



2025/1723

7.8.2025

**COMMISSION IMPLEMENTING REGULATION (EU) 2025/1723**

**of 6 August 2025**

**imposing a provisional anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels, originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

**1. PROCEDURE**

**1.1. Initiation**

- (1) On 9 December 2024, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of sweetcorn originating in the People's Republic of China ('the country concerned' or 'the PRC' or China) on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(2)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 25 October 2024 by the Association Européenne des Transformateurs de Maïs Doux (AETMD) ('the complainant'). The complaint was made on behalf of the Union industry of certain prepared or preserved sweetcorn in kernels in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

**1.2. Registration**

- (3) The Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2025/309 of 14 February 2025 ('the registration Regulation') <sup>(3)</sup>.

**1.3. Interested parties**

- (4) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers, and the Chinese authorities, and known importers and traders about the initiation of the investigation and invited them to participate.

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

<sup>(2)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of certain prepared or preserved sweetcorn in kernels, originating in the People's Republic of China (OJ C, C/2024/7407, 9.12.2024, ELI: <http://data.europa.eu/eli/C/2024/7407/oj>).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2025/309 of 14 February 2025 making imports of certain prepared or preserved sweetcorn in kernels originating in the People's Republic of China subject to registration (OJ L, 2025/309, 17.2.2025, ELI: [http://data.europa.eu/eli/reg\\_impl/2025/309/oj](http://data.europa.eu/eli/reg_impl/2025/309/oj)).

- (5) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Following the initiation, a hearing took place with the European Federation of the Trade in Dried Fruit, Edible Nuts, processed fruit & vegetables and processed fishery products ('FRUCOM') and its national member associations Waren-Verein der Hamburger Börse e.V. ('Waren-Verein') and Nederlandse Vereniging voor de Handel in Gedroogde Zuidvruchten, Specerijen en Aanverwante Artikelen ('NZV'), as well as representatives of several importing members.

#### 1.4. **Comments on initiation**

- (6) The Commission received comments on initiation from the China Chamber of Commerce of Import and Export of Foodstuffs, Native Produce and Animal By-Products ('CFNA') and from Waren-Verein.
- (7) The CFNA criticised that the investigation period of the complaint was not updated close to the submission date. The association argued that it may present a different injury picture as when compared to the investigation period of the investigation, due to significant changes in the EU market as from the second quarter of 2024 and until the end of 2024. The CFNA further considered that Thailand and the PRC are the only major producers and exporters of sweetcorn and that Thai market shares could be taken over by imports from the PRC, if imports from Thailand are restricted by anti-dumping measures. Additionally, the CFNA argued that the increase in imports from the PRC in 2022 was possibly caused by unforeseen developments, such as (1) natural disasters and floods in Thailand that reduced the output of corn and sufficient supply; (2) a bad harvest in Europe due to dry climate conditions, in particular in France; and (3) the war in Ukraine that might have increased energy costs of sweetcorn producers and reduced sweetcorn supply. The CFNA further considered that in 2022, the pattern in export sales from the PRC was changed due to a large order from Lidl. It considered that the bad harvest in Europe may have affected the sweetcorn supply in Europe and purchasers such as Lidl might have stockpiled to avoid shortage of supply.
- (8) The Commission reminds the CFNA that the investigation period was defined in line with Article 6 of the basic Regulation, covering a period of no less than six months immediately prior the initiation of proceedings. Therefore, the claim was rejected.
- (9) With regards to the claim that the increased market share of imports from the PRC was due to the imposition of anti-dumping measures on imports from Thailand, the Commission reminds CFNA that these measures have been in place since 2009. Therefore, the claim was rejected.
- (10) The CFNA did not provide any supporting evidence related to the claim that the change in exports was due only to a major order of the retailer Lidl. The claim was therefore rejected.
- (11) The CFNA also argued that the complaint did not demonstrate the material injury of the Union industry and stated that the increased imports from the PRC did not have any negative impact on the development of the complainant in terms of production, capacity, capacity utilisation, stocks, sales prices.
- (12) According to the Commission's assessment of the information provided in the complaint, there was sufficient evidence pointing to material injury that justified the initiation of the investigation. The claim was therefore rejected.

