



COMMISSION IMPLEMENTING REGULATION (EU) 2025/36

of 9 January 2025

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain polyvinyl chloride originating in Egypt and the United States

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 15 November 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of suspension polyvinyl chloride ('S-PVC') originating in Egypt and the United States of America ('the countries concerned') 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 2 October 2023 by the Polyvinyl Chloride Trade Committee ('the complainants'). The complaint was made on behalf of the Union industry of S-PVC 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. Provisional measures

- (3) In accordance with Article 19a of the basic Regulation, on 14 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.
- (4) The Commission received a number of comments from interested parties.
- (5) Foamalite Ltd ('Foamalite'), a user of S-PVC located in Ireland expressed its concerns about an 'Irish-specific problem' as its main competitor is located in Northern Ireland and may import S-PVC with lower duties and face higher competition from a user outside the Union, especially Türkiye. Foamalite exports about a third of its production outside the Union, a large portion to the United Kingdom. The Commission notes that the use of the Union inward processing would allow the importation of S-PVC without duties when the processed good would be re-exported. This would ensure that the competitiveness of Foamalite outside the Union would not be affected by duties. Regarding the competition with a competitor located in Northern Ireland, the Commission noted that the competitor in Northern Ireland will be subject to the same measures as Foamalite in the Union, as provided for in Article 5 of the Protocol on Ireland / Northern Ireland, to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽³⁾.

⁽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 certain polyvinyl chloride ('PVC') originating in Egypt and the United States of America (OJ C, C/2023/1033, 15.11.2023, ELI: <http://data.europa.eu/eli/C/2023/1033/oj>).

⁽³⁾ OJ L 29, 31.1.2020, p. 7, ELI: http://data.europa.eu/eli/treaty/withd_2020/sign.

- (6) The Commission clarified that the comments made by TCI Sanmar and Foamalite did not concern the accuracy of the underlying dumping and injury calculations within the meaning of Article 19a of the basic Regulation. Therefore, the Commission did not address these comments in the provisional Regulation. However, these comments are addressed below in recitals (35) and (36).
- (7) Formosa Plastics Corporation ('Formosa'), a US producer, claimed that the Commission had made a number of clerical errors in its calculations. These comments are addressed below in recital (60).
- (8) In July 2024, the Commission imposed provisional anti-dumping duties on imports of certain polyvinyl chloride ('PVC') originating in Egypt and the United States of America by Commission Implementing Regulation (EU) 2024/1896 ⁽⁴⁾ ('the provisional Regulation').

1.3. Subsequent procedure

- (9) Following the publication of provisional measures, the governments of Egypt and the United States, TCI Sanmar Chemicals S.A.E. (TCI Sanmar), Formosa, Oxy Vinyls, LP ('Oxy Vinyls'), Westlake Corporation ('Westlake') and the complainants filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.
- (10) The parties who so requested were granted an opportunity to be heard. A hearing took place with Oxy Vinyls on 3 October 2024.
- (11) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.
- (12) 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 S-PVC originating in Egypt and the United States of America ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. The government of United States, TCI Sanmar, Formosa, Oxy Vinyls, Westlake, Shin-tech, Tricon Dry Chemicals and the European PVC Window Profiles Association (EPPA) submitted comments within the deadline.
- (13) Comments that have been submitted on the provisional Regulation and were repeated by the parties in their comments to final disclosure, without any new substantive elements, are addressed once in this Regulation.

1.4. Sampling

- (14) After provisional disclosure, the Commission received comments concerning the representativity of the sample of Union producers from the Egyptian and USA governments and Formosa. The parties questioned the representativity of a Union sample that represented about 25 % of the estimated S-PVC production and 26 % of Union sales. The USA government referred in this respect to the WTO Appellate Body report in EC – Fasteners which found that a domestic industry accounting for 27 percent of the total estimated production of the like product did not satisfy the quantitative threshold and was inconsistent with Article 4.1 of the WTO Anti-Dumping Agreement (ADA) ⁽⁵⁾.

⁽⁴⁾ Commission Implementing Regulation (EU) 2024/1896 of 11 July 2024 imposing a provisional anti-dumping duty on imports of certain polyvinyl chloride ('PVC') originating in Egypt and the United States of America (OJ L, 2024/1896, 12.7.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1896/oj).

⁽⁵⁾ Appellate Body Report, European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WTO Doc. WT/DS397/AB/R (15 July 2011), paras. 430 and 468.

- (15) Firstly, the Commission notes that none of the interested parties provided comments on the Union producers sample when it was announced at initiation stage. Secondly, the case mentioned by the Government of the USA concerns the definition of 'major proportion' and initiation under 4.1 and 5.4 of the ADA respectively and not sampling. Therefore, those Articles are not applicable to the selection of the sample. This comment was rejected accordingly.
- (16) The USA government also requested the Commission for an explanation as to how it selected the sample. As stated in the Notice of Initiation ⁽⁶⁾, the Commission selected a provisional sample upon initiation of the investigations and information thereon could be found in the file for inspection by interested parties ⁽⁷⁾. The Note to the file provided the name of the companies sampled and the criteria used for their selection, that is, the volume of production and sales of the like product in the EU during the investigation period. Parties were given the opportunity to comment on the provisional sample. The Commission did not receive any comments and confirmed the provisional sample.
- (17) The Government of the USA and Formosa also questioned that the sample included two tollers. Certainly, INOVYN Manufacturing Belgium SA and Vynova Wilhelmshaven GmbH are producing S-PVC under tolling agreements. The Commission considers that producing S-PVC under tolling agreement does not imply that these two sampled entities are not producers, rather the contrary. Also, as the Union industry stated in its reply to these comments, the inclusion of tollers was necessary to cover the various business models applicable in the Union. The two entities that produce S-PVC under tolling agreements are amongst the largest S-PVC producers in the Union. Contrary to what the Government of the USA stated, the Commission did consider the producers' full cost of production, having obtained access to the accounting records of the entrepreneurs to that end.
- (18) Formosa also claimed that there was not enough information in the open file concerning the exact arrangements between the tollers and their entrepreneurs to make it possible for the interested parties to evaluate the representativity of the sample.
- (19) However, Formosa failed to submit comments on the proposed sample of the Union industry when it was made available on the open file, neither did it comment on the completeness of the open file in the course of the investigation. In any event, the open file of the investigation included sufficient detail to identify the tollers at an earlier stage of the proceeding including their various sales structure, and hence it was possible to assess the representativity of the sample by interested parties. Therefore these claims are rejected.
- (20) The Government of USA and Formosa claimed that the Commission failed to take into consideration the geographical spread of the Union industry when selecting the sample. In reply to this comment, the Commission reiterated that the sample of the Union producers was selected fully in accordance with Article 17 of the basic Regulation, as it composed of the three largest Union producers in terms production and Union sales. Furthermore, all these Union producers are located in different Member States (Belgium, Germany and the Netherlands) ensuring a good geographical spread taking into account the weight of the producing Member States. Therefore, these comments are rejected.
- (21) Thus, comments about the representativity of the Union sample were rejected.
- (22) In the absence of any further comments on sampling, recitals (8) to (15) of the provisional Regulation are confirmed.

⁽⁶⁾ See footnote 2.

⁽⁷⁾ t23.005593.

1.5. Individual examination

- (23) In the absence of any comments, recital (16) of the provisional Regulation is confirmed.

1.6. Comments on initiation

- (24) The Government of USA criticised the 'excessive redaction' of documents by the complainants, which it considered impeded the US parties' ability to comment on key elements of the complaint. This would be in violation of Article 6.4 and 6.5 of the WTO Anti-Dumping Agreement.
- (25) The Commission analysed the issue. It found that the Government of the USA misrepresented the situation when stating that 'all annexes to the complaint are confidential in their entirety', when that was not the case. In the case of many annexes, the open version is identical to the confidential version. For many other annexes, the non-confidential version properly reflects the information provided in its confidential version, taking due account of company sensitive information. In some specific instances, a non-confidential summary was not possible due to the nature of the information in question. In such cases, this was justified by the party(ies) providing the information and the request for confidentiality was assessed and accepted by the Commission. The Commission therefore concluded that the non-confidential version of the complaint complied with the provisions of Article 19(2) of the basic Regulation and Article 6.4 and 6.5 of the WTO Anti-Dumping Agreement.
- (26) The Government of USA also criticised the fact that comments of Oxy Vinyls regarding overly redacted material submitted by EU industry has been ignored by the Commission. In this regard it is noted that following comments from Oxy Vinyls, the Commission contacted the sampled Union producer who then submitted within the deadline provided by the Commission a revised non-confidential version of his questionnaire response.
- (27) In view of the conclusions above, recitals (17) to (29) of the provisional Regulation were confirmed.

1.7. Questionnaire replies and verification visits

- (28) Comments were received from the USA government and Formosa concerning the limited extensions given to exporting producers for replying to the anti-dumping questionnaire and lack of flexibility when setting the verification schedule, both of which creating unnecessary hardship for US respondents. The USA government pointed at the time lapse between the extended deadline for replying to the questionnaire and the imposition of provisional measures, and between the execution of an on-spot verification and the issuing of the report of that verification, to substantiate these claims.
- (29) The Commission rejected these claims and considered the mentioned examples as irrelevant, given that it had allowed exporting producers time to reply to the questionnaire beyond the 37 days stipulated in the Notice of Initiation, due to Commission holidays, and that it had carefully established the verification schedule with a view to accommodate the exporting producers' preferences as much as practically possible. It also pointed to the fact that the entire investigative process is time consuming and that exporting producers, after having submitted their questionnaire response, have been given several further opportunities to provide missing and/or additional data, up to and including during the on-spot verifications.
- (30) In the absence of any further comments, recitals (30) and (31) of the provisional Regulation are confirmed.

