiO₂.
- (134) While the Commission acknowledges that a few online sources advertise certain TiO₂ products for use in both decor paper production and in other types of downstream products, it has not been demonstrated that the grades which are known to be used for decor paper production are sold for other uses too.
- (135) To the contrary, the available evidence proves that, while there might be interchangeability for other product types, there is indeed a (limited) number of TiO₂ product types produced and marketed as laminate-grade TiO₂ only.

- (136) As the Commission has concluded in recitals (71) to (75) above, the application of the product under investigation (such as it being used in production of decor paper) in a given end-use plays a role in defining the chemical composition and/or other characteristics of TiO_2 , so that it would be properly tailored for that specific application.
- (137) Munksjö and Felix claimed that this is also true for laminate-grade TiO_2 . As the Commission already confirmed in the provisional Regulation, distinguishing chemical feature in laminate-grade TiO_2 is that it contains a high concentration of phosphorus in the coating. New evidence has shown that the phosphorus content would have to be at least 0,5 % on the dry mass of the product for it to be useful in decor paper applications.
- (138) At the same time, the specific technical characteristic of laminate-grade TiO_2 which the two users claimed for it to possess (see in recital (122) above) were not confirmed by the investigation to be exclusive to laminate-grade TiO_2 or to a particular application.
- (139) Namely, even if laminate-grade TiO_2 has electrical surface charge resulting from its thick surface coating, which helps the molecule attach to the wood pulp fibres, it was not demonstrated that other types of TiO_2 would not have similar technical characteristics. While such surface charge might indeed make laminate-grade TiO_2 unsuitable for paints and coatings applications, the Commission could not exclude that TiO_2 used in production of other products (such as other types of paper) would not require a similar characteristic.
- (140) Nonetheless, the Commission assessed whether phosphorus content in the coating would suffice to justify product exclusion.
- (141) Having analysed all the evidence on file, the Commission could not conclude that laminate-grade TiO_2 would have sufficiently different basic physical, chemical, and technical characteristics compared to other types of TiO_2 to be excluded from the product scope.
- (142) Indeed, as the Commission analysed above, multiple types of TiO_2 have specific requirements for certain elements of their chemical composition depending on their application (such as food-grade TiO_2 or TiO_2 used in sunscreens).
- (143) Thus, while the requirement that the phosphorus content has to be at least 0,5 % on the dry mass of the product for it to be useful in decor paper applications might be unique to the application of TiO_2 in decor paper production (or, in other words, unique to laminate-grade TiO_2), laminate-grade TiO_2 is not unique in requiring somewhat adjusted chemical composition in order to be usable in its designated application. In other words, this particular characteristic is not sufficient to distinguish laminate-grade TiO_2 from other types of TiO_2 nor is it unique from other particular characteristics other specific applications may require meriting an exclusion.
- (144) The Commission thus maintained its conclusion in the provisional Regulation that the interested parties failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding laminate-grade TiO_2 . Moreover, laminate-grade TiO_2 falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory TiO_2 imported from the PRC is not in competition with any other product available on the Union market. The Commission rejected this request for product exclusion.
- (145) After final disclosure, Felix, Munksjö, and LB made comments disagreeing with the refusal by the Commission of the product exclusion request.
- (146) First, the two users claimed that the Commission misapplied the test for analysing the specificity of the characteristics of the product. In recitals (140) to (142) above, the Commission considered that specific characteristics would only suffice to differentiate a product if that product would be the only one requiring a particular chemical formula to be functional in its intended application. The users claimed that the question is not whether the product is exclusive in that regard, but rather whether the distinct chemical properties are unique to the relevant product.

- (147) Second, the two users reiterated their claims about the uniqueness of physical, chemical, and technical characteristics of laminate-grade TiO_2 , stating that, taken together, they distinguish laminate-grade TiO_2 from other products. LB similarly reiterated previous claims on the chemical uniqueness and other characteristics of laminate-grade TiO_2 . Namely, it is the only TiO_2 type where phosphorus compounds are added to its coating, while the fact that it must have a good retention in the paper pulp mandated a large particle size and carefully controlled isoelectric point.
- (148) The two users highlighted that the Commission itself recognised that its chemical characteristics make laminate-grade TiO_2 unsuitable for use in other general applications, such as paints and coatings (recital (400) below). The users claimed in that respect that the Commission has considered in previous cases (*Farmed Salmon* from Norway⁽¹⁶⁾ and *Certain aluminium foil* from China and Russia⁽¹⁷⁾) that differences in the use or application of a product are an immediate consequence of the different essential characteristics of the product.
- (149) The Commission reiterated in that regard that the product exclusion analysis is an exercise done on a case-by-case basis, whereby the Commission evaluates all the available elements holistically to determine whether a type of product is within the product scope, as defined, or not. In some cases the fact that there are unique distinct chemical properties will indeed suffice to exclude the product from the scope.
- (150) In this case, however, there are several types of TiO_2 with distinct chemical formulas present in the market. As already elaborated in recitals (71) to (76) above, many of these types/formulas are tailored and marketed for specific uses (given how they perform in those uses thanks to such characteristics compared to others). All of those types are covered by the product description in recital (21) of the provisional Regulation.
- (151) Therefore, the distinctiveness of chemical characteristic is a feature of TiO_2 products. In that context the Commission could not conclude that laminate grade TiO_2 's chemical formula's distinctiveness would be sufficient to consider it as outside of the product description provided in recital (21) of the provisional Regulation.
- (152) Thus, when the nature of the product is such as is for TiO_2 , namely, that the chemical characteristics of TiO_2 are modified precisely for it to perform better in certain applications than in other, the question of exclusiveness of a certain chemical formula intended for a specific use has to be at least a part of the product exclusion test. Moreover, the Commission reminded that laminate-grade TiO_2 falls within the product definition provided in recital (21) of the provisional Regulation and this subcategory of TiO_2 imported from China is indeed in direct competition with products available on the Union market. No additional evidence was provided to the contrary.
- (153) This is a diametrically opposite situation to the *Farmed salmon* and *Certain aluminium foil* cases, which the users drew parallels to. In both of those cases it was clear that the excluded products were not covered by the product description.
- (154) The Commission thus maintained its position and rejected this request for product exclusion.
- (155) The Commission assessed the new claims and evidence on the end-use exemption of laminate-grade TiO_2 in section 7.3.4 below.

2.1.3.2.2. TiO_2 of purity of 99,9 % or more

- (156) In the absence of any comments, the Commission confirmed its conclusions set out in recital (54) of the provisional Regulation.

⁽¹⁶⁾ Council Regulation (EC) No 319/2009 of 16 April 2009 clarifying the scope of the definitive anti-dumping duties imposed by Regulation (EC) No 85/2006 on imports of farmed salmon originating in Norway, OJ L 101, 21.4.2009, p. 1, ELI: <http://data.europa.eu/eli/reg/2009/319/oj>, recital 18.

⁽¹⁷⁾ Council Regulation (EC) No 950/2001 of 14 May 2001 imposing a definitive anti-dumping duty on imports of certain aluminium foil originating in the People's Republic of China and Russia, OJ L 134, 17.5.2001, p. 1, ELI: <http://data.europa.eu/eli/reg/2001/950/oj>, recital 14.

2.1.3.2.3. Graphic TiO₂

- (157) In its submission on the provisional Regulation and during the hearing, Flint contested Commission's conclusions on its request for an end-use exemption for the type of TiO₂ that is only used as a pigment in the production of white inks in the graphic ink industry ('graphic TiO₂').
- (158) Flint did not contest, however, the Commission's conclusion on rejecting its request for product exclusion. At the same time, neither Siegwerk nor Sun Chemical provided additional evidence to that already provided by Flint which would necessitate the re-evaluation of the Commission's decision to reject the product exclusion request.
- (159) The Commission thus maintained its position that graphic TiO₂ does not have different basic physical, chemical, and technical characteristics compared to other types of TiO₂ to be excluded from the product scope. Moreover, the interested parties failed to demonstrate that the application of other more relevant factors than those considered by the Commission when defining the product concerned required that the definition of the product concerned be restricted by excluding graphic TiO₂. Moreover, graphic TiO₂ falls within the product definition provided in recital (21) of the provisional Regulation and interested parties provided no evidence demonstrating that this subcategory TiO₂ imported from the PRC is not in competition with any other product available on the Union market.
- (160) The Commission assessed the new claims and evidence on the end-use exemption of graphic TiO₂ in section 7.3.5 below.

3. DUMPING

- (161) Following the provisional disclosure, one sampled exporting producer, LB Group, the complainant and one of the users, Akzo Nobel, commented on the provisional dumping findings.

3.1. Normal value

- (162) The details of the calculation of the normal value were set out in recitals (80) to (242) of the provisional Regulation.

3.2. Sources used to establish costs and benchmarks

- (163) Following the provisional disclosure, LB raised comments on the benchmarks used for ilmenite, iron powder, labour, and SG&A costs.
- (164) Regarding ilmenite, LB noted that the sulphate process ilmenite ('SP ilmenite') benchmark was the average CIF price as established by Fastmarkets. LB considered that while Fastmarkets refers to the price of the SP ilmenite with a TiO₂ content between 47-49 %, the SP ilmenite that LB sourced domestically had a lower TiO₂ content. Consequently, LB argued that it would not be reasonable to use Fastmarkets benchmark for LB's SP ilmenite consumption.
- (165) First, and as set out in recital (228) of the provisional Regulation, the Commission used prices reported in TZMI (and not Fastmarkets) as a basis for the undistorted prices of titanium ores and concentrates, including SP ilmenite. TZMI is a widely recognized international titanium industry platform (a fact undisputed by interested parties in the course of the present proceedings) including sufficiently precise and fragmented data allowing the Commission to find appropriate benchmarks for titanium ores and concentrates used in the various production processes used by the TiO₂ producing exporters. The SP ilmenite benchmark as reflected in TZMI covered the SP ilmenite with extensive range of the TiO₂ content. LB producing entities using SP ilmenite invariably used in the production process SP ilmenite with the TiO₂ content below 47 % hence at the low-end of the TiO₂ concentration range set for SP ilmenite. Similar considerations applied to the SP ilmenite sourced domestically by the Anhui Gold Star group. Given that SP ilmenite with a lower TiO₂ content is generally less expensive than chloride process ilmenite ('CP ilmenite') with a higher TiO₂ content, it was reasonable to adjust the SP ilmenite benchmark for Chinese exporting producers using the low-end of the price range set out in Fastmarkets for the IP. As a result, the adjusted benchmark used for SP ilmenite was 2 467 CNY/tonne.

- (166) Concerning the use of the benchmark for iron powder, LB submitted that Brazilian imports of at least iron powder of one of the commodity codes should be excluded for being overstated compared to the actual cost incurred by the LB producing entities and for covering special (and therefore more expensive) type of iron powder not used in LB's production process.
- (167) As outlined in the Second Note on sources and recital (225) of the provisional Regulation, to establish the undistorted price of raw materials (including the iron powder), the weighted average import price to Brazil as reported in the GTA at the national tariff level data, to which import duties and transport costs were added, was used as a basis. To arrive at an appropriate iron powder benchmark, weighted average price of imports classified under the various commodity codes covering iron powder was determined to reduce the impact of any potentially abnormal prices at the lower and higher end of the iron powder range and to ensure the price of this input reflects a mix of different qualities, in particular in the absence of any more nuanced information on composition of the input in question. In this case, the Commission has not observed any specific circumstances that would render the iron powder benchmark as used for the provisional Regulation unrepresentative or unsuitable. It is further noted that while the benchmark used for iron powder might be higher compared to the actual domestic cost in China, given the existence of significant distortions in accordance with Article 2(6a) of the basic Regulation, such domestic price cannot be regarded as reliable and illustrative of what the benchmark values should be. Moreover, LB did not put forward any specific evidence (neither in response to the Second Note, nor in response to the provisional disclosure) regarding the iron powder used by the LB group, or the specific commodity codes that that product would fall when considering Brazilian imports, as reflected in GTA. Therefore, the Commission rejected this claim.
- (168) In response to the provisional disclosure, LB claimed that the benchmark for labour was inflated on account of wrong calculation of social charges and the Commission's use of the exchange rate in force during the IP rather than the rates applicable in 2021, period to which the data for labour benchmark relate. Additionally, LB argued that the labour cost benchmark should take into account the regional differences in salaries across China. These arguments were reiterated following final disclosure. First, it is recalled that, in accordance with recitals (231)-(232) of the provisional Regulation, while the statistics on wages in the relevant sector of activity for 2021 were used as a basis for calculation, the values were indexed to the IP. Accordingly, the conversion rate for the IP was applied to the labour cost established for the IP. Second, the regional differences in China as regards the labour cost have no bearing on determination of labour cost benchmark in cases, where Article 2(6a) of the basic Regulation applies and where existence of significant distortions has been found, among others, in relation to the labour cost. Lastly, the Commission proceeded in accordance with the methodology consistently used in its decisional practice. In view of the above, LB's argument was rejected.
- (169) Following the provisional disclosure, Akzo Nobel reiterated its argument already raised following the First and Second Note, that the GTA price for sulfuric acid cannot be considered representative. The user's claim was rejected for the reasons outlined in recitals (220) to (223) of the provisional Regulation. Furthermore, it is recalled that none of the exporting producers challenged the representativeness of the sulfuric acid benchmark in this proceeding.

3.2.1. Sources used to establish the reasonable and undistorted amounts for SG&A costs and for profit

- (170) Further to the SG&A costs of the representative producer (Tronox Brazil) in the representative country, LB submitted that the selling expenses of Tronox Brazil, considered for the construction of normal value should be reduced by the amount of transport expenses, identifiable from the audited annual report of Tronox Brazil. According to LB, this adjustment would ensure that ex-works export price is compared to the ex-works normal value. Upon detailed examination of the Tronox Brazil's annual report and the breakdown of the individual SG&A cost items in the report, the Commission acknowledged that it would be reasonable to conclude that the transport costs (Fretes / Transportes de cargas), as listed in the report, constituted part of the selling expenses.

- (171) In conclusion, the SG&A of Tronox Brazil, used in the construction of the normal value was adjusted from 5,9 % to 4,24 %.

3.2.2. Export price

- (172) The details of the calculation of the export price were set out in recitals (243) to (246) of the provisional Regulation.
- (173) In response to LB comments, the Commission accepted a claim on changing the basis for making SG&A costs and notional profit adjustments under Article 2(9) of the basic Regulation for the UK trader ('BEL UK') when incurring costs normally born by an importer.

3.2.3. Comparison

- (174) The Commission recalls that Article 2(10) of the basic Regulation requires the Commission to make a fair comparison between the normal value and the export price at the same level of trade and to make allowances for differences in factors which affect prices and price comparability. In the case at hand the Commission chose to compare the normal value and the export price of the sampled exporting producers at the ex-works level of trade. As recalled below, where appropriate, the normal value and the export price were adjusted in order to: (i) net them back to the ex-works level; and (ii) make allowances for differences in factors which were claimed, and demonstrated, to affect prices and price comparability.
- (175) As explained in recitals (239)-(242) of the provisional Regulation, the normal value was established at the *ex-works* level of trade by using costs of production together with amounts for SG&A and for profit, which were considered to be reasonable for that level of trade. As explained in recitals (170)-(171), in view of positive evidence that SG&A cost rate used to establish a reasonable SG&A cost amount at the ex-works level of trade contained elements that do not belong to that level of trade, the SG&A rate was adjusted for the relevant elements. No further adjustments were deemed to be necessary to net the normal value back to the ex-works level.
- (176) The Commission found no reasons for making any allowances to the normal value (except for the VAT adjustment explained in recital (249) of the provisional Regulation), nor were such allowances claimed by any of the sampled exporting producers.
- (177) In order to net the export price back to the ex-works level of trade, adjustments were made on the account of transport, warehousing costs, insurance, handling and loading as well as custom duties. Allowances were made for the following factors affecting prices and price comparability: commission, credit costs and bank charges.
- (178) Regarding the adjustment for commissions under article 2(10)(i) of the basic Regulation, LB argued that a downward adjustment to the export price of LB HK (when selling to unrelated Union customers) and a double downward adjustment to the export price of the related United Kingdom ('UK') trader ('BEL UK') (also when selling to unrelated customers) is unlawful and in any event excessive.
- (179) In more detail, LB submitted that the Commission must show that the adjustments made are necessary to make the normal value and the export price comparable (referring in this context to a deduction of certain SG&A costs of the related traders which are not deducted from the normal value). According to LB, the Commission did not explain why bearing the responsibility for the selling process, bearing commercial risks, or receiving markup as set out in the provisional Regulation render the functions of LB traders similar to those of an agent working on a commission basis in line with Article 2(10)(i) of the basic Regulation. Following the final disclosure, LB submitted that the Commission did not examine whether the LB traders form a single economic entity with the Chinese production entities or are internal export trade departments..
- (180) First, as set out in recital (252) of the provisional Regulation, the adjustment under Article 2(10)(i) is warranted, as the traders bore the responsibility for the selling process and commercial risks associated therewith and received a markup for the sales.