- (13) The CFNA further claimed that imports from the PRC are not the sole cause of the injury to the complainant and referred to the factors described in recital 6. It recalled the anti-dumping investigation concerning soy protein imports originating in the PRC <sup>(4)</sup>, where the Commission found that the coincidence of a price increase with the poor financial performance of the Union industry indicated the volatility of the raw material market and was a major cause of injury suffered by the Union industry, which broke the causal link between the Chinese imports and material injury suffered by the Union industry. The CFNA claimed a similar situation for this investigation.
- (14) In the Commission's view, none of the other possible explanations mentioned above disprove the conclusion that there was sufficient evidence in the complaint concerning the injury caused by dumped imports to the Union industry which justified the initiation of an anti-dumping proceeding.
- (15) Waren-Verein requested to extend the period considered to assess the effect of the poor crops for 2020. It requested to consider also other one-off effects, such as freight and currency conditions that were favorable for purchase decisions.
- (16) The complaint analysed the positive causal link between the dumped imports from the PRC and the material injury of the Union industry by analysing the trends of import volumes, the Union sales prices during the period considered, and the main injury indicators over the period considered. A positive link could be demonstrated, while showing that no other factors attenuated the causal link. At this stage, the Commission considered the evidence present in the complaint concerning causality as reasonable and refers to section 5 below on causation. Therefore, this claim was rejected.
- (17) Finally, the CFNA requested the Commission to apply the lesser duty rule pursuant to Article 7(2) of the basic Regulation. It argued that the complaint failed to present specific evidence on the existence of raw material distortions.
- (18) The complainant provided credible and relevant evidence that all the legal requirements to waive the lesser duty rule were met at initiation, including evidence on distortions on the steel market in the PRC that could affect the price of steel cans. At this stage, the Commission considered the evidence present in the complaint concerning raw material distortions as reasonable. Therefore, this claim was rejected.
- (19) Waren-Verein criticised the date chosen for the initiation of the proceeding, which restricted the possibility of interested parties to participate in the investigation.
- (20) The Commission services have no impact on the Union industry's decision on when they lodge a complaint. Once a complaint is lodged, the Commission is legally obliged to take a decision on the case and inform the parties concerned within 45 days, in accordance with Article 5(9) of the basic Regulation, either by the publication of a notice in the Official Journal in case of initiation of an investigation or by informing the Union industry in case of a rejection of the complaint.
- (21) With regards to the selection of the sample of exporting producers, Waren-Verein requested to select exporters based on a representative basis.
- (22) The Commission highlighted that in accordance with Article 17(1) of the basic Regulation, the selection of the sample should be statistically valid on the basis of information available at the time of the selection or be based on the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.
- (23) Waren-Verein requested to limit the selection of the product covered by the investigation to TARIC code 2005 80 00, while TARIC code 2001 90 30 10 should not be included.
- (24) The Commission noted that no further evidence was provided to justify the request of product exclusion. The claim was therefore rejected.

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<sup>(4)</sup> Commission Decision 2012/343/EU of 27 June 2012 terminating the anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China (OJ L 168, 28.6.2012, p. 38, recitals 161-167, ELI: <http://data.europa.eu/eli/dec/2012/343/oj>).

- (25) Waren-Verein argued the negative impact of freight and exchange rates on product prices and requested to consider them during the calculation of the normal value. Moreover, Waren-Verein questioned the comparability of prices of products falling within the product description but varying in size, end-consumers, packaging or delivery conditions.
- (26) With regards to the questions raised on price comparability, the Commission reassured Waren-Verein that, in accordance with Article 2(10) of the basic Regulation, the comparison between export prices and the normal value is made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability. If necessary, adjustments can be made to account for differences on physical characteristics, transport and freight conditions, packing, currency conversion and other factors.
- (27) Waren-Verein requested to consider the interests of consumers and traders during the investigation. The association claimed that sweetcorn prices will likely increase to the disadvantage of consumers, in case anti-dumping duties will be imposed. Considering future poor crops and other unforeseen events in the EU affecting imports, the association considered that no measures should be imposed. It also claimed that EU sweetcorn producers are economically strong enough and do not need to be protected by anti-dumping measures.
- (28) The Commission reminds Waren-Verein that the assessment of the Union interest is carried out as part of the investigation and not at complaint stage. The views of all parties are therefore assessed in section 7 of this regulation.

#### 1.5. **Sampling**

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

##### *Sampling of Union producers*

- (30) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the estimated volume of production and sales of the like product in the EU during the investigation period. This sample consisted of two Union producers. The sampled Union producers accounted for more than [29 – 38] % of the estimated total volume of production and more than [39 – 48] % of the estimated total sales in the Union. The Commission invited interested parties to comment on the provisional sample. No comments on the sample were received. The sample of the Union industry was therefore confirmed.

##### *Sampling of unrelated importers*

- (31) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (32) Six unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two unrelated importers on the basis of the largest import volume of the product concerned in the Union. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. One of the sampled importers informed the Commission it no longer wished to cooperate and would not provide a questionnaire reply. The Commission therefore decided to replace this importer with another importer. Interested parties were informed of the change accordingly. No comments were received on the adjusted sample.

##### *Sampling of exporting producers*

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

- (34) Twenty-three companies in the country concerned provided the requested information and agreed to be included in the sample. Two of these companies were related, one of which was not an exporting producer. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample. No comments were received on the selection of the sample and the Commission confirmed the sample.