1.8. Investigation period and period considered

- (31) Oxy Vinyls stated that the Commission's selected investigation period in such a way that it ensured the worst possible outcome for US exporters from the perspective of injury, as shown by the delta between US and Union contract prices. The Commission noted that the investigation period was selected in accordance with its constant practice and with Article 6(1) of the basic Regulation. Therefore, this claim is rejected.
- (32) In the absence of any further comments, recital (32) of the provisional Regulation is confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (33) In the absence of any comment, the Commission confirmed its conclusions set out in recitals (33) to (38) of the provisional Regulation.

3. DUMPING

3.1. Egypt

3.1.1. Normal value

- (34) In the absence of any further comments, the Commission confirmed its conclusions set out in recitals (50) to (58) of the provisional Regulation.

3.1.2. Export price

- (35) TCI Sanmar alleged that there was an important calculation error as the reported CIF values used by the Commission were not Union border prices as transport and associated costs for all transactions made on FAS or FCA prices were not reported in its sales tables.
- (36) The Commission notes that in line with its consistent practice and in order to gather the data needed to assess export prices and dumping margins in accordance with the applicable provisions under the basic Regulation, exporting producers are obliged to report for each export transaction not only the actual invoice price but also a separate CIF price of the same transaction. In case the delivery term of the underlying transaction is not CIF, the exporting producer has to estimate that CIF value. In fact, in the case at hand, the Commission relied on the CIF values provided by TCI Sanmar. Where the delivery term of the underlying transaction was CIF, the Commission aligned the CIF value erroneously reported by TCI Sanmar to the actual invoice value. The comment and the Commission's clarification also concerned, *mutatis mutandis*, the CIF price used in the calculation of the injury margin (see recitals (129) and (130) of the provisional Regulation).
- (37) Pursuant to final disclosure, TCI Sanmar came back to its previous comments on the issue and alleged that the Commission relied on inappropriate CIF values, and that the subsequent calculation error arose in part due to requests by the Commission to amend data that TCI Sanmar originally submitted in its questionnaire response. TCI Sanmar added that Eurostat data showed a CIF value of EUR 926 per tonne, which was significantly higher than the value the Commission had used in its calculations, also because the Eurostat CIF values included a trader's margin (among other costs), whereas the CIF values used by the Commission did not.
- (38) The Commission clarifies that under its consistent case practice, data reported by individual companies in questionnaire responses, including deficiency letter responses, take precedence over general and public statistical data, in particular if it is for use for a company-specific calculation. The statistical data are not company specific, neither are they available on a transaction-by-transaction basis. The Commission also clarified that ultimately, the responsibility to report accurate data rests with each party subject to investigation.
- (39) In the absence of any further comments, the Commission confirmed its conclusions set out in recitals (59) and (60) of the provisional Regulation.

3.1.3. Comparison

- (40) It is recalled 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 further explained below, where appropriate, the normal value and the export price were adjusted in order to: (i) net them back to the ex-works level; and (ii) make allowances for differences in factors which were claimed, and demonstrated, to affect prices and price comparability.
- (41) In order to net the normal value back to the ex-works level of trade, adjustments were made on the account of packing costs.
- (42) In order to net the export price back to the ex-works level of trade, adjustments were made on the account of transport, insurance, handling and loading as well as packing. Allowances were made on the account of credit costs where these costs affected prices and price comparability (see also recital (47) of the present Regulation and recital (67) of the provisional Regulation.
- (43) After the imposition of provisional measures, TCI Sanmar reiterated previous claims, saying normal values should be adjusted downwards in view of the effects of a currency crisis on the economy of Egypt during the investigation period. For that purpose, TCI Sanmar referred to recital (64) of the provisional Regulation, which summarised a previous claim of TCI Sanmar, which inherently meant to use the exchange rate set by the Central Bank of Egypt ('CBE') on 6 March 2024 for the sake of calculating dumping with regard to transactions carried out during the investigation period, i.e. between 1 October 2022 and 30 September 2023. TCI Sanmar added that the underlying circumstances of the devaluation of the EGP showed that, during the investigation period, the true value of the EGP was significantly less than the published CBE Rate. In their submission following provisional disclosure, TCI Sanmar alleged the Commission had not addressed TCI Sanmar's argument in the provisional Regulation.
- (44) The Government of Egypt also made a submission after the publication of provisional measures in which it referred to TCI Sanmar's claim in recital (43) and added that the submitted evidence (exchange rate adjustment of 6 March 2024) was relevant to the present investigation. In its submission, the Government of Egypt unclearly referred to a WTO Appellate Body Report on *Argentina – Ceramic Tiles* where the WTO Appellate Body had established that post-investigation-period evidence directly related to transactions in the investigation period should not be dismissed as irrelevant.
- (45) The Commission refers to recitals (65) and (66) of the provisional Regulation where the comments have been fully addressed and rebutted. The Commission considered the claim made by the Government of Egypt flawed because the CBE had set applicable exchange rates throughout the entire investigation period which should therefore be applied to transactions made in that investigation period. Obviously, an exchange rate set on 6 March 2024 should not be applied to transactions made in the investigation period lasting from 1 October 2022 to 30 September 2023. In this regard, the use of the exchange rate proposed by TCI Sanmar does not appear to be in line with the requirements of Article 2(10)(j) of the basic Regulation.
- (46) Pursuant to final disclosure, TCI Sanmar, again, claimed that the official exchange rates set by the Central Bank of Egypt (CBE) for the investigation period were not reflective of market reality. The Commission notes that the reiterated claim was not apt to alter the Commission's previous assessment, laid down under recitals (65) and (66) of the provisional Regulation and recital (45) of the present Regulation.
- (47) TCI Sanmar submitted a second claim concerning the comparison between normal values and export prices, to which the Commission had referred in recital (67) of the provisional Regulation. Owing to the sensitive nature of the underlying facts, the Commission addressed this claim only with TCI Sanmar.
- (48) Pursuant to final disclosure, TCI Sanmar reiterated the claim referred to under the previous recital above, concerning a credit costs allowance. Again, given the sensitive nature of the underlying facts, the Commission confirmed the rebuttal of this claim vis-à-vis TCI Sanmar only.

- (49) The Government of Egypt reiterated the claim made by TCI Sanmar and referred to under recital (47) above merely stating that an upward adjustment to the Egyptian exporter TCI Sanmar's export prices based on submitted evidence should be made. That claim by TCI Sanmar was meant to increase the export price upwards, but the Commission's analysis of the claim had resulted in a downwards adjustment of the export price. The Government of Egypt considered that the Commission's refusal to grant an upward adjustment to TCI Sanmar's export prices contravened Article 2(10) of the basic Regulation, which provides for the principle of a fair comparison between normal values and export prices. In that respect, the Government of Egypt referred to a WTO Appellate Body Report, on *EU – Fasteners (China)*, which pronounced on the need for a fair comparison under Article 2.4 of the Anti-Dumping Agreement.
- (50) The Commission confirms that it ensured a fair comparison between normal value and export prices. The underlying details could only be shared directly with TCI Sanmar for confidentiality reasons.
- (51) In the absence of any further comments, recitals (61) to (68) of the provisional Regulation are hereby confirmed.

3.1.4. *Dumping margins*

- (52) In the absence of any accepted claim concerning the dumping margin calculation, recital (72) of the provisional Regulation is hereby confirmed.
- (53) 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
TCI Sanmar Chemicals S.A.E.	86,1 %
Egyptian Petrochemicals Company	109,5 %
All other companies	109,5 %

3.2. **United States of America**

3.2.1. *Normal value*

- (54) In its questionnaire reply, Westlake provided the consolidated cost to produce chlorine and caustic soda and deducted the income generated by the sale of caustic soda. At the provisional stage, the Commission rejected this adjustment. The reasons for this approach had been detailed in the individual disclosure made to Westlake, as follows:
- (i) chlorine and ethylene are the raw materials used for the production of VCM, the basic material used to produce S-PVC. Caustic soda and chlorine are co-products of the chlor-alkali process. Thus, caustic soda is neither a by-product of, nor a co-product in the production of S-PVC which is an entirely separate and upstream production process of the one which produces caustic soda;
 - (ii) the Commission had identified several pieces of information provided by Westlake, where it was explained that the chlorine and caustic soda are co-products of an electrochemical process which uses sodium chloride salt and electricity as raw materials. In this report, they explain the fully integrated chlor-alkali to S-PVC process (so called CAV process) and caustic soda is defined as co-product in the chlor-alkali process, not as a by-product;
 - (iii) in a file submitted by Westlake, caustic soda and chlorine operating results had been kept separate, showing that the EBIT of the caustic soda and chlorine are two separate businesses, with their own costs and incomes;