- (181) It is apparent from the information supplied by LB and verified by the Commission that the related traders perform functions similar to those of an agent working on a commission basis. Indeed, LB itself concedes that its related traders do perform export sales functions. They market the products, facilitate contracts, ensure currency exchange and risk management, take care of contacts with existing and potential customers, arrange logistics, manage legal documentation, solicit, and receive the orders and negotiate the sales, issue invoices, and assume corresponding commercial risks. LB itself conceded that its related traders do perform export sales functions. In exchange for performing these functions both traders received a mark-up. LB failed to explain why these functions would be different to those functions would not be similar to those of an agent working on a commission basis. Therefore, contrary to the claim made by LB following definitive disclosure, the Commission provided consistent indicia demonstrating that LB traders performed functions comparable to those of an agent working on a commission basis. Furthermore, the above assessment indicates that the Commission does not consider the LB traders a single economic entity with the production entities. In any event, LB did not bring forward any evidence to substantiate such claim nor has formally requested prior to the adoption of the provisional measures the single economic entity treatment for any of the LB traders. The Commission recalled that in terms of the burden of proof, *“where the EU institutions have adduced consistent indicia to establish that a trader affiliated to a producer carries out functions comparable to those of an agent working on a commission basis, it will be for that trader or that producer to adduce evidence that an adjustment under Article 2(10)(i) of the basic regulation is not justified”*.⁽¹⁸⁾ In other words it is for LB to argue and substantiate that they form a single economic entity. LB failed to do so.
- (182) In line with the case-law of the European Court of Justice⁽¹⁹⁾, Article 2(10)(i) of the basic Regulation does not cover only commercial agency relationships in their strict sense. On the contrary, adjustment under the said provision is foreseen also in respect of the mark-up received even if the parties do not act on the basis of a principal-agent relationship but achieve the same result by acting as seller and buyer (which is the case here). LB producing entities and their related traders act as seller and buyer. The traders purchase the product concerned and subsequently resell it, receiving a mark-up. Such mark-up is explicitly recognised by Article 2(10)(i) of the Basic Regulation as a form of “commission”. This transfer of ownership to the related traders necessarily implies transfer of commercial risks, however it does not preclude the application of Article 2(10)(i) of the basic Regulation.
- (183) With reference to the notional profit of 6,89 % as generated by unrelated importers for another chemical product (PVA) and used in the present investigation to establish a reliable export price (see recitals (246) and (252) of the provisional Regulation), LB claimed following the provisional and final disclosure that LB HK does not carry out functions that are typical for an importer. Therefore, LB does not consider that a benchmark of an importer reflects a profit margin that LB HK can be expected to achieve. According to LB, at most an adjustment for the actual profit of LB HK can be made for LB HK involvement in the sales to the Union.
- (184) Akzo Nobel equally argued that the deducted profit margin of 6,89 % per trading entity is excessive and should be limited to a total of 6,89 % regardless of how many traders are involved or at the very least, the Commission should use 5 % profit margin previously used in Commission Regulations from 2007 and 2014 and concerning the chemicals industry.⁽²⁰⁾

⁽¹⁸⁾ Judgment of 26 October 2016, *PT Musim Mas v Council*, C-468/15 P, ECLI:EU:C:2016:803, para. 85.

⁽¹⁹⁾ Judgment of the General Court of 25 June 2015, *PT Musim Mas v Council of the European Union*, Case T-26/12, ECLI:EU:T:2015:437, para. 84.

⁽²⁰⁾ Recital 35 to Commission Implementing Regulation (EU) No 904/2014 of 20 August 2014 imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia, OJ L 246, 21.8.2014, p. 1; recital 47 to Commission Regulation (EC) No 390/2007 of 11 April 2007 imposing a provisional anti-dumping duty on imports of peroxosulphates (persulphates) originating in the United States of America, the People's Republic of China and Taiwan, OJ L 97, 12.4.2007, p. 6.

- (185) First, Article 2(9) of the basic Regulation gives the Commission the choice between using the actual profit margin of the related importer and using a notional profit margin, the sole obligation being that the margin must be reasonable. Applying Article 2(9) of the basic Regulation by analogy to Article 2(10)(i), it was considered appropriate to use a reasonable profit margin as a basis for deduction under the said provision, to avoid any distorting effects that may arise from internal arrangements between the exporting producer and the related traders.
- (186) LB does not contest that both LB HK and BEL UK: (i) act as traders; (ii) incur relevant costs as such; (iii) receive a mark-up on the account of the functions they perform; and (iv) generate profit. It is also uncontested that both traders are related to the producer. Therefore, in line with its consistent practice confirmed by the General Court, ⁽²¹⁾ the Commission applied Article 2(9) of the basic Regulation by analogy and used the SG&A costs and a notional profit margin based on the profit achieved by an unrelated trader/importer.
- (187) Regarding the quantification of the adjustment, what matters is the impact of the related trader's role on the export price. The issue is what the actual export price would be based on an arm's length relationship between the exporter and the trader. ⁽²²⁾ It is uncontested that both LB HK and BEL UK acted as traders for LB. It follows that a profit margin of an unrelated trader/importer is a reasonable benchmark for the adjustments. In other words, had LB HK and BEL UK been independent from LB, and the transactions between them and LB were at arm's length, it is reasonable to assume that, in addition to covering their SG&A costs, they would have charged LB an amount equivalent to the nominal profit a trader/importer acting in this industry would expect to generate. LB failed to explain why this would not be the case for LB HK, especially since LB does not contest that LB HK acts as a trader, is remunerated for that in the form of a mark-up and generates profit. Using the actual profit of LB HK, as advocated by LB, is inappropriate due to the relationship between the producer and the trader, which affects that profit amount. Moreover, the profit margin used relates to a relatively recent investigation, rather than to information that is outdated and originates from 2014 or even 2007 (as put forward by Akzo Nobel). Furthermore, nothing in Article 2(10)(i) of the basic Regulation precludes the Commission from applying successive adjustments if successive traders are involved, whose involvement, had it been based on arm's length transactions, would have affected the export price accordingly. It is therefore necessary to make the adjustments in order to remove factors affecting price comparability between normal value and export price. Consequently, LB's and Akzo Nobel's argument had to be rejected.
- (188) In response to the provisional disclosure as well as the final disclosure, LB argued that for BEL UK's involvement in sales to the EU, instead of a profit margin of an unrelated importer established in the PVA investigation (6,89 %) a different basis should be used. Namely, LB argued that the adjustment for the "reasonable profit" of BEL UK regarding sales to the EU, should be based on the median profit margin established by a third-party professional firm in a benchmarking study analysing profit margins over several years for several companies performing similar functions as BEL UK. According to the LB's submission following the final disclosure, what matters is the functions performed and not the products that are being sold. LB further argued that the failure by the Commission to compare BEL's activities with those of the PVA importer and the fact that only data from a single source and from more than 4 years ago was used rendered the Commission's benchmark unreasonable.

⁽²¹⁾ See judgement of 08 May 2024, Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret v Commission, T-630/21, ECLI:EU:T:2024:304, para. 97.

⁽²²⁾ See judgement of 08 May 2024, Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret v Commission, T-630/21, ECLI:EU:T:2024:304, para. 96.

(189) As set out in recital (185) above, when making adjustments under Article 2(9) and Article 2(10)(i) of the basic Regulation respectively, the Commission enjoys wide discretion between choosing the actual profit margin of the related importer and a notional profit margin, the sole obligation being that the margin must be reasonable for a trader / importer trading the product concerned or similar products. Furthermore, it is a consistent practice of the Commission to use a profit margin based on the profit achieved by an unrelated importer, be it for the purposes of Article 2(9) or 2(10)(i) of the basic Regulation. While the functions performed (i.e. importing business) are a key consideration in choosing the benchmark for reasonable profit, it is equally important for the Commission to identify importers active in the same industry (if not the same product). Moreover, the data on profit for the PVA sampled unrelated importers was produced for the purposes of a trade defence investigation and was duly checked and verified by the Commission. Even if the profit used is from 4 years ago this does not render the benchmark unreasonable. In any event LB failed to explain why it would be so. The document referred to by LB Group is an internal report, issued specifically for LB, covering also companies from sectors other than chemical sector and considering companies also with negative profits, all of which undermines the reasonableness principle applied by the Commission in choosing the notional profit. Moreover, whilst seeking to lower the profit margin and thereby its dumping margin, at no point did LB explain in a substantiated manner why the profit margin found in a recent investigation and actually generated by a trader of chemical products should be deemed as unreasonable. LB Group's argument was therefore rejected.

(190) Further to the final disclosure, LB argued that, before the Commission can adjust the mark-up under Article 2(10)(i) of the basic Regulation, it is under the obligation to show that the mark-up is affected (i.e. not at arm's length) by the relationship between the LB traders on one hand and the LB production entities on the other hand. In addition to that, according to LB, any adjustment for mark-up should be tailored to the functions carried out by these entities and, therefore, be linked to the expenses they incurred. LB further claimed by reference to the methodology used in OECD Transfer Pricing Guidelines that LB HK's and BEL's mark-up is at arm's length.

(191) As set out in recital (187), the actual profit generated by the LB traders is affected by the relationship with the LB producing entities. Indeed, as confirmed in *Çolakoğlu*, the principle set out in Article 2(9) of the basic Regulation, according to which 'where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer' must also be capable of applying when quantifying the amount of commission to be deducted from the export price in order not to deprive Article 2(10)(i) of the basic Regulation of its practical effect.⁽²³⁾ Hence, the actual profit generated does not reflect the proper remuneration for the service rendered on an arm's length basis. Reference is further made to the Commission assessment set out in recitals (185)-(189). Regarding the correlation between the number of functions performed and the mark-up adjustment to be made, the basic Regulation does not preclude the Commission from applying the same adjustment under Article 2(10)(i) for traders performing services to varying degrees. The LB traders do not need to perform the same functions or range of functions. The fact that the role of LB HK is in certain cases (for example when reselling to BEL, rather than directly to the unrelated customers) more limited does not invalidate the application of the same notional profit for both, LB HK and BEL, provided that both traders perform functions similar to those of an agent working on a commission basis (which is the case). Lastly, it is noted that the Commission assessment in this case is not based on any OECD guidelines, used for taxation purposes, rather than in the trade defence investigations. The claim was therefore rejected.

(192) In relation to the VAT adjustment in constructing the normal value, LB argued that the Commission omitted the legal basis for the adjustment and failed to provide evidence or explanation as to why it was necessary to ensure price comparability. LB restated following the final disclosure that the Commission failed to show evidence in support of the adjustment made. First, as it follows from the provisional Regulation, namely Section 3.6, the VAT adjustment is made under Article 2(10) of the basic Regulation (more specifically Article 2(10)(k)). The Commission further

⁽²³⁾ See judgement of 08 May 2024, *Çolakoğlu Metalurji and Çolakoğlu Dış Ticaret v Commission*, T-630/21, ECLI:EU:T:2024:304, para. 95.

elaborated on the adjustment and provided its reasoning in Section 4.3.6 of Annex 2 (entitled 'Dumping calculations and information on the methodology used') of the pre-disclosure document. The adjustment is made for a difference in VAT reimbursement between the domestic and export sales (zero refund of the VAT payable on the export sales is in place). Therefore, LB's argument was rejected.

3.2.4. Dumping margins

- (193) As described in recitals (164), (171) and (173), following claims from interested parties, the Commission revised the dumping margins.
- (194) The complainant submitted following the provisional Regulation that by finding a lower provisional dumping margin for Anhui Gold Star, it showed that Anhui sold TiO₂ at considerably higher prices in the domestic market compared to LB.
- (195) It is noted that Article 2(6a) of the basic Regulation applies in this case and that correspondingly normal value for the sampled exporting producers is not calculated with reference to the domestic prices in China, but rather on the basis of replacement costs in a representative country (in this case Brazil) pursuant to Article 2(6a) of the basic Regulation.
- (196) Furthermore, the complainant questioned the involvement of all related companies in the investigation and whether the relationship between companies may have had an impact on the dumping margin calculation.
- (197) It is a consistent practice of the Commission to consider and duly reflect the cost structure of the individual sampled exporting companies in determining the basis for normal value, including whether and to what extent raw materials are sourced from third or related parties or manufactured internally or which initial inputs are used in making the product concerned.
- (198) Finally, the complainant sought clarification as to whether the duties set for the Anhui Gold Star Group will be extended to other TiO₂ producers of a larger CNNC group, to which Anhui pertains. As set out in recital (199) of this Regulation, the individual duty of 11,4 % is set for the two exporting producers within the Anhui Gold Star group (which is indeed part of a wider corporate group owned by CNNC HUA YUAN TITANIUM DIOXIDE CO., LTD), namely Anhui Gold Star Titanium Dioxide (Group) Co., Ltd. and ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED and does not extend to other exporting producers, related or not to the said Anhui Gold Star group companies.
- (199) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
LB group:	32,3 %
— LB GROUP CO., LTD.	
— HENAN BILLIONS ADVANCED MATERIAL CO., LTD.	
— LB LUFENG TITANIUM INDUSTRY CO., LTD.	
— LB SICHUAN TITANIUM INDUSTRY CO., LTD.	
— LB XIANGYANG TITANIUM INDUSTRY CO., LTD.	
Anhui Gold Star group:	11,4 %
— Anhui Gold Star Titanium Dioxide (Group) Co., Ltd.	
— ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED	

Company	Definitive dumping margin
Other cooperating companies	28,4 %
All other companies	32,3 %

4. INJURY

4.1. Definition of the Union industry and Union production

(200) In absence of any comments, recitals (261) and (262) of the provisional Regulation are confirmed.

4.2. Determination of the relevant Union market

(201) In absence of any comments, recitals (263) through (268) of the provisional Regulation are confirmed.

4.3. Union consumption

(202) In absence of any comments, recitals (266) through (272) of the provisional Regulation are confirmed.

4.4. Imports from the country concerned

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

(203) In absence of any comments, recitals (273) through (275) of the provisional Regulation are confirmed.

(204) CNCIA objected to the Commission's findings that the drop in import volumes observed in 2021 was due to extraordinary circumstances related to international shipping, claiming that the Commission provided no evidence in that regard. CNCIA reiterated this claim in its comments on the final disclosure adding that in some recent investigations ⁽²⁴⁾ import volumes from China to the EU rose sharply in 2021 and that the Union industry's export volumes also increased in 2021.

(205) The Commission reminded that the year 2021 was affected by large disruptions in international supply chains due to port closures and subsequent shortage of shipping containers, which also drove the ocean shipping costs up by several orders of magnitude into 2022, while import volumes of many products went down.

(206) The Commission already reached such conclusions in recent cases, ⁽²⁵⁾ while the complainant and Siegwark also expressed the same position in this case. On the other hand, CNCIA offered no alternative explanation for this drop in volume of imports, compared to all the other years when they have been on constant rise.

(207) The Commission thus rejected this claim and confirmed its conclusions from recitals (276) and (277) of the provisional Regulation.

⁽²⁴⁾ CNCIA referred to Commission Implementing Regulation (EU) 2024/1915 of 11 July 2024 imposing a provisional anti-dumping duty on imports of mobile access equipment originating in the People's Republic of China and to Commission Implementing Regulation (EU) 2024/1866 of 3 July 2024 imposing a provisional countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China.

⁽²⁵⁾ See, for example, recitals (370) and (371) of Commission Implementing Regulation (EU) 2024/1064 of 9 April 2024 imposing a provisional anti-dumping duty on imports of certain alkyl phosphate esters originating in the People's Republic of China, OJ L, 2024/1064, 10.4.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1064/oj.

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

- (208) In the absence of any comments, recitals (278) through (281) of the provisional Regulation are confirmed.
- (209) In its comments on the provisional Regulation, AkzoNobel stated that it is unclear from the provisional Regulation whether the Commission complied with the case-law of the Court of Justice, requiring the Commission to calculate undercutting and underselling at the same level of trade. ⁽²⁶⁾
- (210) The Commission pointed in that regard to recital (283) of the provisional Regulation, where it specified that the calculations were done on the same level of trade as explained in the recitals (247), (248) and (249) of the provisional Regulation. The Commission also performed an alternative set of calculations, without the adjustment of SG&A and profit for exporting producers under Article 2(9), and these also showed significant undercutting and underselling margins.
- (211) The Commission therefore confirmed its conclusions set out in recitals (282) and (283) of the provisional Regulation.
- (212) AkzoNobel further disagreed with the Commission's conclusions on price suppression and depression, claiming that the Commission should find that there is no price suppression or depression.
- (213) AkzoNobel first claimed that the Commission concluded that there is price depression "only because prices decreased by 4 % from 2022 to the [investigation period]," while the Commission "ignored that prices increased 35 % from 2020 to 2022, and by 31 % from 2020 to the [investigation period]."
- (214) Second, AkzoNobel believes that the fact that the complaint did not allege the existence of price suppression casts doubt on the Commission's conclusion that there was price suppression.
- (215) Finally, AkzoNobel claimed that the Commission in any case failed to assess the explanatory force of Chinese imports for any price suppression, required under WTO rules. ⁽²⁷⁾
- (216) The Commission considered the above claims by AkzoNobel unfounded.
- (217) First, just because the complaint did not allege price suppression, that does not mean that such price suppression did not occur. As explained in recital (316) read together with recitals (308) and (285) of the provisional Regulation, the Commission concluded that there was price suppression in the period considered due to the overlap of several factors:
- (a) Chinese imports were consistently priced below the Union industry's prices, and they were increasing in volume in each year of the period considered (the exception to both being 2021 when shipping costs increased and volumes of imports decreased), which coincided in time with
 - (b) a rise in the Union industry's cost of production in each year of the period considered, while
 - (c) the Union industry's sales price did not increase at the same pace and therefore they could not fully offset those cost increases.
- (218) The Commission thus found the existence of price suppression and assessed the causal link between Chinese imports and price suppression.
- (219) Second, contrary to AkzoNobel's claims, the Commission did not conclude that there was price depression in the investigation period only because the Union industry's prices decreased between 2022 and the investigation period.

⁽²⁶⁾ Judgment of 10 April 2019, *Jindal Saw v Commission*, T-301/16, ECLI:EU:T:2019:234, paras. 165-190; judgment of 27 April 2022, *Giant v Commission*, T-242/19, ECLI:EU:T:2022:259, paras. 62-95, 122; judgment of 4 May 2022, *CRIA and CCCMC v Commission*, T-30/19 and T-72/19, ECLI:EU:T:2022:266, paras. 108, 125-154.

⁽²⁷⁾ Appellate Body Report, *China – GOES*, WT/DS414/AB/R, paras. 138 and 141.

(220) As set out in recital (316) and recitals (286), (308), and (309) of the provisional Regulation, and in light of the factors mentioned in recital (217), the Commission concluded that there was price depression because:

- (a) while the price of Chinese imports increased in each year of the period considered, in the investigation period the prices of Chinese imports suddenly dropped forcing the Union industry to decrease their prices to maintain at least some share of the market, while
- (b) Chinese imports gained market share.

(221) The Commission thus rejected AkzoNobel's comments as unfounded and confirmed recitals (284) through (286) of the provisional Regulation.