#### 1.6. Questionnaire replies and verification visits

- (35) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (36) Furthermore, the complainant provided in the complaint sufficient prima facie evidence of raw material distortions in China regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to China. For this reason, the Commission sent additional questionnaires in this regard to the GOC.
- (37) The Commission sent questionnaires to the complainant, Union producers, exporting producers, and the known importers. The same questionnaires were made available online <sup>(9)</sup> on the day of initiation.
- (38) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

##### *Union producers*

- Bonduelle Europe Long Life, France and Bonduelle Central Europe, Hungary
- Dawtona Sp z o.o., Poland

##### *Importers*

- Otto Franck Import GmbH & Co. KG, Augsburg, Germany

##### *Exporting producers in the People's Republic of China*

##### *Sunflower Group*

- Sun Flower Food Industry (Xinfeng) Co., Ltd, Ganzhou City, China
- Sunny Food Industry Co., Ltd, Ganzhou City, China

##### *Tongfa Group*

- Zhangzhou Tongfa Foods Industry Co., Ltd, Zhangzhou, China
- Fujian Tongfa Foods Group Co., Ltd, Xiamen City, China.

- (39) In addition, the Commission verified the macro-questionnaire submitted by the complainant AETMD in Paris, France.

#### 1.7. Application of Article 18 of the basic Regulation

- (40) The Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC as described at section 3.2.1 below.

<sup>(9)</sup> <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2762>.

- (41) A partial application of Article 18 was made to the Sunflower Group for issues relating to information supplied in respect of the calculation of the CIF prices and credit costs relevant to the findings on export prices as described at section 3.3 below.
- (42) A partial application of Article 18 was made to the Tongfa Group also for issues relating to information supplied in respect of the calculation of the CIF prices relevant to the findings on export prices as described in section 3.4 below. In addition, Article 18 was also applied to determine labour hours input to the calculation of labour as a factor of production as described at section 3.2.3.1 below.

#### 1.8. Investigation period and period considered

- (43) The investigation of dumping and injury covered the period from 1 October 2023 to 30 September 2024 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2021 to the end of the investigation period ('the period considered').

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

#### 2.1. Product under investigation

- (44) The product under investigation is sweetcorn (*Zea mays* var. *saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen and sweetcorn (*Zea mays* var. *saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling under CN codes ex 2001 90 30 (TARIC code 2001 90 30 10) and ex 2005 80 00 (TARIC code 2005 80 00 10 ('the product under investigation')).
- (45) Sweetcorn is used for human consumption. The product is usually presented in a canned format, but also in glasses, tetra packs or pouches.

#### 2.2. Product concerned

- (46) The product concerned is the product under investigation originating in the PRC ('the product concerned').

#### 2.3. Like product

- (47) The investigation showed that the following products have the same basic physical, chemical, and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
  - the product under investigation produced and sold on the domestic market of country concerned; and
  - the product under investigation produced and sold in the Union by the Union industry.
- (48) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

### 3. DUMPING

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

- (49) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

- (50) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide information regarding the inputs used for producing certain prepared or preserved sweetcorn in kernels (sweetcorn). Fourteen exporting producers submitted the relevant information.
- (51) In order to obtain the information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (52) In point 5.3.2 of the Notice of Initiation the Commission also specified that, in view of the evidence available, it had provisionally selected Türkiye as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (53) On 12 March 2025, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of the product concerned. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Colombia, Malaysia, Mexico, Serbia, Thailand and Türkiye as appropriate representative countries.
- (54) On 6 June 2025, the Commission informed interested parties by a second note ('the Second Note') on the relevant sources it intended to use for the determination of the normal value, with Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the Fraser and Neave Holdings BHD, a producer in the representative country.
- (55) The Commission concluded that Colombia, Serbia and Türkiye should not be considered as representative countries, notably because of the lack of relevant, publicly available financial data concerning companies producing the product under investigation and/or similar products. Moreover, Thailand does not appear to be an appropriate representative country within the meaning of Article 2(6a)(a), as the prices of imports of fresh sweetcorn in Thailand is affected by distortions, due to their quantity of imports from China.
- (56) The Commission did not propose Mexico as representative country due to the absence of import data for fresh sweetcorn, which is the main factor of production representing around 50 % of the total cost of manufacturing.
- (57) The Commission noted that Malaysia would provide a suitable benchmark for the most important factors of production (fresh sweetcorn and cans). The Commission noted the availability of a suitable import price for fresh sweetcorn due to the low quantities of imports from the PRC. In respect of cans, although 78 % of quantities were sourced from the PRC, the Commission noted a large difference in prices between cans sourced from the PRC and those from other sources (around 14 CNY per kilo and 28 CNY per kilo respectively). Therefore, in the absence of evidence that the price of cans from other sources was distorted, the Commission proposed to use this price as a benchmark. Imports of cans from other sources were found not to have been influenced by the Chinese prices and the quantities and prices of the rest of imports remained representative. In addition, the information of Fraser and Neave Holdings BHD was particularly suitable as a source of SGA and profit data as the annual report of 2024 was for the investigation period (30 October 2023 to September 2024).

- (58) The Commission therefore provisionally decided to choose Malaysia as the most appropriate representative country. The comments made by interested parties concerning the First and Second Note, and in particular relating to the choice of representative country, are discussed below at section 3.2.2.