- (iv) in another file submitted by Westlake, the company had clearly distinguished the two separate businesses chlorine and caustic soda by reporting the cost of manufacturing to produce the two co-products.
 - (v) There is a general understanding that a co-product is intentionally produced alongside the primary product
- (55) After provisional disclosure, Westlake contested the Commission's approach on this issue. It submitted that it was crucial to reflect the reality that S-PVC and caustic soda are intertwined in their production and based on joint profits. To substantiate this point, it referred to the Commission's description of PVC production in its decision on the merger investigation INEOS/Solvay/JV ⁽⁸⁾. In that Decision, the Commission described caustic soda as a by-product of PVC production.
- (56) The Commission noted, first, that Westlake did not bring in any arguments rebutting to points (ii) to (iv) in recital (54) above which were included in its individual disclosure. It only commented on point (v) (and thus, implicitly, also on point (i)), stating that it disagreed to consider caustic soda a co-product. Westlake argued that caustic soda should rather be considered a by-product, as the Commission found in the mentioned merger investigation.
- (57) With regard to INEOS/Solvay/JV, the Commission noted that decisions made in merger investigations by the Commission's Directorate-General for Competition are not binding on trade defence investigations which are conducted by the Directorate-General for Trade under a different set of rules. In any event, the published Decision in INEOS/Solvay/JV in fact confirms that caustic soda is a by-product of the electrolysis of salt and water – not of S-PVC. It also states that caustic soda is the most economically relevant by-product in the PVC vertical chain itself – and not of S-PVC alone ⁽⁹⁾.
- (58) On the basis of the above, Westlake claim regarding the caustic soda adjustment was rejected.
- (59) Formosa made a number of claims concerning the normal value calculation. The first claim concerned an alleged mistake made by the Commission when it first, at pre-disclosure stage, revised the financial incomes and expenses reported in Formosa's profitability table and subsequently, when the provisional measures were imposed, it had not considered comments received from Formosa on that revision. The second alleged mistake concerned the assessment of the transport associated costs reported in the same table. The third claim concerned the treatment of sales discounts. The fourth claim concerned the calculation of Selling, General and Administrative expenses when the normal value has to be constructed. The last claim concerned the methodology to calculate the company's profitable sales in the dumping calculation.
- (60) Four of these were rejected and one was accepted. The reasons for their rejection and the acceptance of one claim were only disclosed to the company itself, as the comments had not been summarised in an open version.
- (61) In the absence of any further comments, recitals (73) to (81) of the provisional Regulation are hereby confirmed.
- (62) After final disclosure, Formosa reiterated two claims concerning the normal value calculation referred to under recital (59), in particular the claim concerning the request to revise the allocation of the financial incomes and expenses reported in the profitability table and the methodological claim on how the Commission should calculate the Selling, General and Administrative expenses percentage.
- (63) The Commission rejected both claims based on the explanations already submitted in Annex III of the specific disclosure documents sent to Formosa on 29 October 2024 ⁽¹⁰⁾. In short, for the first claim the Commission relied on verified figures. With regard to the second claim the Commission confirmed that the SG&A percentage has been calculated in accordance with the established dumping calculation methodology as a percentage of the ex-works sales turnover reported in the profitability table.

⁽⁸⁾ Case M.6905 – Ineos/Solvay/JV (2014).

⁽⁹⁾ Case M.6905 – Ineos/Solvay/JV, paragraph 83.

⁽¹⁰⁾ t24.009617.

3.2.2. Export price

- (64) As explained in recital (83) of the provisional Regulation, for the indirect sales through unrelated traders in the USA, the export price was established on the basis of the price at which the product concerned was sold to those traders.
- (65) Westlake submitted that at the time of sale to these unrelated traders, it did not know whether the specific goods sold, or what volumes thereof, were destined for the Union. Therefore, it submitted, the prices for these sales were not specific to the Union market and these sales could not be considered to reflect export prices to the Union. It therefore claimed that these sales should not have been accounted for in the dumping calculation. The Commission recalled that in the course of the investigation it had obtained information that allowed it to establish EU destination for a large number of transactions to these unrelated traders and only those transactions for which the EU destination could be established were included in the calculation of the export price. Indirect export sales for which the EU destination could not be confirmed were excluded from the dumping calculation. The Commission found that whether or not Westlake was aware of the final destination of these export sales at the time of sale to the unrelated domestic trader was irrelevant. The facts demonstrated that these sales transactions were sales to the Union and therefore they were included in the dumping calculation. The claim was therefore rejected.
- (66) In the absence of any further comments, recitals (82) and (83) of the provisional Regulation are hereby confirmed.

3.2.3. Comparison

- (67) It is recalled 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 further explained below, where appropriate, the normal value and the export price were adjusted in order to: (i) net them back to the *ex-works* level; and (ii) make allowances for differences in factors which were claimed, and demonstrated, to affect prices and price comparability.
- (68) In order to net the normal value back to the *ex-works* level of trade, adjustments were made on the account of handling, loading and ancillary expenses, freight and insurance costs. Allowances were made for the following factors affecting prices and price comparability: credit costs, packing expenses, discounts and other allowances, when applicable.
- (69) In order to net the export price back to the *ex-works* level of trade, adjustments were made on the account of handling, loading and ancillary expenses, freight and insurance costs. Allowances were made for the following factors affecting prices and price comparability: credit costs, packing expenses and discounts, when applicable.
- (70) In the absence of any comments, recitals (84) and (85) of the provisional Regulation are hereby confirmed.

3.2.4. Dumping margins

- (71) The partly accepted claim from Formosa resulted in a slight change of its dumping margin, which went from 70,3 %, as indicated in recital (87) of the provisional Regulation, to 71,2 %.
- (72) 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
Formosa Plastics Corporation	71,2 %
Westlake Chemicals	58,0 %

Company	Definitive dumping margin
Other cooperating companies	62,3 %
All other companies	77,0 %

4. INJURY

- (73) After the publication of the provisional Regulation, Formosa claimed that the fact that several injury indicators were based on estimations casted doubt on the reliability of those indicators.
- (74) In reply to this comment the Commission noted that it estimated the macro indicators for the injury assessment such as production and sales volume etc., on the basis of the information received from the sampled and non-sampled Union producers and Eurostat, as explained basically in recital (100) of the provisional Regulation. Furthermore, Formosa failed to identify any specific problems with those estimations or provide alternative estimations.
- (75) On the basis of the above, these comments of Formosa were rejected.

4.1. Definition of the Union industry and Union production

- (76) In the absence of any comment with respect to this section, recitals (92) to (93) of the provisional Regulation were confirmed.

4.2. Determination of the relevant Union market

- (77) Following the publication of the provisional Regulation, Westlake and Oxy Vinyls reiterated their claim that the revenues and profits of caustic soda should be considered in the injury analysis, and S-PVC and caustic soda were intertwined in their production and markets. In particular, Oxy Vinyls claimed that the Commission did not provide sufficient reasons when rejecting that the injury assessment should also take into consideration the caustic soda business. Furthermore, Westlake alleged that S-PVC producers who are integrated in the production of chlorine rely on joint profits.
- (78) The Commission notes that Westlake and Oxy Vinyls did not provide any additional evidence that would put into question the findings in recital (97) of the provisional Regulation and the provisional findings as explained in recitals (55) to (58) above. In any event, the Commission recalls that not all Union producers are engaged in the production of chlorine. Furthermore, S-PVC and caustic soda are co-products of the Chlor-Alkali process and caustic soda is not a co-product or by-product of the S-PVC production and should be, therefore, treated separately.
- (79) Oxy Vinyls comment that the Commission did not provide sufficient reasons when rejecting caustic soda in the injury analysis was very vague and did not specify the relevant factors that would have a bearing effect on the Union industry, because of this rejection. The Commission disagrees with the above statement of Oxy Vinyls for the following reasons. In the recital (96) and (97) of the provisional Regulation, the Commission clearly explained the production process of the product under investigation by the different sampled Union producer and the relevance of caustic soda therein. The Commission notes here again that all of the sampled Union producers bought chlorine from separate legal entities either related or unrelated. Therefore the production of caustic soda was separate to the production process of S-PVC and did not affect the cost of production or profitability of the product under investigation. Therefore, this claim was rejected. Oxy Vinyls also claimed that the Commission had the duty to analyse the segmentation of the market of the product under investigation. In this regard, the Commission found that there was no market segmentation for S-PVC as explained in detail in recitals (98) and (99) of the provisional Regulation. The exporting producer failed to submit any new evidence that would have put the provisional conclusion on market segmentation into question, therefore this claim was rejected.

- (80) On the basis of the above, the conclusions set out in recitals (94) to (99) of the provisional Regulation were confirmed.
- (81) Following final disclosure Oxy Vinyls reiterated its claim that the Commission should have treated PVC and caustic soda as integrated industries warranting cumulative consideration in the injury assessment. In support of this claim it referred mainly to Commission's description of PVC production in its decision on the merger investigation INEOS/Solvay/JV.
- (82) With regard to the above, the Commission maintains its position, as developed in recital (57) above. The claim was therefore rejected.

4.3. Union consumption

- (83) In the absence of any comment with respect to the Union consumption, the conclusions set out in recitals (100) to (103) of the provisional Regulation were confirmed.

4.4. Imports from the countries concerned

4.4.1. Cumulative assessment of the effects of imports from the countries concerned

- (84) The Government of Egypt, TCI Sanmar and Westlake contested the cumulative assessment of the effects of imports from Egypt and the USA as in their assessment the market share of Egyptian imports was negligible. In support of their claim, Westlake and TCI Sanmar also referred to Court of Justice judgement in the *Eurofer v Commission* case⁽¹¹⁾, where the Court clarified that 1 % requirement in Article 5(7) and Article 9(3) of the basic Regulation is not a mandatory threshold above which the Commission is prevented from concluding that imports from a particular country is negligible.
- (85) The Commission reiterates that the conditions set in Article 3(4) of the basic Regulation were met. The Commission also notes that the imports from the countries concerned were also above the threshold for negligibility outlined in the WTO Anti-dumping Agreement⁽¹²⁾. The Commission recalled that the imports from Egypt reached a market share of 1,92 % in the investigation period which is clearly above the *de minimis* threshold laid down in Article 9(3) of the basic Regulation. Furthermore, in the *Eurofer v Commission* case the Court of Justice stated that market share 'slightly' higher than 1 % may be considered as negligible, leaving the Commission with some discretion to assess what would be considered negligible in each case. In this particular investigation, the 1,92 % market share during the investigation period was not 'slightly' higher than 1 % and therefore was considered not to be negligible.
- (86) On the basis of the above, recitals (104) to (107) of the provisional Regulation were confirmed.
- (87) Following final disclosure TCI reiterated its decumulation claim, referring to the Court of Justice judgement in the *Eurofer v Commission* case. The Commission considers it has duly examined its claim, as explained in recital (85) above. This claim was therefore rejected.