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

4.5.1. *General remarks*

(222) In absence of any comments, recitals (287) through (291) of the provisional Regulation are confirmed.

4.5.2. *Macroeconomic indicators*

4.5.2.1. *Production, production capacity and capacity utilisation*

(223) In absence of any comments, recitals (292) through (296) of the provisional Regulation are confirmed.

4.5.2.2. *Sales volume and market share*

(224) In absence of any comments, recitals (297) through (299) of the provisional Regulation are confirmed.

4.5.2.3. *Growth*

(225) In absence of any comments, recital (300) of the provisional Regulation is confirmed.

4.5.2.4. *Employment and productivity*

(226) In absence of any comments, recitals (301) through (303) of the provisional Regulation are confirmed.

4.5.2.5. *Magnitude of the dumping margin and recovery from past dumping*

(227) In absence of any comments, recitals (304) and (305) of the provisional Regulation are confirmed.

4.5.3. *Microeconomic indicators*

4.5.3.1. *Prices and factors affecting prices*

(228) In absence of any comments, recitals (306) and (307) of the provisional Regulation are confirmed. After addressing the comments by AkzoNobel on price suppression and depression in section 4.4.2 above, the Commission confirmed recitals (308) and (309) of the provisional Regulation.

4.5.3.2. *Labour costs*

(229) In absence of any comments, recitals (310) and (311) of the provisional Regulation are confirmed.

4.5.3.3. Inventories

(230) In absence of any comments, recitals (312) and (313) of the provisional Regulation are confirmed.

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

(231) The Commission corrected a clerical error in the data reported in Table 11 in the provisional Regulation regarding the cash flow of the Union industry during the IP. In fact, the cash flow in the IP was minus 42,3 million EUR instead of minus 4,3 million EUR. However, the indexed figures showing the trend of cash flow over the period considered were accurate in Table 11 of the provisional Regulation.

(232) The corrected cash flow figure is shown in the table below.

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)	7,9 %	9,8 %	5,1 %	– 11,7 %
<i>Index</i>	100	125	65	- 148
Cash flow (EUR)	92 461 606	124 892 941	3 767 112	- 42 293 138
<i>Index</i>	100	135	4	- 46
Investments (EUR)	37 870 922	36 314 534	39 542 712	43 030 210
<i>Index</i>	100	96	104	114
Return on investments	53 %	41 %	2 %	- 67 %
<i>Index</i>	100	79	5	- 127

Source: Verified questionnaire replies of the sampled Union producers.

(233) This clerical error does not impact the conclusions in section 4.5.3.4. of the provisional Regulation.

(234) With the above modification to the table 11, the Commission confirmed its findings in recitals (314) through (322) of the provisional regulation.

4.6. Conclusion on injury

(235) CNCIA argued in its comments that the Union industry was not suffering material injury and that the injury indicators set out in the provisional Regulation did not paint a negative picture of the Union industry. CNCIA reiterated this claim in its comments on the final disclosure.

- (236) In this respect CNCIA argued that despite the drop in certain injury indicators such as production, the Union industry was able to maintain its strong position on the Union market and lost only a few percentage points in market share.
- (237) CNCIA also maintained that the drop in profitability of the Union producers in the IP was only temporary as it was due to the sharp increase in production costs combined with a strong drop in demand which prevented the Union industry from passing on its increased costs to consumers.
- (238) CNCIA also pointed to some of the injury indicators and analysed them separately claiming that the decrease was either limited or due to other factors than the Chinese imports.
- (239) The Commission recalls that it analysed all injury indicators separately and as a whole in its injury analysis. In particular, the Commission found price undercutting ranging between 14 % and 15,3 % as set out in recital (283) of the provisional Regulation. The Commission also found that Chinese landed prices were even below Union industry's average cost of production both in 2020 and the investigation period (recital (342) of the provisional Regulation).
- (240) In addition, all main injury indicators followed a negative trend: profit, cash flow, return on investment plummeted in the IP. Over the period considered, production volume decreased by 31 %, sales volume dropped by 25 % and market share, employment and productivity also decreased. On the basis of the assessment carried out and described in the provisional Regulation, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (241) None of the arguments of CNCIA put into question the above conclusion. The Commission therefore confirms its findings in recitals (323) – (337) of the provisional Regulation.

5. CAUSATION

5.1. Effects of the dumped imports

- (242) Interested parties claimed that it was not possible to make a valid finding on the causal link between the presence of allegedly dumped imports of TiO₂ from China and injury caused to the Union industry because several factors, which do not reflect normal market reality, influenced the investigation period and the period concerned.
- (243) Siegwerk argued in that regard that, first, China greatly reduced its overall exports during the Covid-19 pandemic and thus the increase in imports of Chinese TiO₂ observed after the end of the pandemic actually represented a normalisation of trade volumes. Second, demand in the Union was above average during the pandemic. Third, Siegwerk claimed that, as a result of the prior two factors, the Union producers were operating in “near-monopolistic position” and were able to achieve extraordinary profits during the pandemic.
- (244) The Commission noted that it analysed these elements in its analysis of the injury indicators and the causal link in the provisional Regulation.
- (245) In Section 4.4.1, recital (276) of the provisional Regulation, the Commission observed that during 2021 there was indeed a drop in volumes of imports from China. The Commission concluded that this was due to general disruptions of sea trade from China which was present in that year as a consequence of the Covid-19 pandemic.
- (246) Likewise, the Commission concluded in recital (271) of the provisional Regulation that demand was above average in 2020 and 2021.

- (247) The Commission recalled that, precisely because of those two factors together, the Union industry managed to temporarily increase its market share and profitability in 2021, while volumes of Chinese imports and market shares both went down in that year. ⁽²⁸⁾
- (248) The Commission thus established in the provisional Regulation, in the context of the overall analysis of all the injury indicators taken together, that these two elements do not invalidate the conclusions on injury and the causal link. The Commission thus rejected the above claims.
- (249) CNCIA also noted that the Chinese import prices in 2022 were only 1,5 % lower than the Union industry sales prices, which cannot be considered to represent “significant price undercutting.” On the other hand, prices of imports from Mexico were 65 % lower in that year.
- (250) At the outset the Commission noted that simple price comparison cannot be considered as undercutting as it fails to account for product types. The Commission noted that, even if 1,5 % lower prices in 2022 could not be considered as significant price undercutting (quod non), the difference in price was much higher in other years: 6,4 % in 2020, and 24,2 % in the investigation period. Significant price difference was therefore present in the period concerned.

5.2. Effects of other factors

- (251) Several parties contested the Commission’s causality analysis after the provisional Regulation.
- (252) CNCIA argued that Chinese imports were not the cause for the state of the Union industry and claimed that the Commission did not examine the other factors which affected the Union industry: third country imports, rising cost of production, contraction in demand and intra-Union industry competition.
- (253) Other interested parties similarly claimed that a contraction in demand and the rising cost of production were the cause of injury to the Union industry.
- (254) Felix, Munksjö, and AkzoNobel claimed that the Commission made a manifest error in assessment by not acknowledging cyclicalities in the TiO₂ market as a cause of injury to the Union industry.
- (255) Siegwirk further listed other factors that influenced the market from the end of 2023 onwards. Since these occurred after the investigation period, they are not pertinent for the Commission’s backward-looking analysis. At the same time, they were not such to make the imposition of anti-dumping duties manifestly inappropriate. They mainly concern the evolution of market demand, which the Commission assessed in section 5.2.1 below.
- (256) In addition, AkzoNobel claimed that complainant’s investment decisions actually caused negative profitability. AkzoNobel pointed to the investment and cashflow figures in the investigation period, concluding that the 10 million EUR investment split over 2022 and the investigation period ⁽²⁹⁾ was directly responsible for the – 4,3 million EUR negative cash flow in the investigation period.
- (257) However, as the Commission explained in recitals (231) and (232) above, the – 4,3 million negative cashflow figure in the investigation period was a clerical error in the provisional Regulation. The actual drop in cashflow was much more significant: 50 percentage points and the cashflow of the Union industry was – 42,3 million EUR, as shown in the corrected Table 11 above.
- (258) This drop in cash flow cannot thus be attributed solely to the above investment.
- (259) The Commission addressed the other comments, outlined in recitals (252) to (254), in relevant subsections below.

⁽²⁸⁾ Recitals (298), (299), (325) and (328) of the provisional Regulation.

⁽²⁹⁾ Recital (320) of the provisional Regulation.

5.2.1. Cyclicalities of the TiO₂ market

- (260) Several interested parties made comments in relation to Commission's findings set out in recitals (349) to (358) of the provisional Regulation. Felix and Munksjö claimed that the Commission failed to sufficiently consider cyclicalities, being one of the crucial characteristics of the TiO₂ market, thus breaching its obligation under Article 3(7) of the basic Regulation.
- (261) While the users acknowledge that cyclicalities is not exclusive to the TiO₂ market, they claim that it is its vital attribute which affects the dynamics in this market (pricing and availability of TiO₂ and negotiating power of various parties) and thus has an impact on the Union producers' performance. Any downturn in financial performance experienced during periods of lower demand, they can recover during the periods of market growth.
- (262) AkzoNobel submitted comments along similar lines. They claimed that the Commission's conclusions that "cyclicalities is not unique to the TiO₂ market and thus "merits" no "special consideration" ⁽³⁰⁾ and that it is not possible to "draw a pattern showing with utter certainty when an upturn or a downturn will take place" ⁽³¹⁾ to conclude that "contraction was bound to happen in 2023" are not valid reasons to reject the claim that the injury to the Union producers were caused by a bottom of the cycle.
- (263) AkzoNobel submitted that while cyclicalities indeed was not unique to the TiO₂ industry, it was a known factor in the industry and the Commission was required to assess the extent to which it caused the injury to the Union industry. It is irrelevant that one cannot accurately predict when a downturn would happen, but, as the Commission itself concluded, after the "big demand uptick" in 2020 and 2021, "any drop in consumption that follows would naturally also be pronounced."
- (264) AkzoNobel stressed that this confirmed its point that the performance of the Union industry followed a cyclical pattern. Thus, the selected period concerned, and the investigation period would have shown negative trends even in the absence of any imports. AkzoNobel reiterated that the complainant had selected the investigation period shrewdly with this in mind, so that it would coincide with the bottom of a cycle.
- (265) Many parties claimed, essentially, that the Union industry was bound to perform poorly in the investigation period, pointing to the cyclical nature of the market and the market intelligence forecasts, and that therefore there was no injury caused to the Union industry by the Chinese imports.
- (266) The complainant contested these claims. While they acknowledged the existence of cyclicalities, they pointed to the fact that Chinese import volumes and market shares have consistently increased over time, starting to significantly rise since 2017.
- (267) The complainant thus concluded that the impact of cyclicalities was negligible, since even despite cyclical trends, Chinese imports into the Union kept rising, both in the previous period of contraction in demand in 2017-2018, and in the investigation period.
- (268) The Commission noted that it analysed in detail whether and to what extent cyclicalities could have affected the Union industry, and concluded that, due to all the considerations laid out in the provisional Regulation, it cannot be claimed that it is the cyclicalities in the market which is the sole reason for injury.
- (269) In its provisional findings, the Commission acknowledged that the TiO₂ market is indeed cyclical on the global level (see for instance recital (355) of the provisional Regulation). The Commission noted, however, that cyclicalities is not specific to the TiO₂ market, but that many markets go through regular cycles of contraction and expansion in demand. ⁽³²⁾ It could not thus be concluded that the fact of cyclicalities alone suffices to attenuate the causal link.

⁽³⁰⁾ Recital (355) of the provisional Regulation.

⁽³¹⁾ Recital (357) of the provisional Regulation.

⁽³²⁾ Recital (355) of the provisional Regulation.

- (270) Furthermore, the Commission found that, compared to the global predictions of TiO₂ market behaviour by the market intelligence forecasts which the interested parties relied on to claim that cyclicalities is the main cause of injury to the Union industry, ⁽³³⁾ the Union (and also global) market was actually affected by several extraordinary circumstances. ⁽³⁴⁾ These circumstances led to the Union market deviating from said predictions, ⁽³⁵⁾ making it unrealistic that the predicted downturn would have, as alleged, happened in 2023 in exactly the kind of way which would have resulted in the level of injury that the Union industry experienced in the investigation period. ⁽³⁶⁾
- (271) Instead, these circumstances affected the behaviour of the market cycle in the Union. Thus, while the Commission acknowledged that a downturn may have been bound to happen, the injury suffered by the Union industry was much too pronounced to be attributed squarely to the cyclicalities, and the situation in the Union market had to be considered more broadly than just through the prism of cyclicalities.
- (272) As the Commission acknowledged in recital (388) of the provisional Regulation, the drop in demand in 2022 and the investigation period (whether due to an expected downturn in the cycle or not) indeed made the Union industry's situation challenging. Nonetheless, this (either on its own or taken together with other factors such as increase in cost of production) did not attenuate the causal link between dumped Chinese imports and injury.
- (273) As explained in recital (389) of the provisional Regulation, imports from China were increasing throughout the period considered. What is more, even in the contracting market of 2022 and the investigation period, when import volumes from virtually all other third countries were decreasing, alongside the Union industry's sales volumes, the volumes of Chinese imports kept going up and gaining market share. As already concluded in recital (361) of the provisional Regulation, this is not to be expected in a shrinking market.
- (274) To reinforce the claim that the injury was caused by a bottom of a cycle which coincided with the investigation period, and out of which the Union industry was now exiting, AkzoNobel submitted public global earning reports from Tronox Holdings plc ('Tronox Holdings') ⁽³⁷⁾ and Kronos Worldwide, Inc. ('Kronos Worldwide') ⁽³⁸⁾ from Q1 2024.
- (275) These reports show Kronos Worldwide reporting USD 23,4 million profit in Q1 2024 and an increase in capacity utilization and sales volumes of 11 percentage points and 15 %, respectively, in Q1 2024 compared to Q1 2023. The Tronox Holdings report showed an increase in sales volumes of 18 % in Q1 2024 compared to Q4 2023, stressing good performance in Europe, and an EBITDA margin ⁽³⁹⁾ of 16,9 % at the global level. AkzoNobel further cited Tronox Holdings' report itself stating that such increase in demand is indicative of a front end of a recovery.
- (276) The Commission noted on the outset that it does not collect post-investigation period data on the Union industry in a material injury analysis, while non-verified financial data which includes activities other than TiO₂ ⁽⁴⁰⁾ and related companies outside the Union cannot be considered relevant for Commission's analysis.

⁽³³⁾ I.e., TZMI report referred to in recital (350) of the provisional Regulation.

⁽³⁴⁾ Recital (358) of the provisional Regulation.

⁽³⁵⁾ Recitals (351) and (356) of the provisional Regulation.

⁽³⁶⁾ Recital (357) of the provisional Regulation.

⁽³⁷⁾ Mother company of one of the sampled Union producers, Tronox Pigments Holland B.V. ('Tronox').

⁽³⁸⁾ Mother company of another sampled Union producer, Kronos Titan GmbH ('Kronos').

⁽³⁹⁾ EBITDA margin is a profitability ratio that measures how much in earnings a company is generating before interest, taxes, depreciation, and amortization, as a percentage of revenue.

⁽⁴⁰⁾ E.g., 21,8 % of Tronox global revenue in Q1 2024 came from products other than TiO₂ (see Tronox' summary of select financial results for Q1 2024, available at: <https://www.tronox.com/tronox-reports-first-quarter-2024-financial-results/>, last visited on 24 September 2024).

- (277) In light of AkzoNobel's claims, however, the Commission nevertheless examined the publicly available financial reports for the first half of 2024 for Tronox Holdings and Kronos Worldwide at the global level. The Commission also examined the reports for the first half of 2024 of Grupa Azoty Zakłady Chemiczne "Police" S.A. ('Police') and Cinkarna metalurško kemična industrija Celje, d.d. ('Cinkarna'), considering that these Union producers operate TiO₂ facilities in the Union only and had publicly available financial reports.
- (278) In that regard the Commission noted that, while EBITDA margin may have indeed been high for Tronox Holdings in Q1 2024, the Commission's analysis in Table 11 looks at income before tax to determine the net profit margin, making EBITDA an improper comparison. Nonetheless, examining even Tronox Holdings' EBITDA margin evolution year-over-year between 2023 and 2024, there is a decrease both in Q1 and Q2. This is not indicative of a recovery in 2024 compared to the investigation period, contrary to AkzoNobel's claims.
- (279) Furthermore, Tronox Holdings' income before taxes was USD 2 million in Q1 2024⁽⁴¹⁾, compared to USD 34 million in Q1 2023, showing a significant decrease year-over-year. On the other hand, in Q2 it somewhat increased, from 53 million in Q2 2023, to 55 million in Q2 2024. Nonetheless, as percentage of net sales, this translates into a pre-tax profit of 0,2 % in Q1 2024 and 6,7 % in Q2 2024, compared to 4,8 % in Q1 2023, 6,7 % in Q2 2023. This shows that profitability situation remained at best the same for Tronox Holdings at the global level.
- (280) Kronos Worldwide did show better performance. Half year figures⁽⁴²⁾ show that Kronos Worldwide posted 39,6 million USD income before taxes in first half of 2024, compared to 34,4 million USD losses in first half of 2023. This translates into a pre-tax profit margin of 4 % in first half 2024 compared to -4 % loss in first half of 2023.
- (281) Police, on the other hand, reported pre-tax loss of -10,12 % as percentage of turnover in H1 2024⁽⁴³⁾ (even bigger losses than -5 % from first half of 2023), while Cinkarna reported net profit as percentage of turnover of 7,38 %⁽⁴⁴⁾ (compared to almost the same level of 7,30 % the year before). Neither of these are indicative of a recovery, as AkzoNobel argued.
- (282) In their financial reports, Police reported 20 % increase in sales volumes, and Cinkarna 5 % increase. Both of those producers are among the smaller ones in the Union, however, representing around [3-8] % of Union production capacity each. Tronox Holdings and Kronos Global (parent companies of two of the Union producers that were sampled, among other reasons, due to their size) claimed their global sales volume increase of 11 % and 15 %, respectively. However, the Commission has no specific information on the evolution of Tronox and Kronos sales volumes in the Union.
- (283) The Commission thus concluded that the available post-investigation period data does not indicate that the Union producers stopped suffering injury in 2024, even if the TiO₂ market might see an increase in demand, and Kronos Worldwide was performing better on the global level than it did in the investigation period. Moreover, it does not render the imposition of the proposed anti-dumping duties manifestly inappropriate.⁽⁴⁵⁾

5.2.2. Demand in the Union market

- (284) As the contraction in demand was already addressed in section 5.2.1 above, in light of those considerations and absence of additional comments to the contrary, the Commission confirmed its conclusions set out in recitals (359) through (365).