### 3.2. Normal value

- (59) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (60) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined ... that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').
- (61) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

#### 3.2.1. Existence of significant distortions

- (62) Article 2(6a)(b) of the basic Regulation states that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
  - state presence in firms allowing the state to interfere with respect to prices or costs;
  - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
  - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
  - wage costs being distorted;
  - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state.'
- (63) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list.
- (64) However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) of the basic Regulation must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provide the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

- (65) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.
- (66) Pursuant to this provision, the Commission issued a country report concerning China ('the Report')<sup>(6)</sup>, which contains evidence of the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as selected sectors (such as the steel sector). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed on the investigation file at initiation.
- (67) The complainant argued that prices or costs of the product under investigation, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation and that, as a result, it is not appropriate to use domestic prices and costs to establish normal value.
- (68) To support this position, the complainant referred to the evidence contained in the Report, in particular with regard to distortions in the key sectors of production, such as land, energy, capital, raw materials and labour, as well as key raw materials in the production of preserved sweetcorn such as steel and aluminium. The complainant claimed the existence of significant distortions regarding all points listed in Article 2(6a)(b) of the basic Regulation.
- (69) Specifically, the complainant claimed that the GOC exercises control, supervision and guidance over the Chinese preserved sweetcorn industry, which is an integral part of the canned food industry. The complainant listed several policy measures which result in: the Chinese producers adhering to the Chinese Communist Party ('CCP') ideology; pursuing an export oriented approach in particular through the Belt and Road Initiative ('BRI'); in the sector displaying strong consolidation with only a handful market players present; the Chinese producer receiving government support.
- (70) Among the most important national policy measures to achieve the mentioned objectives, the complainant noted:
- the national 14th Five Year Plan ('FYP14') which aims at supporting, consolidating and strengthening agricultural products and production capabilities<sup>(7)</sup>;
  - the 14th FYP for the Development of China's Canned Food Industry, which highlights the importance of a stable export policy and the need to improve the sector's international competitiveness and which contains incentives to the canned food industry to achieve the objectives listed<sup>(8)</sup>;
  - the Opinions of the Central Committee of the CCP and the State Council on Comprehensively Promoting Key Works of Rural Revitalisation in 2023, which concerns the modernisation of agricultural and rural areas<sup>(9)</sup>;
  - the China Canned Food industry Association ('CCFIA') Three Year Special Action Plan (2021-2023), with the objective to improve cooperation among canned industry producers<sup>(10)</sup>.

<sup>(6)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024)91 final.

<sup>(7)</sup> Georgetown University Center for Security and Emerging Technology, 'Translation: Outline of the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035,' 13 May 2021.

<sup>(8)</sup> China Canned Food Industry Association, 'Outline of FYP14 for the Development of China's Canned Food Industry'.

<sup>(9)</sup> GOC, 'Opinions of the Central Committee of the Communist Party of China and the State Council on Comprehensively Promoting Key Works of Rural Revitalization in 2023,' 13 February 2023.

<sup>(10)</sup> China Canned Food Industry Association, 'Three-Year Special Action Plan (2021-2023),' 7 September 2021.

(71) Among the provincial and municipal policy measures in support of the canned food industry, the complainant noted:

- in Guandong, the Agricultural Products Processing Industry Development Plan (2018-2025), which aims at building and optimizing primary processing facilities, and guaranteeing support to several projects <sup>(11)</sup>;
- in Heilongjiang, the Three Year Action Plan (2023-2025) for Accelerating the High Quality Development of the Agricultural Product Processing Industry, which also aims at improving the industrial system of agricultural products processing <sup>(12)</sup>, as well as the related Notice of the Issuance of Three-year Action Plan (2023-2025) for Accelerating the High-quality Development of the Agricultural Product Processing Industry (Notice from the General Office) <sup>(13)</sup> and the Notice on the Issuance of Several Policies to Support the High-quality Development of the Intensive Processing Industry of Agricultural Products <sup>(14)</sup>;
- in the Suihua municipality (Heilongjiang), the Implementation Opinions on Accelerating the High-Quality Development of the Agricultural Products Processing Industry (2023-2025), which states that agricultural products processing enterprises, among which the corn processing industry, should benefit from increased policy support, including through the use of innovative financial services <sup>(15)</sup>.

(72) In addition, the complainant noted that the GOC also keeps control over the economy through its presence in State-owned enterprises ('SOEs') and private companies, through CCP committees within companies, and by appointments of key managerial personnel, who are usually not only CCP members but also occupy senior positions in the CCP hierarchy <sup>(16)</sup>. The complainant illustrated this by specific examples of producers in the sector, among which:

- Hangzhou Wahaha group Co Ltd, the founder and chairman of which was a representative of the CCP in Congress in Zhejiang <sup>(17)</sup>;
- Huanlejie Food Group: the chairman and general manager, consistently referred to in the company's regulatory filings as 'communist politician' <sup>(18)</sup>;
- Hebei Yaxiong Modern Agriculture Co. Ltd.: the controlling shareholder of which has been member of the Hebei Provincial Committee of the Chinese People's Political Consultative Conference and of the Hebei Federation of Industry and Commerce, as well as the chairman of Chamber of Commerce of the Vegetable Industry <sup>(19)</sup>.