4.4.2. Volume and market share of the imports from the countries concerned

- (88) Westlake questioned the Commission's methodology chosen for the estimation of the volume of imports of E-PVC falling under the CN code 3904 10 00. In particular, Westlake questioned how the conclusion that the 4 % of the import volume under the said CN code represented the volume of imports into the EU of E-PVC, was reached. In this regard, as explained in recital (102) of the provisional Regulation the Commission based the division of imports under CN code 3904 10 00 between the two types of PVC was based on market intelligence included in the complaint. Moreover, the Commission notes that Westlake did not provide any evidence that the Commission

⁽¹¹⁾ Judgment of 24 February 2022, *Eurofer, Association Européenne de l'Acier, AISBL v European Commission*, C-226/20P, EU:C:2022:122, para. 90.

⁽¹²⁾ Article 5.8 of the WTO Anti-Dumping Agreement.

estimates were wrong or an alternative, more appropriate methodology to calculate the share of E-PVC. In addition, merely expressing doubts without identifying any issues is not sufficient to put into question the Commission's approach based on market intelligence. Oxy Vinyls claimed that there had not been significant increase in dumped imports from the US as imports throughout the investigation period had shown a downward trajectory. The Commission notes that this argument is based on the quarterly imports data from the US during the investigation period and as the imports during the last quarter of the investigation period were the lowest, it concluded that imports exhibited a downward trajectory. Table 1 shows the quarterly evolution of imports. During all four quarters of the investigation period, imports from the countries concerned were higher than the quarterly imports observed one year earlier.

Table 1

Import volumes from countries concerned (tonnes), quarterly evolution

	Pre-IP 12 months				IP			
Year	2021	2022	2022	2022	2022	2023	2023	2023
Quarter	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Egypt	1 176	8 676	7 443	10 116	18 327	21 176	11 798	10 702
USA	9 787	10 590	30 744	33 087	53 291	88 610	86 199	39 290
Total	10 964	19 266	38 187	43 203	71 619	109 786	97 997	49 992
Change over prior same quarter (Qn, Y/Qn, Y-1)					553 %	470 %	157 %	16 %

Source: Eurostat.

- (89) In view of the above, the Commission rejected the comments and confirmed the conclusions set out in recitals (108) to (110) of the provisional Regulation.
- (90) Following final disclosure Oxy Vinyls claimed that the Commission had not addressed its allegation regarding the alleged transshipment of US imports to the UK via EU Member States, which resulted in the recording of higher import volumes from the USA in this proceeding.
- (91) The Commission noted that import figures extracted from Eurostat do not include goods arriving in Union ports and transhipped to other destinations via the transit procedure, but capture goods that are released for free circulation into the customs territory of the Union. Thus, this claim was rejected.
- (92) Oxy Vinyls further claimed that there has been no genuine increase of dumped imports from the USA, but any rise coincided with periods of *force majeure* indicating that they were simply serving to address the supply shortfall on the Union market.
- (93) In this regard the Commission found that most of the *force majeure* events took place early in the period considered, that is in 2020 and 2021, and thus, cannot explain the injury shown in the investigation period after the surge of dumped imports from the second half of 2022.

(94) In view of the above, the post-final-disclosure claims of Oxy Vinyls were rejected.

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

(95) After the publication of the provisional Regulation, TCI Sanmar claimed that the fact that import prices were lower than Union prices during the investigation period was not sufficient to show that the Union industry had suffered injury during the investigation period. The company called the Commission to use the same approach as in the Pentaerythritol decision ⁽¹³⁾ and terminate the investigation.

(96) The case quoted by TCI Sanmar was not at all applicable to the investigation at hand as the factual situation in the Pentaerythritol decision was very different. In that investigation the volumes of dumped imports had increased by 8 % during the investigation period, whereas in this investigation the increase of dumped imports between 2022 and the investigation period was 91 % as the volumes multiplied by two times over the investigation period (from 2020 to 2022 the volume of dumped imports increased by 131 286 tonnes whereas from 2022 to the investigation period, the volume of dumped imports increased by further 157 119 tonnes). In any case, the facts of each anti-dumping proceeding are examined on their own merits and the Commission is not bound to follow conclusions reached in other cases ⁽¹⁴⁾. Therefore, this claim was rejected.

(97) In addition, Oxy Vinyls called for a dynamic assessment of the undercutting for the entire period considered by claiming that the assessment made by the Commission was not appropriate because it was static. Oxy Vinyls quoted in support a number of WTO reports ⁽¹⁵⁾. The same party alleged that there was a noticeable difference between spot and contract prices of the US and Union producers and that the Commission should have made its injury and dumping price comparisons using the same set of prices.

(98) Finally, the Government of the USA claimed that the Commission's price undercutting analysis was solely based on CIF prices obtained from the sampled US producers during the investigation period and that relying on the same 12-month period for both its price undercutting analysis and its dumping margin calculations failed to reflect the fundamental differences between the two analyses.

(99) The Commission notes that its undercutting analysis was done in line with Article 3(3) of the basic Regulation. In addition, the Commission conducted a price comparison for the whole period considered examining the price trend and combining this with the detailed calculations of undercutting and underselling, based on company specific data both on the exporting producer side and the Union industry side, for the investigation period. Furthermore, as explained in recitals (115) to (116) of the provisional Regulation, the calculation of the undercutting margin was made on a product type level and in the questionnaires for the exporting producers and the sampled Union producers the Commission requested these parties to provide the sales data based on the product types only for the investigation period. No interested party commented on the questionnaire and claimed that the Commission should ask the exporting producers and the sampled Union producers to report the sales data at product type level for the entire period considered nor did any party comment on the fact that the product control number (PCN) structure did not require a distinction of spot and contract sales. On the basis of the above, the comments on undercutting were rejected.

⁽¹³⁾ Commission Decision 2007/214/EC of 3 April 2007 terminating the anti-dumping proceeding concerning imports of pentaerythritol originating in the People's Republic of China, Russia, Türkiye, Ukraine and the United States of America (OJ L 94, 4.4.2007, p. 55, ELI: <http://data.europa.eu/eli/dec/2007/214/oj>).

⁽¹⁴⁾ In any event, the Commission recalls that the legality of regulations imposing anti-dumping duties shall be assessed by reference to applicable legal rules and not by reference to past administrative practice. See Judgment of 12 March 2020, *Eurofer v Commission*, T-835/17, EU:T:2020:96, paragraph 76 ('[t]he lawfulness of a regulation imposing anti-dumping duties or, as in the present case, terminating the proceedings without 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 Commission's and the Council's alleged previous decision-making practice.').

⁽¹⁵⁾ Appellate Body Report, China – HP-SSST (Japan/EU), para. 5.159., Panel Report, China – GOES, para. 7.528.

- (100) Oxy Vinyls and Westlake also submitted that there was no evidence of correlation between the Union industry's prices and the imports, but Union producers had to drop prices because market dynamics rather than the effect of imports. In addition, TCI Sanmar and Oxy Vinyls claimed that there was no evidence of price suppression. Also, the USA government claimed that the Commission found that Egypt and US imports suppressed the like product only during the investigation period.
- (101) The Commission found there was a clear correlation between the increase in the volume of imports from the countries concerned and the gradual decrease in import prices over the period considered. As a result, the Union industry was unable to sell at prices covering their cost of production and therefore became lossmaking in the investigation period. Indeed, this correlation was clear when looking at the variations between 2022 and the investigation period, when imports increased by 91 % in volumes and 116 % in market share, causing a decrease of 28 % in Union industry's prices. These claims were therefore rejected.
- (102) On the basis of the above, the conclusions set out in recitals (111) to (117) of the provisional Regulation were confirmed.
- (103) Following final disclosure Oxy Vinyls reiterated its earlier claim regarding the dynamic assessment of undercutting. The Commission maintains its findings as developed in recital (99) above.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (104) In addition to several comments on specific injury indicators that had been addressed in each section, the Commission received comments from Formosa about its overall injury analysis. Formosa claimed that Commission failed to provide solid evidence of injury to the Union producers as several injury indicators did not show a negative trend but rather remained positive or at least stable, such as production capacity, prices and profitability. Further the decrease in market share can only be considered as marginal as the Union industry even during the investigation period remained above 80 %.
- (105) The Commission did not consider the various indicators in isolation but rather taken all injury indicators together and, despite what Formosa claimed, the majority of these indicators showed a negative trend. Furthermore, it is not a legal requirement for the establishment of material injury that all injury indicators show a negative trend.
- (106) In the absence of any other specific comments on this section, recitals (118) to (122) of the provisional Regulation were confirmed.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

- (107) The Government of the USA criticised the Commission for having used provisionally the official statistics of 2022 to estimate the production of S-PVC in the Union for the investigation period.
- (108) The Commission used the most recent statistical data available for estimating the Union production of S-PVC. Furthermore, the Government of the USA failed to supply any evidence that would question the reliability of the data used by the Commission or more recent data for the estimation of the production.