⁽⁴¹⁾ Tronox financial report for Q1 2024, available at: <https://www.prnewswire.com/news-releases/tronox-reports-first-quarter-2024-financial-results-302133675.html> (last visited on 24 September 2024).

⁽⁴²⁾ Available at: <https://kronosworldwideinc.gcs-web.com/news-releases/news-release-details/kronos-worldwide-inc-reports-second-quarter-2024-results> (last visited on 24 September 2024).

⁽⁴³⁾ Consolidated half-year report available here: <https://zchpolice.grupaazoty.com/en/investor-relations/periodic-reports#item5903> (last visited on 24 September 2024).

⁽⁴⁴⁾ Unaudited report available at: https://seonet.ljse.si/?doc_id=90449, last visited on 24 September 2024.

⁽⁴⁵⁾ See judgment of 17 December 2008, HEG and Graphite India v Council, T-462/04, ECLI:EU:T:2008:586, para. 67.

5.2.3. *Rising production costs*

- (285) Siegwirk further claimed that the Russian invasion of Ukraine in February 2022 caused a sharp increase in energy costs in the Union, while resulting inflation caused a decrease in demand for TiO₂. The same factors also led to a spike in costs of production which made Union TiO₂ more expensive compared to Chinese TiO₂.
- (286) The Commission took those elements into account in its analysis of injury and causal link. ⁽⁴⁶⁾ The Commission thus rejected those claims.
- (287) CNCIA contested the Commission's conclusion in recital (383) of the provisional Regulation, that, the increase in cost of production was global and affected all the market players to a similar extent as evidenced by the rising prices of imports from other third countries than China.
- (288) CNCIA argued that the Commission therein failed to adequately separate and distinguish the effect of increasing cost of production on the Union industry from the effects of Chinese imports, while, in any case, the Commission should have considered the different degrees to which such increases in costs may have affected different market players.
- (289) The Commission clarified in that regard that the global increase in cost of production, and notably the main raw material, ilmenite ore, would have affected all the market players. In other words, such an increase in costs was not an element that was unique to the Union industry only and thus capable of attenuating the causal link.
- (290) At the same time, neither the exporting producers nor CNCIA present evidence that would indicate that other market players, such as Chinese exporting producers, were affected differently.
- (291) In its comments on definitive disclosure, CNCIA argued that the Commission was incorrect to conclude that the cyclicity of demand and the increase in production costs, which were factors not specific to the TiO₂ market, did not attenuate the causal link. In this respect, the CNCIA claimed that a factor did not need to be unique to the Union industry to influence the causal link. The Commission recalls that it analysed in detail all claims relating to the cyclicity of the TiO₂ market in recitals (349) to (358) of the provisional Regulation and in recitals (260) to (283) of the present Regulation. The Commission also analysed in detail all claims relating to the rising production costs in recitals (381) to (384) of the provisional Regulation and in recitals (285) to (290) in the present Regulation. The Commission recalls its conclusion in recital (383) that the increase in cost of production, notably the price of the main raw material, ilmenite ore, was global and affected all the market players and was therefore not specific to the Union industry. However, contrary to CNCIA's claim, this finding cannot be interpreted as a general conclusion on whether a factor needs to be unique to the Union industry to influence the causal link.
- (292) The Commission thus rejected the above arguments and confirmed its conclusion that the rising costs of production did not attenuate the causal link.

5.2.4. *Imports from third countries*

5.2.4.1. Imports from the United Kingdom

- (293) In relation to Commission's conclusion set out in recitals (366) and (367) of the provisional Regulation, Felix and Munksjö claimed that the fact that TiO₂ production plants in the UK are owned by Tronox and Venator, does not mean that they are not in competition with other Union producers.
- (294) In relation to the same recitals, the CNCIA argued that, if UK producers are not in competition with the Union industry on the Union market, imports from the UK to the Union should be considered 'self-imports' by the Union industry and therefore be included in the market share of the Union industry.

⁽⁴⁶⁾ See recitals (307), (325), (339)

- (295) Felix and Munksjö further claimed that the Commission is under obligation to examine whether “restrictive trade practices of, and competition between, third country and Union producers” could have been the cause of injury to the Union industry.
- (296) The Commission clarified that recitals (366) to (373) of the provisional Regulation concerned the analysis whether imports from third countries, including imports from the UK might have contributed to the injury of the Union industry. In this respect, the Commission concluded that the average price of imports from the UK to the Union were the highest of all imports from third countries to the Union, considerably higher than Chinese prices and even higher than Union sales prices between 2021 and the investigation period and therefore they did not contribute to the injury of the Union industry.
- (297) As concerns the arguments referred to in recital (294), the Commission notes that the concept of “self-import” is unknown under the basic Regulation and products produced in a third country cannot be considered as produced by the Union producers. Therefore, the Commission rejected the argument that imports from the UK should be added to the market share of the Union industry.
- (298) In that regard, the Commission recalled that it had already established in recital (367) of the provisional Regulation that import prices from the UK were higher than the Chinese import prices. For that matter, UK import prices were the highest from all third country imports, and higher even than the Union industry prices throughout the period considered, except in 2020.
- (299) In its comments on the final disclosure, CNCIA reiterated its claim that imports from the UK were conducted by the Union producers themselves and should be taken into account for the assessment of the injury indicators. CNCIA also repeated its argument that the Union industry might have shifted its production to their non-EU production sites in the UK and in other non-EU countries and that this shift could potentially impact the injury indicators for their EU-based operation and explain the decline in production volume and capacity utilization. CNCIA did not provide any evidence to support this hypothesis.
- (300) In addition, CNCIA stated that the Commission took into account ‘self-imports’ in the investigation into *battery electric vehicles* ⁽⁴⁷⁾ differentiating between imports by ‘Chinese brands’ and those by Union producers and also in the investigation regarding *polyethylene terephthalate (PET)* from China ⁽⁴⁸⁾ adjusting the market share of the Union industry to take into account imports made by a Union producer. Moreover, CNCIA claimed that the European Court of Justice also recognized the relevance of considering the imports by the Union industry when defining the Union industry. ⁽⁴⁹⁾
- (301) In this respect, the Commission first recalls that it assessed the effect of imports from the UK and other third countries in recitals (367) to (373) of the provisional Regulation and concluded that they did not attenuate the causal link between the dumped Chinese imports and the injury suffered by the Union industry. Concerning past investigations and the judgement of the Court of Justice relied on by CNCIA and referred to in recital (300), in those cases the imports made by the Union producers were from the country concerned by the investigation and not from other third countries and were taken into account in order to assess the impact and the market share of imports from the country concerned. In the present investigation that is not the case, the Union industry does not import TiO_2 from China and therefore there is no need to differentiate between the imports made by the Union industry and the rest of the imports.

⁽⁴⁷⁾ Commission Implementing Regulation (EU) 2024/2754 of 29 October 2024 imposing a definitive countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People’s Republic of China (OJ L, 2024/2754, 29.10.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/2754/oj)

⁽⁴⁸⁾ Commission Implementing Regulation (EU) 2023/2659 of 27 November 2023 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in People’s Republic of China (OJ L, 2023/2659, 28.11.2023, ELI: http://data.europa.eu/eli/reg_impl/2023/2659/oj).

⁽⁴⁹⁾ Cases C-260/85 and C-106/86, TEC v. Council, ECLI:EU:C:1988 465, para 47.

- (302) Concerning CNCIA's hypothesis on the strategic shift of production by the Union industry whereby they allegedly lowered the production at their EU facilities and enhanced production in the UK in order to import these volumes to the EU, the Commission notes that the volume imports from the UK to the EU dropped by almost half during the period considered and their market share also decreased while their average price was the highest of all imports and therefore this claim is not substantiated. Moreover the hypothesis itself was not supported by any evidence.
- (303) The Commission thus maintained its conclusion that imports from the UK did not attenuate the causal link established between the dumped Chinese imports and the injury suffered by the Union industry.

5.2.4.2. Imports from Mexico and the USA

- (304) CNCIA argued the Commission did not sufficiently assess the impact of imports from Mexico on the state of the Union industry. In this respect, CNCIA pointed out that the prices of Mexican imports were significantly lower than Chinese, except prices in the investigation period, and they were also considerably lower than the prices of the Union industry throughout the period considered and that imports from Mexico (and from the USA) did not lose market share in the investigation period compared to 2020. CNCIA repeated the same claims in its comments on the final disclosure, without providing new evidence to contest Commission's conclusions.
- (305) The Commission recalled that the volume of imports from Mexico and the USA decreased over the period considered as set out in recital (369) of the provisional Regulation and their market share has remained stable during the period considered. The fact that Mexican imports did not increase in volume, and they maintained their market share at 8 % despite their low prices throughout the period considered while Chinese imports increased both in terms of volume and market share, show that Mexican imports are not susceptible of attenuating the causal link between dumped imports from China and the injury suffered by the Union industry.
- (306) Without further claims or evidence to the contrary, the Commission thus confirmed its conclusion from recital (373) of the provisional Regulation, that imports of TiO₂ from third countries did not cause injury to the Union industry.

5.2.5. *Export performance of the Union industry*

- (307) CNCIA objected to the Commission's conclusions in recital (378) of the provisional Regulation. CNCIA noted that by relying on the initiation of an investigation by the Brazilian investigating authority, for which evidentiary threshold is much lower than for definitive finding of injurious dumping, the Commission is obstructing the right of defence of the exporting producers.
- (308) In addition, CNCIA claimed that the Commission's conclusion that China's geographical proximity to Japan and Taiwan means that Chinese TiO₂ exports could have played a role in closure of the latter's TiO₂ plants is logically flawed. Geographic proximity between the countries is not a relevant criterion in anti-dumping investigations.
- (309) The Commission underlined that the relevant recital was a summary of the complainant's claims that unfair trade practices of the Chinese exporting producers in all markets were making it hard for them to compete also in the export markets without a conclusion on those claims.
- (310) In fact, the Commission concluded in recital (90) of the provisional Regulation that, driven by 13th and 14th Five Years plans, large increases in Chinese TiO₂ production capacities took place already between 2016 and 2020 with a further capacity expansion expected, which is difficult to absorb on the Chinese domestic market and which will encourage Chinese producers to export.
- (311) Finally, the present investigation has found that Chinese exporting producers are engaging in injurious dumping in the EU.

- (312) In any case, even if there were no indications that Chinese exporters could be practicing dumping in other markets, this assessment of the complainant's claims was ancillary to the conclusion that the export performance of the Union industry is not the cause of its injury.
- (313) Therefore, in absence of any comments to recitals (374) to (377) and (379), the Commission confirmed those recitals and, taking them together with the above, maintained its conclusion from recital (380).

5.2.6. *Intra-Union industry competition*

- (314) CNCIA brought forward new arguments at the definitive stage, claiming that the Commission should have examined the effects of intra-Union industry competition on the injury it may have suffered. CNCIA pointed to the public statements of Union producers' executives and published annual reports which show that the other Union producers are their main competitors.
- (315) The Commission pointed out in that regard that it is only natural and expected that in the free-market Union industry members would compete with each other. However, such competition is not something that would have driven down the performance of the entire Union industry – some would perform better while others would perform worse.
- (316) The Commission also reminded that it always investigates a representative sample of Union producers precisely to get a reasonable understanding of how the industry as a whole was performing in the period concerned, to level out any outliers. No party objected to the selection of the sample on the grounds that it would not be representative for the situation of the Union industry.
- (317) The Commission thus rejected these claims as unfounded.

5.3. **Conclusion on causation**

- (318) In its comments on the final disclosure CNCIA argued that the Commission failed to address its claims on the lack of causation. In this respect CNCIA reiterated its claims that the Union industry was not suffering material injury, and even if material injury was found, this was not caused by Chinese imports of TiO₂ but by the cumulative impact of the contraction in demand and the parallel increase in production costs which would have prevented the Union industry from increasing its prices even in the absence Chinese imports. The CNCIA also reiterated its reference to the Commission decision regarding imports of *certain soy protein* products originating in China ⁽⁵⁰⁾. CNCIA also reiterated its comment that the Chinese imports do not have explanatory force for the suppression of domestic prices as required by WTO Appellate Body in HP-STT (Japan) ⁽⁵¹⁾.
- (319) The Commission assessed the above claims in recitals (363) and (381) to (384) of the provisional Regulation. Concerning price suppression, the Commission confirmed its findings in recitals (284), (285) and (316) of the provisional Regulation and in recital (217) of this Regulation.
- (320) In light of the above considerations, and in absence of further comments to the contrary, the Commission confirmed its conclusions from recitals (388) through (394) of the provisional Regulation.

6. LEVEL OF MEASURES

6.1. **Injury margin**

- (321) In absence of any comments, the Commission confirmed its conclusions from recitals (398) through (415) of the provisional Regulation.

⁽⁵⁰⁾ Commission Decision of 27 June 2012 terminating the anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China (OJ L 168, 28.6.2012, p. 38).

⁽⁵¹⁾ Appellate Body Report, HP – STT (Japan), para 5.155.

6.2. Examination of the margin adequate to remove the injury to the Union industry

(322) In absence of any comments, recitals (416) through (418) of the provisional Regulation are confirmed.

6.3. Conclusion on the level of measures

(323) Following the above assessment, definitive anti-dumping duties should be set in accordance with Article 7(2) of the basic Regulation. The amount of the definitive duty is set out in recital (541) below.

7. UNION INTEREST

(324) Following the publication of the provisional Regulation, several new interested parties came forward opposing the measures. As indicated in recital (13) above, ten users and four user associations submitted comments opposing the measures. Hearings were held with six of those users and two users' associations. Multiple new evidence was submitted to show that duties would have undue impact on the users.

(325) In total, users employing an estimated 30 000 people came forward in the investigation opposing the duties. Furthermore, CEPE, a European level association of paints, printing inks and artists' colours producers in Europe claimed that the members it represents employ up to 150 000 people, with most of them being SMEs.

(326) AkzoNobel in that regard pointed out that the fact that there are so many interested parties underscores how big of an impact, duties will have on users and that more attention should be paid to their interests.

(327) The Commission took all their claims into account and assessed them in detailed in this section.

7.1. Interest of the Union producers

(328) Siegwerk claimed that the imposition of anti-dumping duties would result in a relocation of production capacities of large multinational users of TiO₂ outside the Union, while SMEs, which do not have such flexibility in relocating assets, would be forced to shut down or curtail production. This would result in Union producers losing a large chunk of their customers, ultimately adversely affecting their performance too.

(329) While such risk may exist, the Commission considered that the more imminent risk from price and volume pressure of Chinese dumped imports vastly outweighed any potential risk to the Union industry compared to the potential decreased demand further down the line.

(330) In light of the above, and in absence of further claims, recitals (422) to (424) of the provisional Regulation are confirmed.

7.2. Interest of unrelated importers and traders

(331) AAKO claimed that the duties at the level proposed in the provisional Regulation would have a huge impact on prices of the TiO₂ they import and the sunscreens industry, since that type of TiO₂ can cost up to eight times more than the more common grades.

(332) The Commission addressed the effect of definitive duties on AAKO and similar importers, as well as their customers in recital (539).

(333) As no other importers or traders came forward and contested Commission's conclusions on the interest of importers and traders, the Commission maintains its conclusion in recital (426) of the provisional Regulation that the imposition of anti-dumping measures is not likely to have a negative effect on the situation of importers and traders in the Union.

7.3. Interest of users

7.3.1. General

- (334) Several users and user associations in addition to those mentioned in recital (427) of the provisional Regulation came forward to oppose the duties.
- (335) No comments were received concerning the assessed size of TiO₂ downstream market segments. Recital (428) of the provisional Regulation is thus confirmed.

7.3.2. Masterbatch White (MW)

- (336) Schulman Plastics, a Union producer of plastics and related materials which cooperated with the Commission in the provisional stage of the investigation, did not provide any comments in the definitive stage of the investigation. With the new, lower, recalculated dumping margins (see recital (199) above), however, the impact on its plant which mainly produces MW will be even less pronounced than estimated in the provisional Regulation.
- (337) The Commission thus maintained its conclusion in recital (434) of the provisional regulation, that Schulman Plastics would be able to absorb the duties and remain profitable, even if it would not be able to pass cost increase onto customers.
- (338) Plastika Kritis claimed that the imposition of duties against Chinese TiO₂ would be detrimental to the MW industry in the Union. Plastika Kritis claimed that there are over 300 producers of MW in the Union, mostly SMEs, employing in total over 15 000 people. With MW being a light and inexpensive material, orders are won or lost on a few cents difference. Thus, any increase in the price of the main raw material (TiO₂) resulting from the imposition of the anti-dumping duties will make the Union MW producers uncompetitive compared to competitors from abroad.
- (339) As a result, large masterbatch producers will be forced to relocate their production outside Europe while smaller ones will stop producing and will become importers. Plastika Kritis thus claimed that there is clearly a prevailing interest of the MW industry that duties are not imposed, even if that would lead to a demise of the Union producers of TiO₂, since MW industry employs far more people and produces higher added value products.
- (340) No data was presented to the Commission, however, which would show that MW producers are exposed to heavy competition from abroad or what are the market shares between Union and foreign MW producers.
- (341) On the other hand, the complainant provided their own estimates, according to which Union MW producers hold 95 % of the Union market.
- (342) The actual impact is hard to quantify as none of the smaller users submitted a questionnaire reply. It could not be excluded, however, that, due to the very high incidence of TiO₂ cost in the total cost of production of MW, producers of this product could be heavily impacted by the imposition of duties if they source non-negligible quantities of TiO₂ from China.
- (343) In fact, the analysis of impact of duties on a MW producer's profitability (based on Schulman Plastic's data) has shown that, with currently proposed duties, profitability of a MW producer decreases by around 1 percentage points for each additional 5 percentage points of TiO₂ sourced from China in their supply mix. It remained unclear, however, to which extent the Union MW producers are exposed to competition from abroad.