<sup>(11)</sup> GOC, 'Guangdong Province Agricultural Products Processing Industry Development Plan (2018-2025),' Yue Nong [2018] No. 195, 30 August 2018.

<sup>(12)</sup> GOC, 'General Office of the People's Government of Heilongjiang Province on the issuance of Heilongjiang Province to speed up the promotion of high quality of agricultural products processing industry Notice of Three-Year Action Plan for Development (2023-2025)'.

<sup>(13)</sup> GOC, 'Notice from the General Office of the People's Government of Heilongjiang Province on the issuance of the three-year action plan (2023-2025) for accelerating the high-quality development of the agricultural product processing industry in Heilongjiang Province,' Regulation [2023] No. 3, 25 June 2023.

<sup>(14)</sup> GOC, 'Notice from the General Office of the People's Government of Heilongjiang Province on the issuance of several policies and measures to support the high-quality development of the intensive processing industry of agricultural products in Heilongjiang Province,' Government Regulations [2023] No. 4, 25 June 2023.

<sup>(15)</sup> GOC, 'Implementation Opinions of the Suihua Municipal People's Government Office on Accelerating the High-Quality Development of the Agricultural Products Processing Industry (2023-2025),' Suizheng Banfa [2023] No. 24, 31 August 2023.

<sup>(16)</sup> Report – Chapter 3, p. 55.

<sup>(17)</sup> 36 Krypton, 'Reviewing Zong Qinghou's ten major life nodes,' 25 February 2024.

<sup>(18)</sup> Huanlejie, 'Annual Report 2022,' April 2023, p. 8.

<sup>(19)</sup> Hebei Yaxiong Modern Agriculture Co. Ltd., 'Public Transfer Instructions (draft declaration),' June 2017, pp. 30, 43.

- (73) The complainant also stated that the distortions in the sector of product under investigation stem from the GOC's intervention in the upstream sectors, in particular those of raw corn and steel.
- (74) Regarding the raw corn industry, the complainant noted that the vast majority of corn exporters are SOEs, which are, according to the complainant, vehicles of the GOC to achieve its policy goals and benefitting from related government support.
- (75) Regarding the steel sector, the complainant noted that most of the steel producers in China are SOEs, and it referred to previous investigations in which the Commission established the existence of distortions within the sector <sup>(20)</sup>.
- (76) In conclusion, the complainant argued that significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the sweetcorn sector.

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

- (77) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people' <sup>(21)</sup>.
- (78) The state-owned economy is the 'leading force in the national economy' and the state has the mandate to ensure its 'consolidation and growth' <sup>(22)</sup>. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation.
- (79) The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the state with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the state ownership <sup>(23)</sup>.
- (80) In addition, under Chinese law, the socialist market economy is developed under the leadership of the CCP. The structures of the Chinese state and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the state are indistinguishable.
- (81) Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution.
- (82) Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China' <sup>(24)</sup>. This illustrates the unquestioned and ever-growing control of the CCP over the economic system of China.
- (83) This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

<sup>(20)</sup> Commission Implementing Regulation (EU) 2022/802 imposing a provisional anti-dumping duty on imports of electrolytic chromium coated steel products originating in the People's Republic of China and Brazil, recital 75, [http://data.europa.eu/eli/reg\\_impl/2022/802/oj](http://data.europa.eu/eli/reg_impl/2022/802/oj); Commission Implementing Regulation (EU) 2023/100 of 11 January 2023 imposing a provisional anti-dumping duty on imports of stainless steel refillable kegs originating in the People's Republic of China, rec. 58, [http://data.europa.eu/eli/reg\\_impl/2023/100/oj](http://data.europa.eu/eli/reg_impl/2023/100/oj).

<sup>(21)</sup> Report – Chapter 2, p. 7.

<sup>(22)</sup> Report – Chapter 2, p. 7-8.

<sup>(23)</sup> Report – Chapter 2, p. 10, 18.

<sup>(24)</sup> See at: [http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node\\_2825.html](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.html) (accessed on 10 June 2025).

- (84) The Chinese state engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market <sup>(25)</sup>. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (85) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government.
- (86) Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets.
- (87) Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.).
- (88) The economic operators, private and state-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans, but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans <sup>(26)</sup>.
- (89) Second, on the level of allocation of financial resources, the financial system of China is dominated by the state-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project <sup>(27)</sup>.
- (90) The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the state and the CCP <sup>(28)</sup>.
- (91) Third, on the level of regulatory environment, the interventions by the state into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by state policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies <sup>(29)</sup>.
- (92) Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both state and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining state control over key sectors or bolstering domestic industry <sup>(30)</sup>.
- (93) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles <sup>(31)</sup>.

<sup>(25)</sup> Report – Chapter 2, p. 29-30.

<sup>(26)</sup> Report – Chapter 4, p. 57, 92.

<sup>(27)</sup> Report – Chapter 6, p. 149-150.

<sup>(28)</sup> Report – Chapter 6, p. 153 -171.

<sup>(29)</sup> Report – Chapter 7, p. 204-205.

<sup>(30)</sup> Report – Chapter 8, p. 207-208, 242-243.