- (109) Following the publication of the provisional Regulation, Eurostat released its latest figures concerning the production of the product concerned for the year 2023⁽¹⁶⁾. Following this update, the relative weight of S-PVC producers became 65 % of total production for the investigation period. In conclusion, the analysis done by the Commission on the basis of the 2022 data, where the weight of the S-PVC producers was 66 % remained valid for the determination of Union production during the investigation period. Therefore, this claim was rejected.
- (110) On the basis of the above, the conclusions set out in recitals (123) to (127) of the provisional Regulation were confirmed.

4.5.2.2. Sales volume and market share

- (111) TCI Sanmar alleged that the fact that the Union industry lost its near-monopoly status in the Union market was not a result of the injurious dumping, but merely reflected a normal competitive process and the cyclical nature of the industry with fluctuations in demand and changes in the share of supply. TCI Sanmar alleged that in the Hubei⁽¹⁷⁾ judgement the General Court considered that a decrease of market share must be considered in the light of the fact that the industry had a significant market share.
- (112) The Commission recalls that the circumstances of the investigation behind the Hubei judgement were not the same as in the current case. In particular, the referred judgement states that 'the applicant essentially – and rightly – claims, besides the decrease of the Community industry's market share, the economic factors referred to above are all positive and, on the whole, paint a picture of an industry in a situation of strength, not of fragility or vulnerability'⁽¹⁸⁾. Thus, the Commission considers that it cannot be inferred from that judgment that the appreciation of the General Court as regards the market share would be relevant for this investigation, in which there were several negative factors showing the injury, in addition to the loss of market share and to the fact that, contrary to the production of seamless pipes and of tubes of iron or steel, PVC is a cyclical industry that, furthermore, maintained in the case at hand a stable production capacity, as recalled in recitals (126-127) and (187) of the provisional Regulation. This claim was therefore rejected.
- (113) On the basis of the above, recitals (128) to (132) of the provisional Regulation were confirmed.

4.5.2.3. Growth

- (114) No comments were received regarding this indicator. Therefore, recital (133) of the provisional Regulation was confirmed.

4.5.2.4. Employment and productivity

- (115) No comments were received concerning these indicators. Therefore, recitals (134) to (138) of provisional Regulation were confirmed.

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

- (116) No comments were received concerning on the magnitude of the dumping margin and recovery from past dumping. Therefore recitals (139) to (140) of the provisional Regulation were confirmed.

⁽¹⁶⁾ https://ec.europa.eu/eurostat/databrowser/product/view/ds-056121__custom_12544654?lang=en.

⁽¹⁷⁾ Judgment of the General Court (Second Chamber), 29 January 2014, Hubei Xinyegang Steel Co. Ltd v Council of the European Union, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=40954BAF1F62AA7A028721CFC94C10D9?text=&docid=147002&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1702873>.

⁽¹⁸⁾ Judgment of 29 January 2014, *Hubei v Council*, T-528/09, EU:T:2014:35, paragraph 61.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

- (117) The Government of the USA referred to the evidence provided by Oxy Vinyls regarding the fact that the cost of ethylene in the EU market increased by almost 50 percent, and that the cost of ethylene in the EU market was more than the three times the cost of ethylene in the US market in the first half of 2023 and the fact that this was not addressed in the provisional Regulation. At the same time, Oxy Vinyls recognised that the substantial increase in ethylene costs in the Union peaked in 2022.
- (118) In this regard it is noted that ethylene, main raw material in the production of S-PVC, was duly taken into account together with other factors of production in Table 7 of the provisional Regulation. However, as the injury was more visible in the investigation period when the imports from the countries concerned almost doubled in comparison to 2022, the ethylene peak of 2022 was not the detrimental factor for the injurious situation of the Union industry in the investigation period. It is also noted that had it not been for the dumped imports, the Union industry would have been able to increase prices to recover its costs (see Table 1 for a quarterly evolution of imports from the countries concerned for more detail).
- (119) Following final disclosure Oxy Vinyls claimed that ethylene costs continued to rise in 2023 placing sustained pressure on Union producers. While Oxy Vinyls did not provide any supporting evidence in this regard, the Commission by accessing publicly available statistics found that the average worldwide price of ethylene in the investigation period was 16 % lower than the average price in 2022 ⁽¹⁹⁾. This claim was therefore rejected.
- (120) Oxy Vinyls claimed that Union producers did not become 'price takers' in the investigation period but rather that Union producers had to drop their prices in the investigation period because of market dynamics. Oxy Vinyls claimed that after three years of constantly increasing prices, Union producers had simply begun to risk alienating their customers, who were existing in an ever-contracting market. It was observed that during the investigation period the Union industry could not increase prices to cover costs due to the surge of the dumped imports and not to other market dynamics nor alienation of clients, as claimed by Oxy Vinyls. On the basis of the above, the conclusions set out in recitals (141) to (143) of the provisional Regulation were confirmed.

4.5.3.2. Labour costs

- (121) No comments were received concerning labour costs. Therefore, recitals (144) to (146) of the provisional Regulation were confirmed.

4.5.3.3. Inventories

- (122) No comments were received concerning inventories. Therefore, recitals (147) to (148) of the provisional Regulation were confirmed.

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

- (123) The Government of the USA, Oxy Vinyls and TCI Sanmar claimed that the injury observed by the Union industry was explained by the high investments made in the investigation period. They claimed that those investments had negative consequences on the costs of production and profits of the sampled Union producers.
- (124) The Commission acknowledged that considerable investments were triggered by the need to ensure compliance with applicable regulations (in other words, to stay in business). However, the injury found cannot be attributed to those investments because such investments are depreciated over long periods and did not increase current depreciation costs and, therefore, have not contributed to the observed injury that pushed the Union industry to be loss making in the investigation period.

⁽¹⁹⁾ [Monthly ethylene prices globally 2024 | Statista](#) (last accessed 13 November 2024).

- (125) In order to illustrate the error of the argumentation raised by these parties, the following table shows the amounts of investments and depreciation costs over the period considered. The table shows that while investments have increased, the total depreciation in the cost of manufacturing of S-PVC for the sampled producers went down by 14 percentage points over the period considered, as companies postponed investment. This demonstrates that the losses incurred by the Union industry during the investigation period cannot be linked to the level of investments made.

Table 2

Investments and depreciation costs (EUR)

	2020	2021	2022	IP
Investments	64 616 015	61 243 727	82 005 921	141 483 932
<i>Index</i>	100	95	127	219
Total depreciation of the like product	6 730 575	8 316 453	5 295 182	5 763 630
<i>Index</i>	100	124	79	86

Source: Sampled Union producers

- (126) On the basis of the above, recitals (149) to (154) of the provisional Regulation were confirmed.
- (127) Following final disclosure Oxy Vinyls submitted that increasing costs of compliance associated with numerous Union environmental and social endeavours is a substantial factor in any injury that Union industry may be facing and requested this to be adequately reflected in the Commission's assessment. It further claimed that Union producers allocated resources for compliance purposes towards the end of the period considered which is when the alleged injury began. It also claimed that these costs have contributed to the decline in the return on investment for Union producers at the end of the period considered.
- (128) The Commission firstly refers to recital (124) and (125) above where compliance costs in the form of depreciation are analysed. Their effect on investments has been duly considered in the injury analysis. Regarding the return on investments this was assessed in recitals (153) and (159) of the provisional Regulation, where it was evident that it developed negatively in view of the loss-making situation of the Union producers in the investigation period.
- (129) Following final disclosure Oxy Vinyls submitted that its claim following provisional disclosure that Union producers' inability to raise capital cannot reasonably be attributed to US imports, was not addressed in the final disclosure.
- (130) As noted in recital (154) of the provisional Regulation, the Commission looked into the particular situation of the sampled companies and identified various reasons that made it difficult for these companies to benefit from reallocation of resources at group level. Indeed, as indicated in recital (154) prioritising investments in other regions of the world, not addressing bottlenecks in the production process, extraordinary ongoing budgetary cuts, and others, were acknowledged. The role of dumped imports, however, could not be ignored because of their effect on the loss-making situation of these producers, during the investigation period and the uncertainty for the future resulting thereof. The claim of Oxy Vinyls was therefore rejected.

4.5.4. Conclusion on injury

- (131) All claims of the parties following the provisional Regulation were rejected. The Commission therefore concluded, based on the findings disclosed in the provisional Regulation, that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation and recitals (155) to (161) of the provisional Regulation were, therefore, confirmed.