- (344) In their comments on final disclosure, Plastika Kritis reiterated its previous claims on the effect of duties on producers of MW and requested an exemption from anti-dumping duties for TiO₂ destined for the production of masterbatches. While the legal basis for the exemption request was not specified, and after having rejected at provisional stage Schulman Plastic's request to expand the product scope in this investigation to also cover MW to which no comments were received (see recital (26) above) from the nature and the phrasing of the request, the Commission treated it as a request for an end-use exemption under Article 254 of the Union Customs Code ⁽⁵²⁾.
- (345) The Commission noted on the outset that this end-use exemption came extremely late in the investigation. As already stressed in recital (86) above, such claims should have been submitted in the early stages of the investigation, in order to allow sufficient time to assess their merit and to give the opportunity to other interested parties to react to them.
- (346) Nonetheless, even if the Commission was thus not able to assess the request to a sufficient extent, the Commission examined the request in light of the evidence it had available. In that regard, the Commission reminded that only one TiO₂ user that produced MW, Schulman Plastic, submitted a questionnaire reply which was verified.
- (347) First, no evidence was provided to the Commission that TiO₂ used in production of masterbatches is in some way unique when compared to other grades. To the contrary, it appears that several TiO₂ grades can be used in the production of masterbatches.
- (348) Second, no evidence was provided to the Commission that would prove a shortage of supply of TiO₂ for MW producers. Given the relatively broad range of TiO₂ grades advertised for use in masterbatches, which also appear to be of relatively standard specifications, as well as the size of the plastics market segment, it appears unlikely that there would be a shortage of supply of TiO₂ for this use.
- (349) Third, as concerns the share of the product concerned in the cost structure and the ability of the user(s) to absorb the duties, as already stated in recitals (342) and (343) above, the Commission acknowledged that MW producers might be the most affected by the duties, due to the high incidence of TiO₂ in their overall cost structure. ⁽⁵³⁾
- (350) At the same time, the Commission again highlighted that it could verify the profit levels and the share of Chinese TiO₂ in the supply mix only for Schulman Plastics, on the basis of its questionnaire reply. The Commission could adequately estimate Schulman Plastics' exposure to imports from China and the impact the duties would have on its profitability. The Commission was thus able to conclude, as laid out in recitals (434) of the provisional Regulation and (336) and (337) above, that Schulman Plastics could absorb the duties and remain profitable, even if it would be assumed that it would not be able to pass on cost increases to consumers.
- (351) Plastika Kritis did not submit a questionnaire reply or other verifiable data on their profitability or sources of supply. The Commission was thus not able to assess and conclude how seriously they would individually be impacted by the imposition of duties on TiO₂ imports from China and whether this condition for the end-use exemption could be met.
- (352) Plastika Kritis again reiterated its claim that importers of masterbatch into the Union from nearby markets will become even more competitive against the Union masterbatch producers, since the former will still have access to cheaper Chinese TiO₂.
- (353) The Commission noted that Plastika Kritis provided no new evidence in that regard. The Commission pointed out, however, that a potential remedy exists for such practices if they were to occur: any industry experiencing such practices could request the initiation of a dedicated anti-dumping or anti-circumvention case, provided that all the conditions in the basic Regulation are met.

⁽⁵²⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1 – 101, ELI: <http://data.europa.eu/eli/reg/2013/952/oj>.

⁽⁵³⁾ Which was established, among others, on the basis of the verified questionnaire response from Schulman Plastics.

(354) In light of this and in the absence of new evidence, the Commission maintained its conclusions on this point from recitals (339) - (343) above.

(355) On the basis of the above, the Commission could not conclude that any of the elements for an end-use exemption of TiO₂ used in production of masterbatches are met and thus rejected this request.

7.3.3. *Paints and coating industry*

(356) Multiple users from the paint and coatings industries expressed opposition to the duties on the grounds of Union interest after the imposition of the provisional duties.

(357) Sherwin-Williams, one of the users who submitted a questionnaire reply, did not provide any comments on the provisional Regulation. Given the new, lower, dumping margins, the Commission concluded that the impact on Sherwin-Williams will be even less pronounced than estimated in the provisional Regulation.

(358) AkzoNobel and PPG claimed that duties at the proposed level will have a major impact on their cost of production and margin erosion, not only on account of more expensive TiO₂ from China, but also that that Union producers will raise their prices too.

(359) ASEFAPI, PPG, Teknos and AkzoNobel claimed that there was no possibility to pass on cost increases to customers. Such cost increases will make paint and coating producers uncompetitive and promote the importation of the finished products (paints) into the Union. AkzoNobel claimed that imports of paints and varnishes into the Union were already increasing.

(360) PPG claimed that, with the current level of duties, imports from China will become unviable, even if crucial due to lack of capacity in the Union and the need to diversify sources of supply. PPG thus pleaded that the Commission revises the duties downwards to strike a fairer balance.

(361) The Commission noted that it had already concluded that TiO₂ represents a minor amount in the cost of production of paints and estimated that profitability of paint producers would not be seriously affected. No new evidence was brought forward to contest that conclusion.

(362) Similarly, while limited evidence was provided to show that paint producers operate under longer contracts, making it difficult to implement instant price increase, no evidence was provided to show that they could not increase prices in negotiation with their customers, nor that that competition from abroad is increasing and jeopardising their position on the market.

(363) Smaller producers such as Teknos further claimed that the interest of paint and coating industry was not sufficiently considered, a claim also echoed by CEPE. CEPE claimed that SMEs in the coating industry will become less competitive and might have to shut down production, while larger producers could relocate their production outside the Union. CEPE thus pleaded to mitigate the impact on the SMEs active in this sector.

(364) ASEFAPI similarly claimed that the price increase associated with anti-dumping duties endanger the viability of many SMEs which are ASEFAPI members, particularly since the TiO₂ users' market is highly fragmented, so their market power is constrained. Some of ASEFAPI's members particularly have large clients in the automotive sector, reducing their bargaining power when trying to pass on price increases.

(365) ASEFAPI furthermore provided a table showing by how much an increase in price of TiO₂ as the main raw material would increase the cost of production of ten different paints, enamels, and printing inks formulations.

(366) The Commission noted that this table provided limited insight into several elements needed to appropriately assess the impact on proposed duties on users. These include: the share of revenues generated from the products using TiO₂ in total revenue of those companies; the share of TiO₂ bought from China compared to other sources; the share of TiO₂ costs in total manufacturing costs of the product; profitability on sales of products using TiO₂; and profitability of the total company.

- (367) The Commission also pointed out that none of the SMEs members of ASEFAPI or CEPE submitted a questionnaire reply which would give insight into those elements to the Commission.
- (368) Nonetheless, the Commission acknowledged that many of the members of CEPE and ASEFAPI are SMEs which might not necessarily have the resources to fill in the questionnaire replies and instead rely on their industry associations to represent their interest.
- (369) Thus, while it remained unclear to what extent paint and coating producers are actually exposed to competitive pressures from imports into the Union and what effect the duties might have on profits of smaller producers, it could not be excluded that competitiveness of numerous SMEs could be affected. However, on the basis of the cost structure of paint producers that the Commission observed in AkzoNobel's and Sherwin-Williams questionnaires, this impact will likely be the least pronounced of all the categories of users analysed in this section.
- (370) In their comments on final disclosure, one user, Teknos and four associations of paints and coatings manufacturers - ASEFAPI, CEPE, HCA, and *Fédération des Industries des Peintures, Encres, Couleurs, Colles et adhésifs, Résines* ('FIPEC') - contested the Commission's conclusions on the Union interest analysis with regard to this sector.
- (371) First, CEPE, FIPEC and Teknos submitted that the Commission should have given more attention to the construction sector in its analysis. They further claimed that construction projects are declining in the Union, and that even a small increase in the price of a raw material (in this case, paints and coatings) could put the sector's survival at risk, since it does not have the margins to absorb price increases.
- (372) Second, all four associations disagreed with the Commission's conclusion from recital (369) above, that impact on the paint and coating segment of the downstream industry will be the least pronounced of all the categories of users examined in this section.
- (373) To that end, all four associations provided their own calculations of cost increases, based on assumptions that TiO_2 represents 30 % - 50 % in raw material costs of a paint producer. ASEFAPI specifically highlighted that it had brought forward data specifying more significant cost increases.
- (374) Furthermore, they claimed that the Commission's findings were based on two large companies (AkzoNobel and Sherwin Williams) and therefore they were not representative for the broader industry, particularly SMEs. They reiterated their claims that SMEs can absorb the duties to a lesser extent, and they cannot pass them on to their clients as they have limited bargaining power.
- (375) Third, the associations claimed that countries near the Union borders, such as the UK, Türkiye, and others, will be able to import TiO_2 from China without the burden of the additional anti-dumping duties, which will make local paints and coatings producers more competitive against Union paint producers. HCA requested for a protection mechanism from such imports. Similarly, they claimed that paints and coatings imported from China could undercut Union painting manufacturers due to lower production costs.
- (376) Fourth, the associations also claimed that Union exports of paints and coatings will also suffer from increased prices, making the Union users of TiO_2 less competitive on foreign markets as well.
- (377) Finally, the associations stressed that it is imperative to maintain the users' competitiveness, since these companies are more numerous and employ many more people than the Union industry producing TiO_2 . The associations further claimed that duties mainly benefit non-Union companies, since majority of Union producers are subsidiaries of companies headquartered abroad. ASEFAPI also argued that the duties would not favourably impact the Union producers of TiO_2 as they lack production capacity, therefore users would buy TiO_2 from other third countries and thus the duties would ultimately benefit non-EU producers of TiO_2 .

- (378) HCA further suggested several measures to soften the impact on competitiveness of the Union industries in form of tax breaks and financial support for domestic industries. None of these, however, are within the ambit of trade defence investigations.
- (379) The Commission analysed these claims and reached the following conclusions:
- (380) First, as the Commission already stated in the provisional Regulation, no companies active in the construction sector came forward in the investigation to oppose the duties. Similarly, no parties provided sufficient evidence on the situation in the construction sector other than a few broad claims, nor did they meaningfully substantiate the impacts of the anti-dumping duties with regard to it. Compared with the volume of submissions, evidence, and data on all the other claims submitted and examined in this investigation, those on construction sector were very limited. The Commission thus took the construction sector into account to the extent that the Commission and the parties considered relevant and as far as information was available.
- (381) While CEPE and Teknos, in their submission on final disclosure, provided certain reports outlining the situation and future prospects of the Union, and in particular the German, construction sector, they did not provide evidence to substantiate the claims mentioned in recital (371) above. In particular, they did not substantiate or quantify to what extent the costs of paint would increase, nor to what extent could the construction sector even be impacted by any increase.
- (382) On the other hand, the fact that no companies from the construction sector registered as interested parties to oppose the duties suggests that they do not expect to be significantly impacted by the duties on TiO₂.
- (383) Second, the Commission acknowledged that ASEFAPI, its comments on the provisional Regulation, provided some data showing the share of the cost TiO₂ can have in certain paint formulas and what could be the increase in costs for those formulas with different levels of duties. The Commission duly analysed that data and took it into account for final disclosure, as explained in recitals (365) to (366) above.
- (384) The Commission repeated that this data only showed an estimate of how much a certain increase in the price of TiO₂ would increase the cost of production of ten different paints, enamels, and printing inks formulations. However, this data did not show which users it came from, how profitable these users were, how many other types of products they produced and sold and at what cost, what were their sources of supply, etc.
- (385) The Commission could thus not draw from this data any meaningful conclusion on the share of Chinese TiO₂ in the supply mix of any users, nor their performance and profit levels. Therefore, the Commission could not adequately estimate what is their exposure to imports from China and, consequently, what impact the duties would have on such users. While this data was, in addition, not verified, the only conclusion that could be drawn from this data is that some paints contain higher than average share of TiO₂ in their costs of production.
- (386) On the other hand, as already stressed above, AkzoNobel and Sherwin Williams provided questionnaire replies, which were verified. These replies were, by the nature of the questionnaire, comprehensive and contained all the above elements that the Commission would need to assess, thus showing a full picture of the performance of each of those producers: their costs of production and share of TiO₂ in them were averaged across all paints that each company produces, while the share of Chinese imports in their total cost structure was isolated. Such questionnaire data, completed and verified, allow for a more accurate insight into how a paints and coating producer could be affected.
- (387) On the basis of such data the Commission could conclude that TiO₂ represents a much lower share in total raw material costs of a paint producer, when averaged across all paint formulations, than what ASEFAPI, CEPE, FIPEC, and HCA present on the basis of certain individual formulations. The share of TiO₂ in total cost of production was even lower.

- (388) Even in Sherwin Williams' case, which filled out the questionnaire only at the level of its two most affected plants, the share of TiO₂ in total raw material costs was much lower than suggested 40 % – 50 %, and lower than for all other categories of users which submitted questionnaire replies (i.e., decor paper, graphic white inks, and MW producers).
- (389) On that basis, as explained above in recital (369), the Commission concluded that a paint producer, even an SME, would be, on average, less impacted by duties on TiO₂ due to a relatively low share that TiO₂ represents in a paint producer's cost structure. With no new evidence brought forward to contest it, the Commission maintained this conclusion.
- (390) No new evidence was brought forward in regard to the third claim either. The Commission pointed out, however, that for any alleged dumping practices on paints and coatings coming from China, a legal remedy existed in the form of a dedicated anti-dumping investigation. If the users have evidence of such practices, they have the possibility to bring their own complaint to the Commission.
- (391) Similarly, a protection mechanism exists for circumvention of duties alleged by HCA. An industry experiencing circumvention practices can request the initiation of a dedicated anti-circumvention case, provided that all the conditions in the basic Regulation are met.
- (392) Likewise, no new evidence was brought forward in regard to the fourth claim. While the overall cost structure of downstream users might be affected, no comprehensive evidence was presented to show to what extent paints and coatings industry relies on exports, to which destinations, and what would be the overall effect on their performance in those markets. The Commission thus did not have a comprehensive picture and could not verify the veracity of this claim.
- (393) Finally, the Commission pointed out that, even if some of the Union producers are a part of multinational conglomerates headquartered abroad, that does not exclude them from the definition of Union industry within the meaning of Article 4 of the basic Regulation. Indeed, the companies themselves are established according to relevant Member States' laws and they are not related to any exporter or importer from the country concerned.
- (394) Teknos and the four associations made additional claims that paints industry is particularly sensitive to price changes, that reduction in Union TiO₂ production over the past years has already made them more dependent on imports, and that the imposition of duties will negatively affect the EU Green Deal goals, since duties will lead to increased imports of paints into the Union, which will result in additional emissions associated with their transport. They further claimed that the duties will negatively affect jobs in downstream industries and investment in the Union, as higher costs of production will lead to layoffs and make paints and coatings sector less appealing for new investment. These claims were not supported by meaningful verifiable evidence, however, and were thus rejected by the Commission.

7.3.4. *Decor paper producers*

- (395) At definitive stage, Felix and Munksjö maintained their position that, even if the Commission did not exclude laminate-grade TiO₂ from the product scope, it should grant end-use exemption for its use in decor paper production, providing new claims and evidence in that regard.
- (396) The users reiterated their claims that all the criteria which the Commission took into account in previous cases of end-use exemptions were met. These include: the particularity of the downstream product, availability of supply, share of the product concerned in the cost structure, the ability of the user to absorb the duties, and the impact of the exemption on the effectiveness of the measures.

7.3.4.1. Particularity of the product

- (397) The users stressed again how laminate-grade TiO_2 is specifically designed to serve the purposes of the decor paper production, echoing the arguments laid out in recitals (119) to (122) above. The users also claimed that the qualification process for new grades takes about one year on average.
- (398) Following the analysis from section 2.1.3.2 above and in light of all the evidence available, the Commission maintained its conclusion that, even if laminate-grade TiO_2 does not have sufficiently different basic physical, chemical, and technical characteristics compared to other types of TiO_2 to be excluded from the product scope, there is a particularity to this product, given that it is tailored and mainly suitable for use in a specific application – production of decor paper.
- (399) This particularity is evidenced by significant presence of phosphorus in the coating of TiO_2 molecule. New evidence that Felix and Munksjö submitted showed that it has to be at the level of at least 0,5 % on the dry mass of the product for it to be useful in decor paper applications. At the same time, as was already claimed before, the electrical surface charge resulting from its thick surface coating helps the molecule attach to the wood pulp fibres.
- (400) The Commission concluded in recital (139) above, that the latter characteristic might be also relevant for use of TiO_2 in production of other products based on wood pulp fibres (such as ordinary paper). This prevented the Commission from concluding that this is a basic technical characteristic different from other types of TiO_2 , or at least TiO_2 used in other applications. However, this characteristic is indeed one of the elements making laminate-grade TiO_2 particular, insofar that it makes laminate-grade TiO_2 unsuitable for use in other general applications, such as paints and coatings.