<sup>(31)</sup> Report – Chapter 2, p. 19-24, Chapter 4, p. 69, p. 99-100, Chapter 5, p. 130-131.

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

- (94) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.
- (95) Sweetcorn is mainly produced by private companies, such as Sunflower Food Industry Xinfeng Co. Ltd.<sup>(32)</sup>, Zhangzhou Tongfa Food Industry Co. Ltd.<sup>(33)</sup> or Runfeng Food Co. Ltd.<sup>(34)</sup>. The canned food sector is also served by companies partially state-owned like Hangzhou Wahaha Group<sup>(35)</sup> featuring 46 % state ownership<sup>(36)</sup>.
- (96) However, CCP interventions into operational decision making have become the norm not only in SOEs, but also in private companies<sup>(37)</sup>, with the CCP claiming leadership over virtually every aspect of the country's economy. Indeed, the state's influence by means of CCP structures within companies effectively results in economic operators being under the government's control and policy supervision, given how far the state and Party structures have grown together in China.
- (97) Moreover, the sweetcorn sector is subject to several government policies, such as the 2022 key policies announced by the Ministry of Finance and the Ministry of Agriculture and Rural Affairs: '[i]ntegrated development of agricultural industry. Coordinate the layout and construction of a number of national modern agricultural industrial parks, advantageous and characteristic industrial clusters, and agricultural industrial strong municipalities. Focusing on ensuring national food security and effective supply of important agricultural products, focusing on rice, wheat, corn, [...] build a modern rural industrial system based on strong industrial towns, industrial parks as the engine, and industrial clusters as the backbone, provincial, county and township layouts, and coordinated promotion of points, lines, and areas, so as to improve the quality and efficiency of industrial development as a whole'<sup>(38)</sup>.
- (98) Similarly, the 14th FYP on Promoting the Modernization of Agriculture and Rural Areas sets the following objectives: '[n]ational food security industry belt construction: [b]ased on the production and supply of rice, wheat, corn, soybeans, etc., coordinate the layout of capacity building in production, processing, storage, and circulation, and build food safety industrial belts [...]'<sup>(39)</sup>.
- (99) Government control and policy supervision can be also observed at the level of the relevant industry associations<sup>(40)</sup>.

<sup>(32)</sup> See at: <http://en.tyhsp.cn/> (accessed on 10 June 2025).

<sup>(33)</sup> See at: <http://www.tfacan.com/page-10500.html> (accessed on 10 June 2025).

<sup>(34)</sup> See at: <http://www.jsrunfeng.cn/> (accessed on 10 June 2025).

<sup>(35)</sup> See at: <https://www.wahaha.com.cn/#/Introduce> (accessed on 10 June 2025).

<sup>(36)</sup> See at: <http://www.21jingji.com/article/20240718/herald/8041aff7549aaa03487bacb1128aa14f.html> (accessed on 10 June 2025).

<sup>(37)</sup> See Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law. See Report – Chapter 3, p. 47-50.

<sup>(38)</sup> See at: [http://www.moa.gov.cn/gk/cwggk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cwggk_1/nybt/202206/t20220610_6402146.htm), paragraph 20 (accessed on 10 June 2025).

<sup>(39)</sup> See at: [https://www.gov.cn/zhengce/content/2022-02/11/content\\_5673082.htm](https://www.gov.cn/zhengce/content/2022-02/11/content_5673082.htm), section II.6, Box 2 (accessed on 10 June 2025).

<sup>(40)</sup> Report – Chapter 2, p. 24-27.

- (100) For instance, the canned food sector is covered by the China National Light Industry Council ('CNLIC') <sup>(41)</sup>. Article 2 of CNLIC's Articles of Association <sup>(42)</sup> describes the Council's purpose as being 'to thoroughly study and implement the spirit of General Secretary Xi Jinping's series of important speeches.' Furthermore, Article 3 mandates that '[t]he Council adheres to the overall leadership of the Communist Party of China, and in accordance with the provisions of the Constitution of the Communist Party of China, establishes the organization of the Communist Party of China, carries out the activities of the Party, and provides the necessary conditions for the activities of the Party organization' <sup>(43)</sup>.
- (101) The CNLIC provides guidance to the sector <sup>(44)</sup>, as well as to CCFIA <sup>(45)</sup>, in particular as regards Party building activities and policy making. In 2022 the Council recommended that the CCFIA 'should adhere to the guidance of Party building, guide the industry to unswervingly listen to the Party, and unswervingly follow the Party' and that it 'should encourage enterprises to develop new varieties on the basis [...] of canned vegetable' and 'develop, strengthen and support enterprises, develop canning industry clusters' <sup>(46)</sup>.
- (102) Accordingly, according to Article 4 of CCFIA's Articles of Association <sup>(47)</sup>, the Association 'adheres to the overall leadership of the [CCP], establishes the organization of the [CCP] in accordance with the provisions of the [CCP] Constitution [...], carries out Party activities, and provides necessary conditions for the activities of Party organizations. The registration and management authority of this Association is the Ministry of Civil Affairs of the People's Republic of China, and the Party building leading authority is the Party Committee of the State-owned Assets Supervision and Administration Commission of the State Council'. Moreover, the Association 'accepts the business guidance, supervision and management' by the Ministry of Civil Affairs and by the Party Committee of State-owned Assets Supervision and Administration Commission <sup>(48)</sup>. Additionally, Article 24 of CCFIA's Articles of Association requires the chairman, vice chairman and secretary general of the association to '[a]dhere to the Party's line, principles, policies and have good political qualities' <sup>(49)</sup>. Sunflower Food Industry Xinfeng Co. Ltd. <sup>(50)</sup>, Zhangzhou Tongfa Food Industry Co. Ltd. and Runfeng Food Co. Ltd. <sup>(51)</sup> are all members of CCFIA <sup>(52)</sup>.
- (103) Consequently, even privately owned producers in the sector of the product concerned are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance.
- 3.2.1.3. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs
- (104) The GOC is in position to interfere with prices and costs through state presence in firms. Indeed, CCP cells in enterprises, state-owned and private alike, represent an important channel through which the state can interfere with business decisions.
- (105) According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(53)</sup>) and the company shall provide the necessary conditions for the activities of the Party organisation.