5. CAUSATION

5.1. Effects of the dumped imports

- (132) TCI Sanmar contested that the dumped imports caused material injury to the Union industry by arguing that (i) the 'steep' increase of import volumes was measured from an extremely low starting base of 1 % market share and that the Union industry maintained an overwhelming market share of 80 % during the investigation period; (ii) the prices of imports not being injurious and the industry being profitable throughout the period considered, except for the investigation period; and (iii) the Union industry's cause of the losses in the investigation period was the high level of investments. The Commission considered that these elements had been addressed in other sections: see recitals (85), (96), (99), (124) and (125), above.
- (133) On the basis of the above, the conclusions in recital (163) to (170) of the provisional Regulation were confirmed.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (134) Formosa contested that imports from third countries had remained relatively stable and called for the Commission to examine the import trends more carefully.
- (135) The Commission confirmed that imports from all third countries except the countries concerned were stable in the investigation period as in 2020 (322 205 tonnes in the investigation period versus 317 781 in 2020 in absolute figures) and that their market share increased only moderately (from 8 % in 2020 to 10 % in the investigation period). Furthermore, the Commission notes that Formosa failed to explain what exactly the Commission should have analysed differently or to supply any evidence that would have questioned the Commission conclusion with respect of to third country imports. Therefore, this claim of Formosa was rejected.
- (136) TCI Sanmar claimed that imports from Mexico were significant and that it was difficult to understand how the Commission could regard imports from the countries concerned as having a price suppression effect but not for those of Mexico. Imports from Mexico were priced slightly higher than the imports from Egypt in the investigation period but still lower than the price of Union industry. TCI Sanmar called the Commission to remedy its failure to duly consider whether imports during the investigation period from Mexico, the second largest exporter to the Union, attenuated the causal link.
- (137) The Commission refers to Table 11 in the provisional Regulation, where it is clearly indicated that the volume of imports from Mexico in the investigation period were 9 % lower than in 2020 and their market share remained stable throughout the period considered. In light of these trends the Commission maintains that imports from Mexico together with countries other than the countries concerned did not attenuate the causal link between the injury suffered by the Union industry and the dumped imports.
- (138) TCI Sanmar also noted that imports from South Korea increased over the period considered from 0 % in 2020 to 2 % in the investigation period. TCI Sanmar indicated that the increase in volume and market share is similar to the increase in Egyptian imports and that the Commission failed to sufficiently examine the increase in imports from South Korea.
- (139) The Commission indeed notes that imports from South Korea, increased by 48 368 tonnes over the period considered obtaining a market share of 1,6 % in the investigation period. It also notes that the import prices of South Korea in the investigation period while been 14 % lower than the prices of the sampled Union producers, they were 7 % higher than the import prices of the countries concerned. At the same time the import prices from South Korea were consistently higher than the Union producers' prices in all other periods of the period considered. While acknowledging that the South Korean imports, in particular taking into consideration their increase in market share during the period considered may have contributed to the injury suffered by the Union industry during the investigation period, the Commission confirms the conclusion set out in recital (175) of the provisional Regulation that that imports from third countries (including South Korea) did not attenuate the causal link between the injury suffered by the Union industry and the dumped imports from the countries concerned.

- (140) In light of the above, the conclusions set out in recitals (171) to (175) of the provisional Regulation were confirmed.
- (141) Following final disclosure TCI Sanmar disagreed with the Commission's assessment that imports from South Korea did not attenuate the casual link, first because the import prices from South Korea were lower than those of Union producers during the investigation period and secondly because the Commission relied on data of periods other than the investigation period.
- (142) The Commission as stated in recital (139) had acknowledged that South Korean imports may have contributed to the injury suffered by the Union industry, but it maintained however that their impact cannot individually be regarded as significant in terms of volumes and prices and they cannot have attenuated the causal link between the injury suffered by the Union industry and the dumped imports from the countries concerned.

5.2.2. *Export performance of the Union industry*

- (143) Formosa and Oxy Vinyls also claimed that the reference to exports to Switzerland at price below market value and the allegation that 'cheap' US and Egyptian imports are flooding third-country markets like the UK and Switzerland were baseless.
- (144) However, that finding was based on the assessment of sales data provided by US producers and unrelated traders and by reference to the import's statistics of Switzerland and the UK. Moreover, the ongoing UK investigation, in particular after the decision about registration of imports as of 26 July 2024 ⁽²⁰⁾, confirmed that the conclusions of the Commission were not baseless.
- (145) On the basis of the above, the conclusions set out in recitals (176) to (184) of the provisional Regulation were confirmed.

5.2.3. *Overcapacity in the S-PVC industry*

- (146) Westlake claimed that the reason for the Union industry's low capacity utilisation during the investigation period, and any negative consequences suffered therefrom, had to do with the fact that the Union industry had much more capacity than what the domestic market could absorb. Westlake submitted that the Union industry's installed capacity remained well above the Union demand even when demand peaked in 2021, a year marked by a strong economic recovery in the EU, Union producers' capacity exceeded the Union demand in that year by 22,5 %, and that such constant overcapacity was bound to have negative effects for Union producers, but it could not be an indication of injury caused by the dumped imports.
- (147) Similarly, Oxy Vinyls alleged that while the Commission admitted the 'relatively high level of overcapacity' it dismissed this problem as irrelevant to the situation of the Union industry, on the rather evasive ground that such overcapacity was somehow normal. Oxy Vinyls argued that it cannot be that overcapacity abroad was viewed with suspicion and acted against, while overcapacity at home was considered benign.
- (148) In this regard, the Commission noted that Westlake comments fail to take into account the export performance of the Union industry when measuring overcapacity. Consequently they are dismissed, because they measure overcapacity only in relation to Union demand. Furthermore, the figures presented in their claim were inaccurate. Moreover, and as to the comments of Oxy Vinyls, the Commission noted that the Union industry was not presenting signs of low capacity utilisation rates before the surge of dumped imports in late 2022 ⁽²¹⁾ and the relatively high level of overcapacity of the Union industry in the investigation period was the direct result of the surge in dumped imports and the temporary economic contraction that was considered separately below in Section 5.2.5.
- (149) On the basis of the above, the conclusions set out in recitals (185) to (190) of the provisional Regulation were confirmed.

⁽²⁰⁾ Trade remedies notice 2024/07: registration of imports on suspension poly (vinyl chloride) from the United States of America – GOV.UK.

⁽²¹⁾ Capacity utilisation rate 91 % in 2020 and 2021 (see Table 4 of the provisional Regulation).

5.2.4. *Energy crisis in the Union*

- (150) The US government claimed that the Commission acknowledged in recital (192) of the provisional Regulation that the increase of the like product's prices in 2022 were attributable to the energy crisis that year. It also stated that the Union industry was impacted by an energy crisis in 2022, which increased the like product's prices.
- (151) The Egyptian government claimed that 'the significant effects of the energy crisis and economic contraction in the Union market have not been adequately considered by the Commission', as 'the Commission's conclusion that import prices caused injury is unsupported, as Union producers experienced increased costs due to the energy crisis yet passed these costs on to customers without suffering material injury'.
- (152) Formosa requested the Commission to revise its assessment and consider the injurious impact of the energy crisis without attributing any such injury to the dumped imports. Formosa also claimed that the Commission over-relied on the data from 2021 and the first half of 2022, and unduly disregarded the impact of the energy crisis in the later months of 2022 and early 2023.
- (153) On the above, the Commission noted that its statement in recital (193) of the provisional Regulation referred to the Union industry being able to pass through the higher costs, including the higher energy costs, to users in 2022. However, as mentioned in recital (142) of the provisional Regulation, the situation was not the same at the end of 2022 when the sampled Union producers were having difficulties to have all costs covered by the sales prices.
- (154) The Commission reiterated that the energy crisis affected the costs of the Union industry starting in 2022. However, the Union industry was able to pass through these higher costs until dumped imports surged in late 2022 and 2023 (i.e. in the investigation period). Finally, the Commission considered that the analysis of the imports from third countries confirmed that if the energy crisis, and not the dumped imports, would have caused the injury, the Union industry being able to pass these energy costs, one would have been expected to observe significant market share increases for imports from other countries. However, significant market share increases were observed only for the dumped imports.
- (155) Westlake contested the statement about the end of the energy crisis in late-2022 made by the complainants. In this regard, the Commission considered that while the complainants and the Commission referred to the energy crisis as a period during which energy prices continuously increased, Westlake and other US producers such as Formosa, considered that the energy crisis referred to a period during which energy prices in the Union were significantly higher than in the US. The Commission did not dispute that energy prices in the US were lower than in the Union (and continue to be so) but it is a fact that energy prices in the Union stopped to raise. The Commission noted that because of joint action by the Member States, the price of gas (the source of energy most affected by Russia's war of aggression against Ukraine) 'decreased substantially towards the end of the 2022 and remained relatively stable in 2023' ⁽²²⁾. The Commission therefore, reiterated that the data for the investigation period was not affected by a continuous raise of energy prices in the Union. On the contrary, the stabilisation of prices, confirmed that the data for the investigation period was not affected by energy price changes.
- (156) Thus, the conclusions from recital (191) to (194) of the provisional Regulation were confirmed.

⁽²²⁾ See the webpage of the Council of the European Union for further information about this topic (<https://www.consilium.europa.eu/en/policies/energy-prices-and-security-of-supply/#:~:text=In%20December%202023%2C%20one%20megawatt,energy%20imports%20away%20from%20Russia.>)