7.3.4.2. Availability of supply

- (401) On availability of supply, Felix, Munksjö and CEPI also disagreed with the conclusion that, even in the total absence of TiO_2 imports from China, there would be sufficient alternative sources of supply available to decor paper producers, both within the Union and from other third countries (like UK or Mexico).
- (402) The two users submitted that it is unrealistic to expect that Union producers would significantly increase the supply of laminate-grade TiO_2 , which is furthermore more expensive to produce than most other grades. Since laminate-grade TiO_2 only accounts for around 12 % of total TiO_2 market (compared to 60 % for coatings and 25 % for plastics), focussing on larger market segments allows for economies of scale and a larger customer base, making those grades more profitable.
- (403) As they did at provisional stage, the two users submitted new evidence in the form of multiple, more recent, exchanges with the Union producers, which showed that the latter were able to offer only limited quantities of laminate-grade TiO_2 .
- (404) The two users have furthermore made a new claim on estimated the supply gap for laminate-grade TiO_2 in the Union, on the basis of the figures in the provisional Regulation and the share of the plants which regularly produce laminate-grade TiO_2 in the total Union production capacity.
- (405) Due to the spread of their portfolio across many types of TiO_2 which is in demand in the Union market, the two users estimated that the Union producers could satisfy only around one third of total Union demand for laminate-grade TiO_2 . This is in line with the estimates that the two users made in their previous submissions addressed in recital (53) of the provisional Regulation.
- (406) On availability of supply from other sources, the two users made a new claim that just because they sourced significant volumes from other countries in the investigation period, that does not mean that those sources could supply additional volumes which would cover for the volumes currently sourced from China.

- (407) In addition, in their submission of 30 May 2024, Felix and Munksjö demonstrated that weather events in Mexico caused significant production disruptions, jeopardising stability of supply. The two users claimed that this underscores the importance of diversified sources of supply. CEPI reiterated this argument in its comments on the provisional Regulation.
- (408) Felix and Munksjö also provided a TZMI report from April 2023, which forecasts an increase in demand in the Americas in 2024. Users claimed that this increase in demand will reduce Chemours' ability to supply the decor paper market in the Union. This same claim was also echoed by CEPI.
- (409) As concerns the UK as a potential alternative source of supply, Felix and Munksjö have provided new evidence to show that local suppliers have limited capacity to supply adequate quantities of laminate-grade TiO₂ to the Union.
- (410) The two users further argued that both the UK and Mexico produces only chloride process TiO₂, while their Chinese suppliers mostly produce via sulphate process. Although switch between the two is technically possible, this would incur additional costs to reformulate the parts of their portfolios which uses sulphate process TiO₂.
- (411) The two users also brought new evidence claiming that only some of eleven Union producers regularly produce laminate-grade TiO₂.
- (412) The complainant claimed that Felix and Munksjö provided no evidence to support that Union producers could not satisfy the demand of the laminate paper industry, and that the only thing preventing the Union producers from producing sufficient quantities of laminate-grade TiO₂ is unfair competition from China.
- (413) The complainant on the other hand claimed that there is no reason why Chemours plant in Mexico would not be able to export sufficient quantities to the Union, submitting TZMI market intelligence data to corroborate that claim. According to this data and nameplate capacity in Mexico, there was a total of [140 000 – 180 000] tonnes of spare capacity in Mexico during the investigation period. ⁽⁵⁴⁾
- (414) First, the Commission notes that, in line with Article 6 of the basic Regulation, it based its assessment on the verified information submitted by the cooperating users for the investigation period. Information relating to a period subsequent to the investigation period was not collected or verified. Concerning the sourcing of the cooperating users, the verified questionnaire replies showed that they sourced the predominant part of their laminate-grade TiO₂ from other third countries during the investigation period, while they sourced a much lower share (10 to 40 %) of their laminate-grade TiO₂ from China and the Union producers represented the lowest share of their source of laminate-grade TiO₂. This analysis showed that the cooperating users had an established and well-functioning supply channels with other third countries.
- (415) In light of all the new evidence presented, the Commission concluded that Felix and Munksjö might indeed face difficulties in buying the required volumes from available sources in the Union and the UK, due to producers choosing to prioritise other, bigger, market segments.
- (416) The Commission could not exclude, however, that this is due to the Chinese dumped imports keeping prices of laminate-grade TiO₂ uncompetitively low, unattractive to the Union producers. There is evidence on the file to corroborate that assertion.
- (417) On the basis of verified macro questionnaire data on nameplate production capacity for those five Union producers, and under the assumptions that (i) laminate-grade TiO₂ makes up 12 % of total Union demand for TiO₂, and that (ii) the remaining 50 % of the decor paper market players have the same share of the suppliers in their supply mix as Felix and Munksjö taken together, the Commission assessed the available spare capacities for production of laminate-grade TiO₂ in the Union.

⁽⁵⁴⁾ Taking, for the purposes of this analysis of spare capacities, the conservative assumptions that the other, much smaller, production plant in Central and South American region was operating at full capacity and only servicing its domestic market.

- (418) As was established in recital (270) of the provisional Regulation the Commission estimated that the average consumption in the Union during the period considered was 1,14 million tonnes. The Commission thus based its estimations on the demand for laminate-grade TiO₂ on the average yearly consumption during the period considered.
- (419) The Commission's estimation has thus shown that the above five Union producers, if they would be producing at 90 % nameplate capacity and dedicating 12 % of that production to laminate-grade TiO₂, they could indeed satisfy just above 1/3 of total Union laminate-grade TiO₂ demand.
- (420) However, even such limited supply would be enough to cover around 90 % of total supply of laminate-grade TiO₂ which decor paper producers would source from China, should those imports disappear completely. This is an extreme scenario as the purpose of the measures is not to stop imports altogether but to ensure that they enter the Union market at fair prices.
- (421) Notwithstanding the conclusion in recital (414) above, the Commission also examined the information submitted by interested parties on the availability of additional supply from Mexico for the period following the IP.
- (422) Examining the data submitted by the complainant and mentioned in recital (413), the Commission noted that the spare capacity figures might be overstated, since they seem to assume that no capacity was dedicated to domestic Mexican demand. In addition, there is evidence on the file that global demand was low during the investigation period.
- (423) Therefore, it could be expected that the actual available capacity in Mexico in a normal year would be less. This conclusion is reinforced with other estimates from TZMI, which show that actual spare capacity in 2024 in the whole Central and South American region will be half of the figure in recital (413) above.
- (424) Nonetheless, the Commission estimated that even in a more conservative scenario, if Mexican producers would also allocate 12 % of production to laminate-grades TiO₂, there would be around four times as much available capacity for laminate-grade TiO₂ production than what is needed to account for the remaining 10 % of supply of laminate-grade TiO₂ coming in from China (see recital (419) above), in the unlikely scenario that the latter disappear completely. ⁽⁵⁵⁾
- (425) At the same time, the weather events which disrupted supply from Mexico in summer 2024 can be considered as exceptional circumstances which cannot lead to the conclusion that Mexico would not be an adequate source of supply in the future.
- (426) The Commission thus concluded that there exist available spare capacities in the Union and Mexico alone (not even considering the UK) to replace the total volumes of laminate-grade TiO₂ purchased by the cooperating users from China, provided that level playing field is re-established and producers can commit 12 % of their production capacity to laminate-grade TiO₂. Therefore, it rejected the claims made by the users in question.

7.3.4.3. Impact of duties on the users and impact of the exemption on effectiveness of the duties

- (427) Felix and Munksjö also contested the Commission's conclusion on the impact of duties on their business. Specifically, they pointed out that the Commission's estimate in recital (430) of the provisional Regulation that their profitability would decrease by [2–3] percentage points fail to take into account the indirect effects of the duties.
- (428) They argued that the first of those effects was that the users would need to switch from grades produced via the sulphate process to the more expensive grades produced via the chloride process and would have to bear additional costs associated with the reformulation of existing recipes.

⁽⁵⁵⁾ Under the assumption that all such additional Mexican production would go to the Union.

- (429) Users further claimed that, as a result of the anti-dumping duties, Union producers were expected to significantly increase their prices for existing volumes too. After the provisional measures came into force, the two users provided evidence on negotiations with their Union suppliers, indicating that these suppliers would indeed be increasing prices in the near future. The users additionally provided a TZMI estimate on TiO₂ price evolution in the near future, published in June 2024, similarly predicting price increases of TiO₂ in the Union.
- (430) Furthermore, the users claimed that these cost increases will make Chinese producers of decor paper comparatively even more competitive, incentivising further increase in dumped imports of decor paper. This would also further stifle the users' ability to increase prices to their customers.
- (431) The users furthermore stressed that, since TiO₂ costs make up such a large share in their total costs of production, they will not be able to absorb the duties, resulting in a dire impact on their business. At the same time, the unwarranted switches from sulphate grades (currently sourced from China) to chloride grades (which are mostly available in the Union and from other third countries), will result in additional imminent costs.
- (432) In addition, using TZMI and TTO data, the users provided calculations on the estimated cost advantage that the Chinese decor paper producers would have compared to the Union ones. These showed that, as a result of an increase in TiO₂ prices, the cost advantage of Chinese decor paper producers would increase from 24 % in the investigation period to 31 % in 2025.
- (433) The users claimed that this will not only result in loss of sales volumes to Chinese competition, but also in their inability to adjust the pricing and thus prevent them from staying profitable in the market.
- (434) Finally, the two users claimed that the end-use exemption would not have an impact on the effectiveness of the measures.
- (435) In this respect, the users maintained that majority of the TiO₂ imports from China would not be affected by the potential exemption, referring to the Commission's conclusion from recital (428) of the provisional Regulation, that laminate-grade TiO₂ accounts for around 12 % of total demand. Furthermore, as the Union producers mainly focus on other TiO₂ applications, the impact of the exemption on the Union industry will also be limited.
- (436) Furthermore, the two users presented that the end-use exemption is both a burdensome procedure for companies that want to benefit from it, and that customs authorities have continuous supervision over the goods under the procedure and can retroactively collect duties if they consider that the goods are not used for the designated end-use, while no users other than decor paper producers could thus benefit from the exemption.
- (437) Concerning these claims, the Commission first clarified that its analysis rested on simulating the increased costs of TiO₂ which these users currently source from China, with all other things (including the volumes, types, and sources of supply) remaining equal. This resulted in the estimated [2–3] percentage points decrease in profitability.⁽⁵⁶⁾ At the same time, the costs associated with reformulation which the users estimated, although not insignificant, would be a one-off cost which would be furthermore minor compared to their usual total costs of production. In light of the above analysis, the Commission maintained its finding in recital (430) of the provisional Regulation, that the duties would likely have a negative impact on Felix and Munksjö's profitability.

⁽⁵⁶⁾ Whereas if the analysis had simulated also the decreased costs associated with switching to other, cheaper grades, the estimated impact could have been even less pronounced.

- (438) However, the Commission noted that the dumping margin found in the definitive stage of the investigation is lower than the dumping margin established in the provisional Regulation. Therefore, the Commission did a new assessment of the impact of the definitive duties on the profit margins of the two users. The analysis showed that the impact of the definitive duty at the level of the lower dumping margin on those two users' profitability would be by around 1 percentage point less than the impact found in the provisional Regulation.
- (439) The Commission thus concluded that, even if the Union industry raised its prices which were, in fact, found to be suppressed by the dumped imports from China as explained in recital (217), the impact of definitive duties on these two users would likely not be more significant than as determined in the provisional Regulation, given the low share of Union supply in their supply mix.
- (440) At the same time, however, laminate-grade TiO₂ represents around 12 % of total Union TiO₂ demand and [15 – 17] % of total sales volumes of sampled exporting producers in the investigation period. The Commission therefore considered the potential impact on the effectiveness of the duties to be disproportionately high if this end-use exemption was granted.
- (441) In addition, as established above, evidence on the file show that at least some of the Union producers were not producing sufficient quantities of TiO₂ due to uncompetitive prices on the Union market.
- (442) The Commission thus concluded that, absent Chinese dumped imports, production is expected to shift back to the Union producers if prices adequately increase.
- (443) Moreover, even if laminate-grade TiO₂ is particular, there are five producers in the Union which are able to produce it, as well as alternative sources of supply both in Mexico and the UK. As indicated above, the Commission's estimates provide that there is sufficient capacity available to cover even for the, extremely unlikely, total disappearance of Chinese imports, showing sufficient availability of supply.
- (444) Finally, with regard to the claim mentioned in recital (430) above, the Commission reiterated that any allegation of dumping practices in the decor paper industry and of the consequent injury of the Union industry are investigated in the separate anti-dumping investigation concerning imports of decor paper originating in China ⁽³⁷⁾ and are outside the scope of this proceeding.
- (445) After final disclosure, Felix, Munksjö, and LB made comments disagreeing with the above findings on end-use exemption. The two users claimed that Commission's assessments of availability of supply are based on overly optimistic assumptions.
- (446) First, the users claimed that the Commission's estimates failed to consider the cyclicity of the TiO₂ market, as those calculations were based on consumption figures and capacities in a period of low demand.
- (447) Second, the users claimed that the TiO₂ market segment which comprises 12 % actually consists of decor paper and normal type of paper. While decor paper indeed takes up the majority of that share, it is unrealistic to expect that the producers will increase the share of laminate-grade TiO₂ in their product mix to 12 %, i.e., the level higher than is market share of it.
- (448) Third, the users claimed that it would be unrealistic to expect that Union producers would allocate a larger share of their production capacity to laminate grade TiO₂, since they benefit from economies of scale in the other segments.
- (449) Fourth, the users claimed that such hypothetical potential increase of supply is invalidated by the fact that numerous Union producers were not willing to increase their supplied quantities even after the imposition of provisional measures.

⁽³⁷⁾ Notice of initiation published on 14.6.2024, OJ C, C/2024/3695, 14.6.2024, ELI: <http://data.europa.eu/eli/C/2024/3695/oj>.

- (450) Finally, LB Group similarly claimed that there is a very limited number of suppliers of laminate-grade TiO₂ globally. They disputed the Commission's conclusion that there are 5 plants in the union capable of producing laminate-grade TiO₂ while production capacity expansion is unlikely since production of this type of TiO₂ requires dedicated production lines to avoid contamination of other grades with phosphorus compounds.
- (451) In addition, LB Group pointed to the provisional conclusions in the anti-dumping investigation currently ongoing in Brazil, ⁽⁵⁸⁾ where the authorities decided to grant the end-use exemption for TiO₂ used in production of decor paper.
- (452) Concerning the users' first argument, as the Commission already explained in recital (418) above, the Commission made its assessments on the availability of supply on the basis of the demand in an average year, and not the investigation period, which was a time of low demand. Likewise, in recital (419) above, the Commission based its estimates on production levels at 90 % of nameplate capacity of Union producers. The Commission's estimates of the supply gap in the (already unlikely) scenario of complete disappearance of Chinese supply were thus, by design, conservative, rather than optimistic.
- (453) As concerns the second argument of the users, the Commission noted that in previous submissions the users also operated under the assumption that decor paper alone accounts for 12 % of the total TiO₂ demand ⁽⁵⁹⁾ and did not previously dispute this assessment. Nevertheless, even if the actual share of demand for laminate-grade TiO₂ would be lower, this means that TiO₂ producers would have to dedicate even lesser share of their total capacity to this market segment, making the Commission's estimates even more conservative and further reinforcing the Commission's conclusion on available capacities.
- (454) Third, the Commission considered that the assertion that Union producers would not increase the share of laminate-grade TiO₂ in their portfolio does not have merit. First, Union producers already produce other, more niche, types of products, even if these benefit from economies of scale to a lesser extent. Second, producers already produce laminate-grade TiO₂ even in the current quantities. It is then safe to assume that, if they start producing more, they will benefit from economies of scale in that segment even further, making it economically enticing to increase production quantities.
- (455) As concerns the users' fourth claim, the Commission already addressed this argument in recitals (415) and (416) above. While the Union producers may not have immediately committed higher volumes to laminate grade TiO₂ production, it is reasonable to expect that they would, once level-playing field is definitively restored.
- (456) Finally, the claim raised by LB Group about the number of Union producers capable of producing laminate-grade TiO₂ is not supported by any evidence. Furthermore, the Commission took Felix's and Munksjö's own claims on the number of Union (and also other) producers which could produce laminate-grade TiO₂ as the starting point in its assessment.
- (457) Finally, as concerns the fact that Brazilian authorities granted an end-use exemption in that case, the Commission pointed out that this decision by another investigating authority has no relevance or bearing on the case at hand as it is taken under different legal framework and under different factual and economic circumstances. In any event, by contrast to the case in Brazil, a large part of the Union industry produces this product and has opposed the exemption. Consequently, the claim was rejected.
- (458) On the basis of the above, the Commission rejected the end-use exemption request for laminate-grade TiO₂.

7.3.5. *Graphic inks producers*

- (459) Three users requested a product exclusion or end-use exemption for graphic TiO₂ for the production of white inks: Sun Chemical, Flint Group GmbH ('Flint'), and Siegwark.

⁽⁵⁸⁾ Available at: <https://www.in.gov.br/web/dou/-/circular-n-54-de-8-de-outubro-de-2024-589436706> (last visited on 13 November 2024).

⁽⁵⁹⁾ Specifically in their comments on provisional Regulation when they made their own estimates of supply-demand gap for laminate-grade TiO₂.

- (460) Flint contested the Commission's findings concerning its request for an end-use exemption for graphic TiO₂ and claimed five factual and legal errors in Commission's provisional findings.
- (461) First, although this has no bearing on its request for an end-use exemption, Flint claimed that it is incorrect that it purchases a limited amount of TiO₂ for purposes other than producing white inks, as concluded in recital (57) of the provisional Regulation.
- (462) Second, Flint disagreed with the conclusion that graphic TiO₂ does not have particular physical, chemical, and technical characteristics compared to other types of TiO₂. To that end, Flint reiterated its claim from its first submission, citing Kronos' promotional claims on graphic TiO₂, which state that "that this type of TiO₂ has exceptionally high gloss resulting from optimized, very intensive milling process, maximum opacity, and very low abrasion." In addition, "[g]raphic TiO₂ has unique whiteness, and chemical resistance, which are critical for ink applications."
- (463) Flint referred to the Commission's findings from recitals (57) and (58) of the provisional Regulation, that there is "a specific know-how to producing [graphic TiO₂,] mastered by only a limited number of [TiO₂] producers" and that "Flint has [...] provided evidence demonstrating that [TiO₂ types which Flint has been testing from different producers] generally do not reach satisfactory quality levels."
- (464) Flint concluded that it follows that graphic TiO₂ must have particular physical, chemical, and technical characteristics that distinguish it from other types of TiO₂.
- (465) Third, contrary to the Commission's finding that graphic TiO₂ does not have a well-defined end-use due to a large number of inks recipes that Flint has for their products, Flint claimed that, while they do use TiO₂ in many recipes, all of those products are white inks. There is thus a single end-use for graphic TiO₂ defined as: material used to manufacture white inks.
- (466) Fourth, Flint claimed that it is irrelevant for an end-use exemption whether customs authorities can verify that it is indeed graphic TiO₂ used for production of white inks. What matters in granting the end-use exemption is the specific use of the product in question, which does not have to differ from other types of products subject to anti-dumping duties.
- (467) Fifth, Flint argued that its profits in fact will be significantly affected by the proposed anti-dumping duties. Flint provided calculations on the impact on its profitability in the white inks segment of its business, which showed that the duties would, contrary to the Commission's provisional findings, decrease its profitability by around 9 percentage points, turning it loss-making.
- (468) Flint further stressed that the impact of the duties on Flint's total business cannot be determinative for end-use exemption request, since Flint is a diversified group with numerous products. This would unjustifiably discriminate between single-product and diversified businesses. Instead, impact on the business segment at hand should be assessed.
- (469) Flint reiterated that all the other requirements for granting an end-use exemption were met.
- (470) First, Flint claimed that end-use exemption for graphic TiO₂ would not reduce the effectiveness of the duties, since graphic TiO₂ makes up for around 3 % of total TiO₂ demand. Flint further noted that the complainant did not mention graphic TiO₂ in the complaint, nor did they engage with Flint's end-use exemption request at the provisional stage of this investigation. This would mean that not even the complainant is concerned about possible effects this exemption might have on the effectiveness of the duties.