<sup>(41)</sup> See at: <http://www.cnlic.org.cn/index.html> (accessed on 11 June 2025).

<sup>(42)</sup> See at: <http://www.cnlic.org.cn/footer/footer-zc.html> (accessed on 11 June 2025).

<sup>(43)</sup> Ibid.

<sup>(44)</sup> See at: [http://www.cnlic.org.cn/LingDaoHuoDong/202206/t20220630\\_64680.html](http://www.cnlic.org.cn/LingDaoHuoDong/202206/t20220630_64680.html) (accessed on 11 June 2025).

<sup>(45)</sup> See at: <http://www.topcanchina.com> (accessed on 10 June 2025).

<sup>(46)</sup> See at: [http://www.cnlic.org.cn/LingDaoHuoDong/202206/t20220630\\_64680.html](http://www.cnlic.org.cn/LingDaoHuoDong/202206/t20220630_64680.html) (accessed on 11 June 2025).

<sup>(47)</sup> See at: <http://www.topcanchina.com/xhjj/4095> (accessed on 10 June 2025).

<sup>(48)</sup> Ibid.

<sup>(49)</sup> Ibid.

<sup>(50)</sup> See at: <http://www.topcanchina.com/myxrhqy/16113> (accessed on 10 June 2025).

<sup>(51)</sup> See at: <http://www.topcanchina.com/myxrhqy/16123> (accessed on 10 June 2025).

<sup>(52)</sup> See at: <http://www.topcanchina.com/xhhyd/11568> (accessed on 10 June 2025).

<sup>(53)</sup> Report – Chapter 3, p. 40.

- (106) In the past, this requirement appeared not to have always been followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle <sup>(54)</sup>, including exercising pressure on private companies to put ‘patriotism’ first and to follow Party discipline <sup>(55)</sup>.
- (107) Already in 2018, it was reported that Party cells existed in 73 % of some 2,57 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies <sup>(56)</sup>. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product concerned and the suppliers of their inputs.
- (108) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era (‘the Guidelines’) <sup>(57)</sup> was released, which further expanded the role of the Party committees in private enterprises.
- (109) Section II.4 of the Guidelines states: ‘[w]e must raise the Party’s overall capacity to lead private-sector United Front work and effectively step up the work in this area’; and section III.6 states: ‘[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers’. The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities <sup>(58)</sup>.
- (110) While it has not been possible to establish systematic overlaps between managerial positions and CCP membership/ functions among producers of the product concerned, the investigation confirmed direct CCP interference in their management. For instance, the Party Working Committee and the General Party Branch of the Chamber of Commerce of Pancheng Street District located in Nanjing Jiangbei area <sup>(59)</sup>, where a subsidiary of Runfeng Food Co. is located, describes its work as ‘[c]losely focusing on the main line of Party building leading the work of the Chamber of Commerce, [...] taking multiple measures to promote the deep integration of Party building and the work of the Chamber of Commerce. [...] In the process of serving enterprises, the General Party Branch of the Chamber of Commerce regularly carries out “service enterprises, face-to-face” symposiums and visits to help enterprises become bigger and stronger, and in the process of serving enterprises, it has successfully introduced many projects [...] and promoted Jiangsu Runfeng Food Co., Ltd. to invest in the construction of a comprehensive demonstration park agricultural product sorting centre’ <sup>(60)</sup>.
- (111) Furthermore, the Law on Promoting the Private Sector Economy (‘*Private Economy Law*’) mandates that ‘[p]rivate economic organizations and their operators shall support the [CCP] leadership [...], adhere to the socialist system with Chinese characteristics, and actively participate in the construction of a socialist modern power’ <sup>(61)</sup>.
- (112) The state’s presence and intervention in the financial markets as well as in the provision of raw materials and inputs further have an additional distorting effect on the market <sup>(62)</sup>. Thus, the state presence in firms, in the sweetcorn and other sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

<sup>(54)</sup> See for example: Blanchette, J. – Xi’s Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, vol. 100, no. 4, July/August 2021, pp. 10-19.