5.2.5. *Economic contraction, market dynamics*

- (157) Oxy Vinyls claimed that any alleged injury accruing to the Union industry would be caused by the contracting Union market. It requested the Commission to terminate the investigation on this ground, in line with past practice. Formosa requested the Commission to revise its assessment and consider the injurious impact of the general economic contraction of the industry without attributing any such injury to the allegedly dumped imports. TCI Sanmar also claimed that Commission's findings undermined its assessment and demonstrated that the Commission had failed to duly consider whether the contraction in demand attenuated the causal link.
- (158) As set out in recital (196) of the provisional Regulation, the demand of S-PVC on the Union market dropped by 18 % over the period considered. In recital (197) the Commission further explained that the reason for this was the combination of high inflation and borrowing costs which had an impact on the economy in general and constrained the demand of the construction sector, that is, the main market for PVC. Furthermore, in recital (200) of the provisional Regulation it was acknowledged that the contraction had a limited impact but did not break or attenuate the causal link. Indeed, in this regard it can be underlined that the injury was observed in the investigation period and the contraction in demand in relation to 2022 was 11 %, meanwhile the dumped imports from Egypt and the USA increased by 91 % in absolute volume and by 116 % in market share over the same period and their prices were 20 % below the Union producers' prices. These figures clearly demonstrate that even if the contraction in demand may have contributed to the injury suffered by the Union industry, the main cause of injury to the Union producers was the surge of dumped imports and the contraction in demand did not attenuate this link.
- (159) Westlake alleged that the fact that Union production may have decreased during the relevant period is not indicative of injury caused by the dumped imports, but simply the logical consequence of a decreasing demand in the Union in 2022 and onwards.
- (160) The argument of Westlake was in contrast with the fact that in the situation of contracting demand of 18 % imports from the countries concerned multiplied by eight times recording an increase of market share of 9,2 percentage points over the period considered, while sales of the Union industry decreased by 28 %. Moreover, the Union production decreased by 4 percentage points more than the decrease in consumption which is explained by the loss of market share to the benefit of the market share of the dumped imports.
- (161) The Commission noted that these trends confirm its assessment as regards the injury caused by the dumped imports in a context of a constrained demand.
- (162) In view of the above, the conclusions set out in recitals (195) to (200) of the provisional Regulation were confirmed.
- (163) Following final disclosure Oxy Vinyls claimed that the Union industry had alienated its clients by its pricing strategy, marked by back-to-back price increases up to 2022 and was forced to reduce prices as customers were unwilling to accept any further increases. It further claimed that this combination of high prices and contracting demand ultimately draw losses in the Union industry sales. In support of this claim it referred to a Court ruling regarding the need to assess the conduct of Union producers in the injury determination ⁽²³⁾.
- (164) The Commission noted in this regard that it took into account the contraction in demand during the investigation period in recitals (195) to (200) of the provisional Regulation and acknowledged that it had a certain impact on the injury suffered by the Union industry. Regarding the prices, however, contrary to the claim of Oxy Vinyls, the Commission established that they were in fact decreasing considerably in the investigation period (– 28 %) coinciding with the significant surge of dumped imports (+ 91 %), in comparison to 2022. Regarding the evidence of alienation provided by Oxy Vinyls, the claim was not substantiated and fails to take into account that the Union industry is not composed of a single producer. Finally, as the Union industry is comprised of a number of Union producers the claim of Oxy Vinyls would suggest that they were collectively engaged in anti-competitive practises.

⁽²³⁾ Case C-10/12 P, Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union, para 13.

(165) On the basis of the above the post-final-disclosure comments of Oxy Vinyls were rejected.

5.2.6. Force majeure

(166) Oxy Vinyls stated that the increase in US imports between 2021-2022 and 2022-IP, coincided with a period of repeated *force majeure* declarations by Union producers and that US imports were therefore merely plugging a gap in the S-PVC supply for the Union users. TCI Sanmar claimed that *force majeure* declarations may have negatively impacted the relationship of trust between customers and Union producers, motivating customers to seek reliable business partners in the countries concerned.

(167) The Commission recalled that no evidence had been provided by parties of the investigation about these arguments. The Commission noted that it was not unusual to have *force majeure* events in the S-PVC industry which was distributed among a multiplicity of sites in the Union and that it relied on upstream industries for critical raw materials, but that no evidence had been provided yet linking *force majeure* events with the surge of dumped imports. The majority of *force majeure* events took place in 2020 and 2021, well before the surge of dumped imports from the countries concerned.

(168) In order to illustrate the weakness of the allegations, the Commission also noted that all three US S-PVC producers declared *force majeure* events in 2021 ⁽²⁴⁾, confirming that these declarations were not unique to the Union industry and indicating that such events cannot influence the relationship between users and producers. Moreover, as clearly indicated in recital (203) of the provisional Regulation most of the *force majeure* events of the Union industry took place early in the period considered (declared in 2020 and 2021), well before the surge of the dumped imports in the investigation period.

(169) Thus, the conclusions set out in recitals (201) to (206) of the provisional Regulation were confirmed.

(170) Following final disclosure Oxy Vinyls provided certain *force majeure* declarations from 2022 and 2023 claiming that contrary to Commission's position these were not confined to 2020 and 2021. The Commission acknowledged that it is not unusual to have *force majeure* events in an industry characterised by multiple production sites, however, the fact remained that the majority of *force majeure*s were declared in 2020 and 2021, prior to the surge in dumped imports, as also reported by the cooperating importers in the course of the investigation ⁽²⁵⁾.

(171) Moreover, in view of the overcapacity of the Union industry the Commission did find evidence during its investigation that Union producers suffering *force majeure* managed to use the production capacity of their related producers (see recital 205 of the provisional Regulation). This claim was therefore rejected.

5.2.7. Conclusion on causation

(172) All claims of the parties following the provisional Regulation were rejected. The Commission therefore concluded, based on the findings disclosed in the provisional Regulation, that the dumped imports from Egypt and the United States caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate or break the causal link between the dumped imports and the material injury.

⁽²⁴⁾ Oxy Vinyls (<https://www.chemorbis.com/en/plastics-news/Production-News-Oxy---America---PVC-/2021/02/17/810029#reportH>), Westlake (Westlake lifts US PVC force majeure: letter | S&P Global) and Formosa (<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/chemicals/070621-formosa-plastics-usa-lifts-february-force-majeure-on-pvc-letter>).

⁽²⁵⁾ Meraxis and Rehau hearing of 24 April 2024, Slides 7 to 9.

6. LEVEL OF MEASURES

6.1. Injury margin

- (173) As provided by Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure described in recital (3) and therefore reflect the additional injury resulting from such increase in the determination of the injury margin.
- (174) Based on data from Eurostat, import volumes from Egypt and the United States of America during the four weeks period of pre-disclosure were 35 % lower than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had not been a substantial rise in imports subject to the investigation during the period of pre-disclosure.
- (175) Therefore, the Commission did not adjust the injury elimination level in this regard.
- (176) The Governments of Egypt and the USA submitted comments about the post-importation adjustment. The Commission conducted its calculations considering a prudent estimate of post-importation costs equivalent to 1,0 % of the CIF value that was disclosed to the sampled exporters and no comments were received on this aspect of the injury margin determination.
- (177) The Commission received comments from the Government of USA and the cooperating exporting producer pointing out to an excessive target profit. The arguments alleged that the target profit of 13,1 % does not correspond to a target profit reasonably achievable under normal conditions of competition as the above-normal results obtained in 2021 continued for most of 2022. Westlake elaborated the criticism indicating that in 2022 the imports from Egypt and the US had already started to increase in volume.
- (178) In reply to these claims the Commission reiterates, first, the arguments put forward in the provisional Regulation recitals (217) to (219), namely that the profit achieved in the year 2022 is the most suitable profit to be used as a target profit from the years covered by the period considered. The Commission also notes that post-COVID pandemic recovery was over by year 2022, this economic rebound dominated year 2021. Furthermore, the Commission acknowledges that the dumped imports were already present on the market in 2022 and it may have influenced the profit reached by the Union industry. However, if it had an impact on the level of profit reached, it had a negative impact and pushed the profits down, which could only be beneficial for exporting producers when using this profit for the injury elimination level calculation.
- (179) TCI Sanmar argued that the industry benefited in 2022 from a strong post-COVID recovery and therefore that profit registered in that year should not be used as a target profit. The Commission did not agree with that statement as the consumption in volume decreased by 18,3 % in 2022. Therefore, this claim was rejected.
- (180) Westlake and TCI Sanmar proposed to use the observed profit of the Union industry in 2019. The Commission considered that it is questionable why using a target profit based on results outside the period considered would be more appropriate than using the margin profit of 2022, a year when the Union industry was suffering the energy crisis and started suffering the impact of the dumped imports.
- (181) On the basis of the above, recitals (216) to (224) of the provisional Regulation were confirmed.
- (182) Following final disclosure TCI Sanmar argued that the non-injurious price of 1 405,48 EUR/tonne was grossly inflated, by referring to the Platts reports of PVC in the period January 2014 to March 2024. Moreover, it reiterated its claim regarding the unsuitability of the target profit of year 2022 and reiterated its proposal to use the profit of year 2019.
- (183) The Commission noted that the non-injurious price was calculated in accordance with Articles 7(2c) and 7(2d) of the basic Regulation and cannot be based on reports or other type of external sources.

- (184) With regard to the target profit, in addition to the reasoning of recital (180) above, the Commission found that in 2019 the Union industry was in a loss-making situation and therefore 2019 was unsuitable for this purpose.
- (185) Following final disclosure Oxy Vinyls alleged that the reason for the high injury margin for the US exporters was the fact that the Commission was comparing US spot export prices with Union contract prices or has established a target price that includes the 'higher' profit margin for contract prices.
- (186) Oxy Vinyls also claimed that the target price used by the Commission was inflated because it exceeded the Union sales prices in 2020, 2021 and the investigation period. It proposed using an average profit margin and cost of production across all four periods of the period considered resulting in a production cost of 1 040 EUR/tonne and a profit margin of 7,9 %.
- (187) Firstly, the Commission recalls that the non-injurious price was constructed based on the cost of production of the Union sampled producers and that this exercise did not entail any comparison of prices. In addition, the target profit cannot be based on periods with losses, which is the case of the investigation period suggested by Oxy Vinyls.
- (188) Secondly, as regards the target profit, the Commission noted that even if it used the lowest profit of 6 %, provided for in Article 7(2c) of the basic Regulation, instead of 13,1 %, the dumping margins for all US exporters would be lower than the respective injury margins. This means that there would have been no change to the level of the anti-dumping duties applicable to the US exporters.
- (189) Therefore, the final injury elimination level for the cooperating exporting producers and all other companies is as follows:

Country	Company	Injury margin (%)
Egypt	Egyptian Petrochemicals Company	100,1
	TCI Sanmar Chemicals S.A.E.	74,2
	All other companies	100,1
USA	Formosa Plastics Corporation	90,6
	Westlake Chemicals	87,2
	Other cooperating companies	88,3
	All other companies	90,6

7. UNION INTEREST

7.1. Interest of the Union industry

- (190) No comments were received regarding the interest of the Union industry. Thus, the conclusions set out in recitals (227) to (232) of the provisional Regulation were confirmed.