- (471) Second, Flint reiterated that graphic TiO_2 makes up a very significant share of cost of production of white inks and pointed to the Commission practice in the PVA case, where this was one of the grounds for granting an end-use exemption request. ⁽⁶⁰⁾
- (472) Finally, Flint reiterated that graphic TiO_2 is a highly specific product for which users could not switch suppliers, which was a ground for granting the end-use exemption in previous Commission practice. ⁽⁶¹⁾ Flint claimed that, since the anti-dumping duties will make it economically unfeasible to source graphic TiO_2 from China, duties would in essence leave Flint with only one major supplier as a source for bulk of its TiO_2 .
- (473) Another producer of white inks, Siegwark, provided calculations showing that the production of white inks would no longer be viable in the Union if measures are imposed, due to competitive pressure from imports from third markets like Türkiye. It is thus likely that the Union white inks capacity closes down or relocates outside the Union.
- (474) Siegwark claimed that the relocation would likely have further negative effects: producers of packaging which rely on white inks producers would likely follow suit in relocating their production outside the EU, since it is cheaper and simpler to import coloured packaging to their customers in the Union, rather than importing white inks (as the transport of inks is less cost efficient and requires more care due to its hazardous nature).
- (475) Furthermore, Siegwark provided evidence showing that over the last decade, 10 percentage points of solvent-based inks volume has relocated from the Union to Türkiye. This trend is thus likely to accelerate if the anti-dumping measures are applied.
- (476) Claims were also made that certain TiO_2 grades required for use in inks applied to packing in speciality uses (medicinal, food packaging, cosmetics, etc., all of which require higher safety standards as they come in contact with products for human consumption) are not available on the Union market. Therefore, the users have no choice but to supply such grades from China, and the cost increase resulting from the imposition of anti-dumping duties would make this production unprofitable.
- (477) In response, the complainant did not give detailed data on the graphic TiO_2 production by the Union industry, but claimed that it had, in general, sufficient capacity to supply the market if level playing field is restored.
- (478) In light of the new evidence and claims presented above, the Commission reassessed its conclusions from the provisional Regulation.
- (479) As concerns Flint's arguments presented in recitals (461) and (462) above, the Commission noted that these are only pertinent in relation to product exclusion analysis. Since Flint did not make a request for the Commission to reassess its analysis of its product exclusion request at the definitive stage, the Commission considered those arguments as moot.
- (480) Concerning the argument mentioned in recital (476), the comments did not specify which grades of TiO_2 these concerns, so the Commission could not verify the veracity of those claims.

⁽⁶⁰⁾ 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, 29/09/2020, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2020/1336/oj), recital (623).

⁽⁶¹⁾ Flint refers to Article 2(2) of Commission Implementing Regulation (EU) 2021/1784 of 8 October 2021 imposing a definitive anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 6), read together with recital (87) to Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 124, 12.4.2021, p. 40).

- (481) Concerning the particularity of graphic TiO₂, the Commission has already concluded in recital (57) of the provisional regulation that there is indeed a specific know-how to producing it, mastered by only a limited number of producers in the Union and in China. As was also confirmed in the merger case Huntsman/Rockwood,⁽⁶²⁾ due to specific nature of this product, white inks producers have limited possibilities to switch to other producers.
- (482) As Flint has shown, using other types of TiO₂ in its applications would result in much poorer performance of inks on the packaging, affecting customers' perception.
- (483) As concerns Flint's argument from recital (466) above, the Commission noted that Flint clarified in the definitive stage that, while it uses other TiO₂ grades in two specific applications, these were neither white inks nor was it using graphic TiO₂ grade for those applications. In any case, these represented less than 1 % of Flint's total use of TiO₂. On the other hand, Flint has shown that over 99 % of its TiO₂ consumption is in formulations for white inks.
- (484) Regarding the availability of supply, Flint has shown that it can only purchase graphic TiO₂ from one supplier in the Union and two suppliers in China. There are no available suppliers in other third countries. Siegwark claimed that they purchase their TiO₂ from a few other Union and Chinese suppliers too, but for over 50 % of their formulations they have only one certified supplier.
- (485) On the basis of all the evidence available, the Commission maintained its conclusion from recital (58) of the provisional Regulation that there is a very limited number of suppliers worldwide who can produce graphic TiO₂ at the adequate quality level, and, to the Commission's knowledge, they are present only in the Union and China.
- (486) As concerns the complainant's claims that it could supply the market if level playing field is restored, the Commission considered this unlikely for the graphic TiO₂ market. Namely, the total Union production capacity is only around 80 % of Union consumption in a normal year. With the new information available at the definitive stage, the Commission estimated that the demand for graphic TiO₂ is around 2,5 % of the total TiO₂ market. The only Union supplier known to be producing graphic TiO₂ at the satisfactory quality level would have to dedicate around 7 % of its total capacity to supply the graphic TiO₂ demands in the Union and that producer did not claim that it intended to make this commitment.
- (487) The Commission thus concluded that available sources of supply for the graphic TiO₂ are very limited both globally and within the Union.
- (488) As concerns Flint's estimates on the impact of the measures on its profitability, the Commission accepted their estimate and reversed its conclusions. Using the same methodology to estimate the impact of the duties at the new, lower dumping margin level, the Commission still found that measures would make Flint loss-making in the white inks segment of business.
- (489) Due to the similar cost structure, similar impact could be expected on Sun Chemical and Siegwark, although the Commission does not know their level of exposure to Chinese suppliers as they did not submit a questionnaire reply.
- (490) In light of the above and new evidence submitted by Siegwark on competitiveness of the Union white inks business, the Commission concluded that measures would have a significant impact on white ink producers and on the employment they generate. On top of this, further potential knock-on effects on downstream packaging industry could have further negative consequences on employment in the Union.
- (491) At the same time, the Commission estimated that white ink producers represent around 2,5 % of the total EU TiO₂ market and this type of TiO₂ is not produced by the vast majority of Union producers. Based on the data available to the Commission, Union industry's sales of Graphic TiO₂ represented around 0,5 % of their total sales in the investigation period and around 5 % of total imports from China.

⁽⁶²⁾ Commission Decision of 10.9.2014 in Case M.7061 – HUNTSMAN CORPORATION / EQUITY INTERESTS HELD BY ROCKWOOD HOLDINGS, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m7061_20140910_20600_4133655_EN.pdf.

- (492) Furthermore, the complainant did not directly oppose the end-use exemption request for the graphic TiO₂. In addition, white inks producers have to rely on a very limited number of producers worldwide which are able to supply graphic TiO₂ at the adequate quality level, with only one such producer being in the Union, and the others in China.
- (493) Based on the above, the Commission concluded that granting an end-use exemption to white inks producers would not have a significant impact on the effectiveness of the measures.
- (494) Furthermore, the Commission concluded that it is in the interest of the Union, to grant an end-use exemption to imports of graphic TiO₂ originating in China for use in the production of white inks for printing.
- (495) In their comments on final disclosure, the complainant disagreed with this decision. The complainant also opposed the use of the term “graphic TiO₂” which, according to their claim, had been unknown to the TiO₂ industry. Flint made a subsequent submission disputing complainant’s claims.
- (496) In its comments on final disclosure, Siegwerk also requested clarification on the term “end-use” throughout this Regulation, noting also that the term “graphic TiO₂” is not defined in customs law.
- (497) Thus, as a preliminary point, the Commission pointed to the original request for end-use exemption made by Flint and described in recital (32). The request for the end-use exemption was made and assessed in the context of Article 254 of the Union Customs Code.
- (498) As interested parties have rightly noted, “graphic TiO₂” is not defined in the customs legislation nor is it necessarily a term uniformly used throughout the TiO₂ industry. “Graphic TiO₂,” instead, is just an abbreviation which was used in numerous documents in this investigation (including submissions from the complainant) to easily refer to the types of TiO₂ that are used as a pigment in the production of white inks in the graphic ink industry. ⁽⁶³⁾
- (499) As explained in this Regulation, the Commission decided to exempt from anti-dumping duties TiO₂ if it is imported for use in the production of white inks for printing, under the procedures and conditions laid out in the Union Customs Code. No definition of “graphic TiO₂” is thus neither required nor implied for the purpose of effecting this end-use exemption, since it operates on the basis of the intended use of the product.
- (500) The Commission then proceeded to analyse the remainder of complainants’ comments on the final disclosure, and Flint’s counterclaims.
- (501) First, the complainant asserted that the Commission’s conclusion is based on the data of one single user (Flint), and that the Commission should have conducted an assessment of the impact of duties on the white inks industry on a more representative number of graphic TiO₂ users.
- (502) Second, the complainant claimed that it was incorrect that users could only purchase graphic TiO₂ from one supplier in the Union and two suppliers in China, as the Commission purportedly concluded in recital (484) above.
- (503) The complainant went on to argue that there is a large capacity of one Union producer available that can be dedicated to the Union ink market, if a level playing field is restored. At the same time, there are several suppliers in the Union which sell TiO₂ to the white inks industry.
- (504) The complainant furthermore disagreed with the Commission’s conclusion that the one Union user known to be producing graphic TiO₂ would not dedicate 7 % of its total production capacity to satisfy demand in the Union.

⁽⁶³⁾ And is, as such, defined in recital (157) above for the purposes of this document.

- (505) In addition, the complainant claimed that the Commission did not request any information from the non-sampled Union producers on their production of graphic TiO₂. The Commission cannot thus reasonably allege that there is only one Union supplier known to be producing graphic TiO₂ at satisfactory quality level.
- (506) Third, the complainant contested the methodology that the Commission used to assess the impact that anti-dumping measures might have on users, white ink producers, compared to the impact that the end-use exemption could have on the Union producers.
- (507) The complainant pointed out that in the 2021 anti-subsidy investigation on imports of aluminium converter foil ('ACF') from China, ⁽⁶⁴⁾ the Commission did not grant the end-use exemption because, while ACF was relevant for only a part of total production of the user in question, the Commission could not determine what impact the duties would have had on the user's total profitability. ⁽⁶⁵⁾ The complainant contended that in this case, since white inks represent only a part of Flint's portfolio, the Commission should reach the same conclusion as in the above referred ACF case.
- (508) By contrast, the complainant claimed, that this end-use exemption would have a severe negative impact on Union producers which produce TiO₂, and this should have been specifically analysed. They argued that should the end-use exemption be granted, the Union producers would no longer be able to sell graphic TiO₂ in the Union market.
- (509) Finally, the complainant claimed that there was high risk of circumvention associated with this exemption. It would introduce significant challenges in verifying the nature of this product, and graphic TiO₂ could thus be misdeclared or diverted to other end-uses.
- (510) Flint, on the other hand, claimed that complainant's comments on this end-use exemption were not *bona fide*, since they only made comments opposing Flint's request after the final disclosure, almost a full year after Flint originally made the request.
- (511) Furthermore, Flint argued that the Commission should reject complainant's arguments on how end-use exemption could be used to undermine the effectiveness of the duties. The very nature of this customs procedure does not permit for any misdeclaration while the procedure precisely ensures that TiO₂ is not diverted to other end uses.
- (512) Flint further claimed that it is irrelevant that only Flint submitted a questionnaire response, as the Commission has previously granted end-use exemptions at the request of just one cooperating user. ⁽⁶⁶⁾
- (513) As regard the first argument made by the complainant, the Commission noted that among the three users that requested the end-use exemption, only Flint submitted a questionnaire reply which was verified. However, Sun Chemicals and Siegwark both made written submissions and hearings were held with them and the Commission was thus able to complement Flint's verified data with additional insights.
- (514) The Commission pointed out that, on the other hand, complainant made only one submission regarding this end-use exemption request in the course of the investigation, where it furthermore contested only the arguments made by Sun Chemical. At the same time, while Flint submitted its request for end-use exemption in the first ten days of the investigation and made several subsequent submissions in support of its claims, as Flint correctly pointed out, the complainant never contested those arguments..
- (515) On the basis of the information available to the Commission, it was estimated that these three users represent around 70 % of Union production of white inks. Thus, the Commission considered that their situation is representative of the white inks industry and made its conclusions on the information that it had available.

⁽⁶⁴⁾ Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344, ELI: http://data.europa.eu/eli/reg_impl/2021/2287/oj).

⁽⁶⁵⁾ *Ibid*, recital (738).

⁽⁶⁶⁾ Such as in Regulation (EU) 2020/1336, recitals 618-628; Section 2.2.2 to Commission Implementing Regulation (EU) 2021/1784 of 8 October 2021 imposing a definitive anti-dumping duty on imports of aluminium flatrolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 6).

- (516) Second, contrary to the complainant's assertion, the Commission did not conclude in recital (484) that the entire white inks industry can buy graphic TiO₂ from one supplier in the Union and two suppliers in China, but rather that this the case for Flint. Indeed, as the remainder of this recital shows, other users might also buy graphic TiO₂ from other suppliers too, in limited quantities.
- (517) As concerns the assertion that the Commission did not request any information from the non-sampled Union producers on their production of graphic TiO₂, the Commission had information from the users' side that some of the users are buying limited quantities from non-sampled Union producers. The Commission again reminded that the arguments made by the white inks producers on availability of supply were never meaningfully contested.
- (518) This particularly pertains to Flint's arguments on the specific know-how necessary to product TiO₂ that works well in white inks, the existence of which and the fact that it was only mastered by a small number of producers was already established in merger case Huntsman/Rockwood. Following this merger, furthermore, the know-how of one of the two Union market leaders in graphic TiO₂ had to be divested, and it was purchased by what is now LB Group which continued supplying that TiO₂ grade to the Union.
- (519) The complainant brought no evidence throughout the investigation that would contest this and thus negate the conclusion that the availability of graphic TiO₂ grades which are of satisfactory quality is very limited globally to only a handful of producers in the Union and in China. Nothing in verified questionnaire replies from sampled Union producers brought that conclusion into question either. The Commission thus found no reason to reach out to the non-sampled Union producers.
- (520) As concerns the available capacity of the one Union producer to supply the market, while they might have theoretical capacity, the Commission already concluded it unlikely that they would dedicate 7 % of this capacity to supply what is only 2,5 % of the market.
- (521) The complainant did not bring any evidence that would suggest otherwise. To the contrary, its own claims from the comments on final disclosure suggest that there is no economic incentive to do so.
- (522) Third, the Commission disagreed with the complainant's assertion that the Commission applied different methodology that in ACF case. The Commission assesses each request on a case-by-case basis and in light of all the facts and information available. Thus, the fact that in ACF case the impact on total profitability of the user could not be estimated does not make the factual situation comparable to this case. At any rate, it is clear from the case-law that the lawfulness of a regulation imposing anti-dumping duties must be assessed in the light of legal rules and, in particular, the provisions of the basic regulation, not on the basis of the alleged previous practice of the EU institutions in taking decisions. ⁽⁶⁷⁾
- (523) Indeed, as the Commission elaborated in recitals (488) to (490), when analysing the overall picture, including the high incidence of TiO₂ in cost structure of white inks and new evidence brought on volatility of white inks business, as well as potential knock-on effects downstream packaging industry, the Commission concluded that measures would have a significant impact on white ink producers.
- (524) At the same time, the Commission expressed doubt about complainant's assertions that this end-use exemption will have a severe negative impact on Union producers. As already stated, graphic TiO₂ represents a very small share, 2,5 %, of the total market, and even less in terms of the share of sales of the one Union producer which is most competitive in this market.
- (525) Furthermore, the complainant did not substantiate why any of the Union producers, which are and have been selling graphic TiO₂ to the Union in the previous years, in spite of Chinese competition, would now suddenly not be able to do so.

⁽⁶⁷⁾ See for instance judgment of 18 October 2016, *Crown Equipment (Suzhou) and Crown Gabelstapler v Council*, T-351/13, not published, ECLI:EU:T:2016:616, paragraph 107.

- (526) Finally, the complainant did not meaningfully substantiate its claims on risk of circumvention. End-use exemption is a customs procedure through which customs authorities verify whether the imported products were indeed subject to a specific use. The Commission thus found no reason to believe that TiO₂ could be misdeclared or diverted to other end-uses as a result of this exemption.
- (527) The Commission therefore rejected the complainants claims regarding the end-use exemption for the production of white inks for printing.