7.2. Importers

- (191) In the absence of any comments regarding the interest of unrelated importers, the conclusions set out in recitals (233) to (235) of the provisional Regulation were confirmed.

7.3. Users

- (192) TCI Sanmar claimed that the Commission had not taken into consideration the detrimental effect of the imposition of duties on users by claiming that the Union producers have a near monopoly supply on the Union market and were able to raise prices significantly above costs during the post-COVID recovery period and that the duties will limit the ability of users to source from the countries concerned to maintain some competitive pressure on the Union producers.

- (193) The Commission reiterates that the users would ultimately benefit from a competitive Union market with a number of S-PVC producers, a situation that would only be possible if the unfair competition of dumped imports is addressed. Moreover, it is recalled that the S-PVC industry in the Union includes twelve producers and that the characteristics of the product make the market extremely competitive. Furthermore alternative sources are also available in the Union market, such as imports from Mexico, South Korea, Norway and the UK. In any case the purpose of the duties is not to cease imports from the countries concerned, but to restore the level playing field in the Union market.
- (194) TCI Sanmar referred to a situation of near monopoly supply of S-PVC in the Union market. The Commission notes that this statement is in contradiction with TCI Sanmar's comments on the target margin profit as S-PVC is a commodity and with the fact that the three largest sites / legal entities producing S-PVC in the Union control only one quarter of the Union production. Moreover, there are sources of supplies from other third countries as shown in recital (171) of the provisional Regulation.
- (195) Westlake alleged that the 'imposition of such high duties is certain to have a very negative impact on users and downstream industries relying on PVC in the EU.' Westlake echoed comments previously made by Rehau Industries SE & Co (Rehau) one of the users having presented comments following the initiation, about the harm for Union downstream industries for which S-PVC is the main material especially because of the high prices being charged by the Union industry and the supply disruptions. Oxy Vinyls had similar comments emphasising the importance of US imports to secure the supply of S-PVC.
- (196) In this regard, the Commission acknowledges that, due most notably to the dumping practices, users were able to purchase S-PVC from the countries concerned at lower prices. However, the Commission notes the inconsistency of claiming, on the one hand, the benefit of these lower prices and on the other hand advocating for the need to avoid supply disruptions. The Commission reiterates that it is precisely because of the interest of downstream industries to have a secured supply of S-PVC that the injury caused by the dumped imports should be addressed. In absence of corrective measures, there is little doubt that the Union industry would have a negative outlook and that users would face a lower number of producers in the Union and a supply concentrated in a lower number of producers. Such a drop in the number of Union producers could indeed create a problem with the security of supply of S-PVC in the Union.
- (197) Fifteen importers/users and the European PVC Window Profiles Association (EPPA) and all exporting producers came forward after the imposition of provisional measures, arguing that they will be exposed to very high prices in the EU market, as the subject imports will be driven out of the market and Union producers will be shielded from any effective foreign competition. They also argued that measures will also affect the availability of S-PVC in the EU market, as Union producers have in the last few years become inefficient, have gone through several production closures, and are generally not sufficiently attentive to customer needs.
- (198) The above arguments echo earlier arguments already addressed and rejected in the provisional Regulation, notably by indicating that the S-PVC industry in the Union includes twelve producers and that the characteristics of the product make the market extremely competitive. In particular, the argument concerning production closures has already been addressed in recitals (126-127) and (187) of the provisional Regulation. Furthermore, as regards foreign competition, alternative sources are also available in the Union market, such as imports from Mexico, South Korea, Norway and the UK. In any case the purpose of the duties is not to cease imports from the countries concerned, but to restore the level playing field in the Union market.
- (199) The comments made on the interest of users were rejected. Therefore, recitals (236) to (241) of the provisional Regulation were confirmed.

- (200) Following final disclosure EPPA claimed that the proposed level of measures is prohibitively high. Instead it proposed a level of duty not exceeding 25 %. Moreover, it claimed that due to the measures their supplies are not secured, because of the *force majeure* incidents of the Union producers and because the other producing countries are not interested on the EU market or they are aiming primarily in supplying their domestic markets. In addition, it claimed that according to their estimates the Union domestic prices will grow by 40 %-50 % and reach unprecedented high levels.
- (201) In support of these claims, they referred to the *force majeure* incidents of 2021 and to PVC export statistics for Mexico and South Korea. For South Korea they also provided a press article according to which '*higher freight costs and longer lead times make it less viable for European buyers to source PVC from Asia*'.
- (202) In response to these claims the Commission notes that the *force majeure* incidents have been duly addressed in recitals (168) to (171) above and in recitals (201) to (206) of the provisional Regulation. For South Korea the Commission noted that European destinations were well represented in its PVC export statistics, whereas Mexico had a constant and stable presence on the Union market, as established for the entire period considered (see Table 11 of the provisional Regulation). Finally, the estimates of EPPA about the alleged high Union price rises were unsubstantiated.
- (203) EPPA further claimed that the S-PVC price increases in view of the duties will result in higher construction costs, reduced housing affordability and delayed housing projects.
- (204) These claims as explained in recital (202) above remained unsubstantiated and were therefore rejected.

7.4. Conclusion of Union interest

- (205) On the basis of the above, the conclusion set out in recital (242) was confirmed.

8. DEFINITIVE ANTI-DUMPING MEASURES

- (206) 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.
- (207) Westlake proposed that in view of the interest of users, the Commission should consider 'a less prohibitive form of measure ... and more specifically an *ad valorem* duty capped by a minimum import price ("MIP").' The complainants contested the opportunity for such measure, as MIPs are not an appropriate measure given the fact that raw materials of S-PVC which form around 80 % of the cost of production are volatile, the risk of circumvention and absorption due to the presence of indirect sales through unrelated traders and due to the ample spare capacity in the Union, ensuring security of supply to users.
- (208) The Commission agreed that an MIP would not be adequate as the prices of S-PVC are influenced by the volatility of the prices of energy that render the price of raw materials volatile. The Commission also considered that such minimum price would not provide certitude for users and producers about the availability of S-PVC, as such price would fail to reflect the dynamics of the market.
- (209) After final disclosure, Westlake, together with three other exporting producers (Oxy Vinyls, Shin-tech and Tricon) clarified this request. They specified that the original MIP would be set at the level of the weighted average normal value including transport costs of the two sampled US producers during the investigation period and that it would be applicable to all imports from the USA. Imports below MIP would be subject to the individual *ad valorem* duty for the difference between the import price and the MIP. To take into consideration the price volatility of the raw materials used for producing PVC and to reflect the dynamics of the market, they proposed that the Commission could index the MIP on a regular basis (quarterly or semi-annually) based on ethylene prices in Western Europe as published by Chemical Market Analytics.

- (210) Moreover, they claimed that the price differentials between US spot export prices and EU spot prices became significantly high in 2022 and in the IP and that in the post-investigation period they have returned to their traditionally similar levels. They requested, should measures be imposed, for an automatic initiation of an interim review in two years' time.
- (211) The Commission analysed the request. It found that a single MIP for producers with significantly different dumping margins would not reflect the different levels of dumping found for the parties and thus have the potential to undermine the efficiency of the measures. Moreover, the proposed form would be very difficult to implement as it would require significant number of recurring administrative and legislative updates. On that basis, the proposal could definitively not be accepted.
- (212) Regarding the request for an automatic interim review in two years' time, the Commission noted that it is based on post-investigation-period information which could not be appropriately and adequately verified. In any case, pursuant to Article 11(3) of the basic Regulation, any exporter or importer may request an interim review if one year has elapsed since the imposition of definitive measures.
- (213) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country of origin	Company	Definitive anti-dumping duty (%)
Egypt	Egyptian Petrochemicals Company	100,1
	TCI Sanmar Chemicals S.A.E.	74,2
	All other imports originating in Egypt	100,1
USA	Formosa Plastics Corporation	71,2
	Westlake Chemicals	58,0
	Oxy Vinyls, LP	62,3
	Shintech Incorporated	62,3
	All other imports originating in the United States of America	77,0

- (214) 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 countries concerned and produced by the named legal entities. 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 Egypt or the United States of America'.
- (215) 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 ⁽²⁶⁾. 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*.

⁽²⁶⁾ European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

- (216) 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 Egypt or the United States of America'.
- (217) 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.
- (218) 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.
- (219) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies 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.

8.1. Definitive collection of the provisional duties

- (220) 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.

9. FINAL PROVISION

- (221) In view of Article 109 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council ⁽²⁷⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (222) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of suspension polyvinylchloride ('S-PVC'), not mixed with any other substance, currently falling under CN code ex 3904 10 00 (TARIC codes 3904 10 00 15 and 3904 10 00 80) and originating in Egypt and the United States of America.

⁽²⁷⁾ 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 rate of the 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:

Country of origin	Company	Definitive anti-dumping duty (%)	TARIC additional code
Egypt	Egyptian Petrochemicals Company	100,1	89BA
	TCI Sanmar Chemicals S.A.E.	74,2	89BB
	All other imports originating in Egypt	100,1	8999
USA	Formosa Plastics Corporation	71,2	89BC
	Westlake Chemicals	58,0	89BD
	Oxy Vinyls, LP	62,3	89BE
	Shintech Incorporated	62,3	89BF
	All other imports originating in the United States of America	77,0	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 tonnes of suspension polyvinylchloride ("S-PVC") sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' Until such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2024/1896 imposing a provisional anti-dumping duty on imports of suspension polyvinylchloride ('S-PVC'), not mixed with any other substance, originating in Egypt and the United States of America shall be definitively collected.

Article 3

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, 9 January 2025.

For the Commission
The President
Ursula VON DER LEYEN