7.3.6. *Other factors*

- (528) Multiple interested parties also made claims on the insufficient supply of TiO₂ in the Union. They stated that they have faced many supply shortages in the past and when the economy picks up again, prices will rise and there will not even be sufficient quantities of TiO₂ available from Union producers.
- (529) The complainant contested those claims, stating that they are ready to meet the Union demand once level playing field is restored. Furthermore, the complainant also argued that multiple capacity expansions are planned in other countries such as the UK, Saudi Arabia and USA.
- (530) The Commission acknowledged that the total Union capacity is insufficient to meet the total Union demand. In addition, the capacity expansions claimed by the complainant could not be verified against reliable evidence.
- (531) Nonetheless, on the basis of the information and evidence available to the Commission, there are ample capacities of TiO₂ available worldwide, and at least indications that capacity expansion will continue in the coming years in regions other than China. Even if imports from China would disappear completely, these could compensate for potential supply gap.

7.4. **Conclusion on Union interest**

- (532) Based on the above, the Commission concluded that there were no compelling reasons against the imposition of definitive anti-dumping duties on titanium dioxide originating in China.
- (533) However, to limit any possible serious impact on the users that are heavily dependent on TiO₂ in their production and in order to mitigate the possible serious adverse effects that anti-dumping duties might have on a large number of such users, while at the same time ensuring protection to the Union industry exposed to the injurious effects of dumped imports from China, the Commission considered modulation of duties.
- (534) In their comments on the final disclosure, several interested parties reiterated their comments that the anti-dumping rate of 32,3 % is too high and will make their businesses uncompetitive, and that the Commission should reduce the duty rates.
- (535) All individual and specific comments on Union interest have been addressed. Moreover, as explained in section 8.2 below, the Commission changed the form of the measures. The duties will not be collected as a percentage of a declared invoice value, but rather as a fixed amount per kilogram, regardless of the value of the invoice. As explained in recital (533) above and section 8.2 below, this is expected to soften the impact of duties on the users.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

8.1. **Definitive measures**

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

8.2. Form of the measures

- (537) As explained in recital (533) above, the Commission considered appropriate to modify the form of the measures. As multiple parties have claimed, the investigation period coincided with a downturn in the demand cycle for TiO₂. According to the market intelligence available to the Commission, it is expected that both demand and prices keep increasing in the foreseeable future, at least until the end of 2025.
- (538) The Commission thus considered that the imposition of duties in the form of specific duties will soften the impact of the duties on the users as, in a rising market, the share of duties in the total price of Chinese TiO₂ will be less than if duties are imposed as ad valorem duties. In particular, the Commission's estimates have shown that, already on the basis of the investigation period data collected from the users, measures in the form of specific duties would soften the impact on the investigation period profitability of the decor paper and white inks producers by between 0,2 and 0,5 percentage points, all other things remaining equal.
- (539) Furthermore, users of very specialised TiO₂ grades, such as those imported by AAKO, the price of which is several orders of magnitude higher than the more commonly used grades, will thus be minimally impacted by the measures.
- (540) At the same time, the level of duties would allow the Union industry to recover from the effects of injurious dumping in the context of rising demand and prices and decreasing raw material costs⁽⁶⁸⁾. The Commission thus concluded that in view of the specific circumstances of this case imposing measures in the form of specific duties will strike a proper balance between the interest of the users and the Union industry's need for protection from dumped imports.
- (541) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, and as a fixed amount per kg should be as follows:

Company	Dumping margin (%)	Injury margin (%)	Definitive duty rate (%)	Definitive specific duty (EUR/kg)
LB group	32,3	53,4	32,3	0,74
Anhui Gold Star group	11,4	53,0	11,4	0,25
Other cooperating companies	28,4	53,3	28,4	0,64
All other companies	32,3	53,4	32,3	0,74

- (542) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the country concerned and produced by the named legal entities.
- (543) In their comments on final disclosure, LB Group suggested that it would be more appropriate to set separate specific duties for sulphate process TiO₂ and for chloride process TiO₂, due to the traditional price differences between the two.

⁽⁶⁸⁾ On the basis of Fastmarkets data, the price of ilmenite, the main raw material for TiO₂ has decreased since the investigation period (available upon subscription at <https://www.fastmarkets.com/login/metals-and-mining/>), while the available market intelligence data also foresee cost decreases in the near future compared to the investigation period.

- (544) The Commission reminded in that regard that, as already elaborated in recitals (67) to (71) of the provisional Regulation, and confirmed in recitals (81) to (84) above, the Commission rejected the request to conduct separate injury and causation analyses for the products coming from the two production processes. This would have been a prerequisite for calculating individual anti-dumping duties for sulphate process TiO₂ and for chloride process TiO₂.
- (545) In absence of new evidence to contest that conclusion, the Commission rejected LB Group's request to set separate specific duties for sulphate process TiO₂ and for chloride process TiO₂.
- (546) In their comments on final disclosure, the complainant, while it did not contest the Commission's decision on proposed form of duties, requested that to insert a clause in the final Regulation to allow for a revision of the form of the duty in case the fixed duty becomes largely inefficient to counteract the dumping practices, to allow for an immediate review.
- (547) The Commission noted in that regard that such a clause would be redundant. In case that the complainant or any other party would find that the anti-dumping duties become inadequate to counteract the dumping practices (regardless of whether they would be expressed as *ad valorem* or specific duties), they can bring forward a request for an interim review provided that the conditions under Article 11(3) of the basic Regulation are met.
- (548) Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other imports originating in the People's Republic of China'.
- (549) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁶⁹⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (550) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The application of individual anti-dumping duties is only applicable upon presentation of a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Until such invoice is presented, imports should be subject to the anti-dumping duty applicable to 'all other imports originating in the People's Republic of China'.
- (551) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.
- (552) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, *inter alia*, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

⁽⁶⁹⁾ European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

- (553) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other imports originating in the People's Republic of China should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.
- (554) Exporting producers that did not export the product concerned to the Union during the investigation period should be able to request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the IP; (ii) it is not related to an exporting producer that did so; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.
- (555) Following final disclosure, the complainant requested the Commission to insert a clause in the final Regulation. The requested clause would enable monitoring of TiO₂ imports originating from Anhui Gold Star, which would allow to compare the volume annually imported from this company into the Union with the maximum capacity reported in its questionnaire's response. It is noted in this respect that based on the additional TARIC code assigned to Anhui Gold Star group, and as part of the monitoring activities, the Commission will be in the position to observe volumes entering the Union from this exporter and assess a need for any follow-on actions accordingly.

8.3. Definitive collection of the provisional duties

- (556) Plastika Kritis argued that provisional duties should not be collected in this case. They claimed that, due to Houtis' attacks disrupting the shipping routes through the Red Sea, many cargoes ordered in February/March and shipped in April or May have not arrived to port of destination yet.
- (557) At the same time, many users of TiO₂ provided offers and signed contracts with their customers at fixed prices and will have to absorb all the losses associated with the anti-dumping duties. They thus claim that no duties should be collected on shipments of TiO₂ that have been shipped prior to the registration date.
- (558) The Commission noted in that regard that the users should have been aware of the possibility that anti-dumping duties will be imposed at least from the moment of publication of the Notice of Initiation.
- (559) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.
- (560) In their comments on final disclosure, Flint claimed that it is not clear from the text of final disclosure whether the end-use exemption will also apply to the provisional anti-dumping duties imposed in the provisional Regulation. Following the conclusions in recitals (459) to (527) above, the Commission confirmed that titanium dioxide imported for the production of white inks for printing, should be relieved from provisional duties, provided that the conditions to benefit from the end-use procedure are met.
- (561) In its comments on final disclosure, Plastika Kritis requested that no duty be collected on TiO₂ that has been shipped from China before the registration date in June 2024, the shipping date of which could be proven by the relevant bill of lading. Plastika Kritis claimed that collection of duties starting from 12 July 2024 is causing significant losses to TiO₂ users who have ordered TiO₂ before the registration date, claiming that in that point in time "no one could imagine that this unreasonable duty would be implemented."

- (562) The Commission pointed out in that regard that the basic Regulation does not provide for the possibility to base the collection of duties on the date of shipping of the product concerned from the country of investigation. Furthermore, the Notice of Initiation in this case was published on 13 November 2023, with timelines of the case laid out therein. From that moment on, the users at least could have been aware of a possibility that provisional duties will be adopted. The Commission thus rejected this request.

8.4. Retroactive collection

- (563) As mentioned in section 1.2. above, the Commission made imports of the product under investigation subject to registration.
- (564) As set out in recital (456) of the provisional Regulation, the Commission could not take a decision on a possible retroactive application of anti-dumping measures at that stage of the investigation. Therefore, the Commission has to decide, in line with Article 10(4) of the basic Regulation, whether definitive anti-dumping measures shall be retroactively collected on imports during the period of registration.
- (565) Five users and ASEFAPI made several submissions opposing registration from the moment the complainant requested it. Several smaller paint producers registered as interested parties after registration, and five of them submitted comments opposing the registration of imports. All interested parties who submitted comments after the provisional Regulation pleaded against the retroactive collection of duties. The complainant argued that they should be collected.
- (566) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.
- (567) The criteria for whether duties can be collected during the period of registration are set out in Article 10(4) of the basic Regulation.
- (568) The condition in Article 10(4)(a) of the basic Regulation is fulfilled as imports were registered in accordance with Article 14(5) of the basic Regulation.
- (569) The importers have been given an opportunity for comment in accordance Article 10(4)(b) of the basic Regulation following the publication of the registration Regulation as well as the publication of the provisional Regulation.
- (570) Several interested parties expressed their opposition to the registration.
- (571) The parties claimed that, since the Union TiO₂ production is insufficient to meet Union demand, the users have no alternative but to import.
- (572) The Commission pointed out in that regard that the mere fact of importing products is not a criterion on which the decision to register imports rested. Instead, the Commission assessed whether there was a further substantial rise in imports which was likely to undermine the remedial effect of the duty. The Commission assessed the evolution of import volumes in recital (575) below.
- (573) Pursuant to Article 10(4)(c) of the basic Regulation, there needs to be 'a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found'. In the present case, the Commission considers that the importers were aware, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found since the date of initiation of the investigation, for the reasons explained in recitals (8) to (11) of the registration Regulation.
- (574) Furthermore, pursuant to Article 10(4)(d) of the basic Regulation, there needs to be 'a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period' that in light of its timing and volume and other circumstances are likely to seriously undermine the remedial effect of the definitive duties.

- (575) The Commission analysed the average monthly import volumes and prices in the whole investigation period and compared them with average monthly import volumes and prices after initiation (period December 2023 – July 2024). The period after initiation distinguished between the period until imposition of provisional measures, on the one hand, and the period until registration entered into force, on the other hand.

Table 1

Comparison with Full IP	Volume (kg)	Monthly average	Average Price (EUR/kg)	Change in Volume from the IP	Change in Average unit Price from the IP
IP	209 375 100	17 447 925	2,24	-	-
Period B1 ⁽¹⁾ - Dec 2023 - July 2024	180 743 000	22 592 875	2,18	29,5 %	- 2,54 %
Period B2 - Dec 2023 - June 2024	161 975 300	23 139 329	2,17	32,6 %	- 2,83 %

Source: Eurostat.

⁽¹⁾ The Commission took period B1 as starting in the first full month after initiation, and ending in the last full month when provisional Regulation was published. The Commission then also looked at period B2, starting in the first full month after initiation, and ending in the month prior to entry into force of provisional measures.

- (576) When comparing either of the periods (B1 or B2) with the whole investigation period, average import volumes from China have increased, by around 30 % while the prices decreased by around - 2,7 %.
- (577) However, since there are strong indicators of seasonality in TiO₂ demand in the market (demand is highest in summer and lowest in winter), the Commission considered that comparing periods B1 and B2 with the same periods in the investigation reflects more accurately the situation in the market. This comparison is shown in the table below.

Table 2

Same periods Comparison	Volume (kg)	Monthly average	Average Price (EUR/kg)	Change in Volume from IP	Change Avg. unit Price from IP
IP Same Period B1 (Dec2022 - July2023)	154 839 500	19 354 938	2,22		
Period B1 (Dec2023 - July2024)	180 743 000	22 592 875	2,18	17 %	- 1,9 %
IP Same Period B2 - (Dec2022 - June2023)	129 414 500	18 487 786	2,25		
Period B2 (Dec2023 - June2024)	161 975 300	23 139 329	2,17	25 %	- 3,2 %

Source: Eurostat.

- (578) The above comparison shows that average monthly imports from China have increased after the initiation of the case, that is by 17 % until provisional measures and, more importantly, by 25 % considering the first full month following publication of the notice of initiation of investigation and the last full month preceding the imposition of provisional measures.
- (579) However, based on estimates provided by the Union industry, the consumption in the Union increased with a similar trend, that is by approximately 25 %. Consequently, the increase in imports was in line with the trend in consumption. This is further corroborated by the fact that a number of Union producers reported increase in sales volumes during the post investigation period.
- (580) Several parties also claimed that it cannot be considered that there was a massive increase in imports after the initiation of the case but rather that any observed increase is in line with previous trends, i.e., expected uptick in demand after the bottom in the cycle.
- (581) Based on the above analysis, the Commission concluded that there was no sufficient evidence that the rise in imports exceeded the increase in demand during the post investigation period. No evidence of stockpiling by the importers was found by or presented to the Commission. Moreover, the Commission noted that, as shown in table 2 above, in the post IP period, the average import price decreased, irrespective of the type of periods considered, and even when seasonality is taken into account. However, the decrease was in line with decrease in cost of production estimated by the Union industry for the post IP period. In view of the foregoing the Commission could not conclude that the rise of imports was likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, within the meaning of Article 10(4)(d) of the basic regulation.
- (582) Consequently, the Commission concluded that the conditions for retroactive collection are not met.

9. FINAL PROVISION

- (583) In view of Article 109 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council ⁽⁷⁰⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union or as a result of an amicable settlement, the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month. The interest rate shall not be negative. The interest shall run from the date of payment of the amount to be reimbursed until the date at which the reimbursement is due.
- (584) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of titanium dioxide, having the chemical formula TiO_2 , in all forms, as titanium oxides or in pigments and preparations based on titanium dioxide, containing a minimum of 80 % by weight of titanium dioxide calculated on the dry matter, having all types of particle sizes, classified under the Chemical Abstracts Service Registry Number (CAS RN) 12065-65-5 and 13463-67-7, currently falling under CN codes ex 2823 00 00 and ex 3206 11 00 (TARIC codes 2823 00 00 10, 2823 00 00 30, 3206 11 00 10, and 3206 11 00 30) and originating in People's Republic of China.

⁽⁷⁰⁾ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>).

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

Company	Fixed amount of duty (EUR per kg)	TARIC additional code
LB group: — LB GROUP CO., LTD. — HENAN BILLIONS ADVANCED MATERIAL CO., LTD. — LB LUFENG TITANIUM INDUSTRY CO., LTD. — LB SICHUAN TITANIUM INDUSTRY CO., LTD. — LB XIANGYANG TITANIUM INDUSTRY CO., LTD.	0,74	89CB
Anhui Gold Star group: — Anhui Gold Star Titanium Dioxide (Group) Co., Ltd. — ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED	0,25	89CC
Other cooperating companies listed in Annex	0,64	See Annex
All other imports originating in the People's Republic of China	0,74	8999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: *'I, the undersigned, certify that the (volume in unit we are using) 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.'* Until such invoice is presented, the duty applicable to all other imports originating in the People's Republic of China shall apply.

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽⁷¹⁾ the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The product described in Article 1(1) shall be exempted from definitive anti-dumping duty if it is imported for use in the production of white graphic inks for printing.

⁽⁷¹⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558)

This exemption shall be subject to the conditions laid down in the customs provisions of the Union on the end-use procedure, in particular Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽⁷²⁾ (the Union Customs Code).

Article 3

1. The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2024/1923 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.
2. The exemption under Article 2 shall also apply to the provisional anti-dumping duty under Implementing Regulation (EU) 2024/1923.

Article 4

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

- (a) it did not export the goods described in Article 1(1) during the period of investigation (1 October 2022 to 30 September 2023);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation, and which could have cooperated in the original investigation; and
- (c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 5

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

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

Done at Brussels, 17 December 2024.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁷²⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

ANNEX

People's republic of China's cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	ANHUI ANNADA TITANIUM INDUSTRY CO., LTD.	89CO
People's Republic of China	CITIC Titanium Industry Co., Ltd	89CP
People's Republic of China	Chongqing Titanium Industry Co., Ltd. of Pangang Group	89CQ
People's Republic of China	Guangxi Bluestar Dahua Chemical Co., Ltd	89CR
People's Republic of China	GUANGXI JINMAO TITANIUM CO., LTD	89CS
People's Republic of China	GUANGDONG HUIYUN TITANIUM INDUSTRY CORPORATION LIMITED	89CT
People's Republic of China	Guangxi Guangfeng Titanium Co., Ltd.	89CU
People's Republic of China	Hebei Milson Titanium Dioxide Co.,Ltd	89CV
People's Republic of China	Jinan Yuxing Chemical Co.,Ltd	89CW
People's Republic of China	KUNMING DONGHAO TITANIUM CO., LTD.	89CX
People's Republic of China	Nanjing Titanium Dioxide Chemical Co., Ltd.	89CY
People's Republic of China	NINGBO XINFU TITANIUM DIOXIDE CO.,LTD	89CZ
People's Republic of China	PANZHIHUA DARUI TECHNOLOGY CO.,LTD.	89DA
People's Republic of China	PANZHIHUA DONGFANG TITANIUM INDUSTRY CO., LTD.	89DB
People's Republic of China	PANZHIHUA KAIHAO TECHNOLOGY CO., LTD.	89DC
People's Republic of China	Pangang Group Titanium Industry Co., Ltd	89DD
People's Republic of China	SHANDONG XIANGHAI TITANIUM CO., LTD.	89DE
People's Republic of China	SHANDONG DAWN TITANIUM INDUSTRY CO., LTD.	89DF
People's Republic of China	SHANDONG DOGUIDE GROUP CO., LTD.	89DG
People's Republic of China	SHANDONG JINHAI TITANIUM RESOURCES TECHNOLOGY CO., LTD.	89DH
People's Republic of China	Xuzhou Titanium Dioxide Chemical Co., Ltd.	89DI
People's Republic of China	Yibin Tianyuan Haifeng Hetai Co., Ltd	89DJ
People's Republic of China	YUNNAN DAHUTONG TITANIUM INDUSTRY CO., LTD	89DK