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

<sup>(56)</sup> See at: <https://merics.org/en/comment/who-ccp-chinas-communist-party-infographics> (accessed on 10 June 2025).

<sup>(57)</sup> General Office of CCP Central Committee’s Guidelines on stepping up the United Front work in the private sector for the new era, see at: [www.gov.cn/zhengce/2020-09/15/content\\_5543685.htm](http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm) (accessed on 10 June 2025).

<sup>(58)</sup> Financial Times (2020) - Chinese Communist Party asserts greater control over private enterprise, see at: <https://on.ft.com/3mYxP4j> (accessed on 10 June 2025).

<sup>(59)</sup> See: [https://njna.nanjing.gov.cn/jd/pcjd/jdgk/201807/t20180724\\_502337.html](https://njna.nanjing.gov.cn/jd/pcjd/jdgk/201807/t20180724_502337.html) (accessed on 19 June 2025).

<sup>(60)</sup> See at: <http://js.news.cn/20250108/60bd844f35d747b3917cfe5131c0a677/c.html> (accessed on 11 June 2025).

<sup>(61)</sup> See Art. 5 of the Private Economy Law, available at: [https://www.gov.cn/yaowen/liebiao/202504/content\\_7022018.htm](https://www.gov.cn/yaowen/liebiao/202504/content_7022018.htm) (accessed on 12 June 2025).

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

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

(113) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central, provincial and local governments must focus on. Relevant plans exist at all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government.

(114) Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(63)</sup>.

(115) Furthermore, the Private Economy Law sets out that '[t]he state shall strengthen the construction of a team of operators of private economic organizations, strengthen ideological and political guidance, and give play to their important role in economic and social development; [...] guide operators of private economic organizations to practice the core socialist values, be patriotic and dedicated, [...] and firmly become builders of socialism with Chinese characteristics and promoters of Chinese-style modernization' and also that '[p]rivate economic organizations and their operators shall [...] accept government and social supervision when engaging in production and operation activities' <sup>(64)</sup>.

(116) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.

(117) The 2022 key policies of the Ministry of Finance and the Ministry of Agriculture and rural affairs mentioned above (see recital 97) contain also the following provision influencing the functioning of the sector: '[t]he state will continue to implement policies such as subsidies for corn and soybean producers, subsidies for rice, and incentives for large grain-producing counties, so as to consolidate the effectiveness of supply-side structural reform in agriculture and ensure national food security'. Moreover, the document provides for '[r]ewards for major seed production counties. Expand the scope of support for major seed production counties of rice, wheat, corn [...], and promote the transformation and upgrading of the seed industry' <sup>(65)</sup>.

(118) The 14th FYP on Promoting the Modernization of Agriculture and Rural Areas <sup>(66)</sup> aims to '[i]mprove grain production support policies. Stabilize grain farmers' subsidies, improve the minimum purchase price policy for rice and wheat, and the subsidy policy for corn and soybean producers. Improve the compensation mechanism for the interests of major grain-producing areas and improve the support policy system for major grain-producing counties' <sup>(67)</sup>. According to the 14th FYP on Developing the Planting Sector at National Level <sup>(68)</sup>, '[d]uring the 14th [FYP] period, we will explore potential expansion, increase production capacity, optimize structure, promote diversified development, and improve supply guarantee capabilities' <sup>(69)</sup>.

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

<sup>(64)</sup> See Art. 5 and 6 of the Private Economy Law.

<sup>(65)</sup> See at: [http://www.moa.gov.cn/gk/cwgk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cwgk_1/nybt/202206/t20220610_6402146.htm), paragraphs 6 and 15 (accessed on 10 June 2025).

<sup>(66)</sup> See at: [https://www.gov.cn/zhengce/content/2022-02/11/content\\_5673082.htm](https://www.gov.cn/zhengce/content/2022-02/11/content_5673082.htm) (accessed on 10 June 2025).

<sup>(67)</sup> Ibid., Section II.1.

<sup>(68)</sup> See at: [http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113\\_6386808.htm](http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113_6386808.htm) (accessed on 18 October 2024).

<sup>(69)</sup> Ibid., Section III.1.3.

- (119) Furthermore, 'in order to implement the Party's and Government's decisions and guidelines' <sup>(70)</sup>, the CCFA issued the 14th FYP for the Development of China's Canned Food Industry <sup>(71)</sup> setting quantitative targets such as 'build three demonstration bases for high-quality raw materials for canned food, create five innovation demonstration units, cultivate one new national canned food industry cluster, cultivate ten influential brands with high reputation', as well as qualitative targets like 'actively develop canned food varieties such as vegetables [and] guide agricultural areas [...] to develop green and high-quality crops and breeds [...] and create corresponding industry clusters' <sup>(72)</sup>.
- (120) At the provincial level, Jiangxi issued the 14th FYP on Developing a High Quality Manufacturing Industry seeking to 'further extend and expand the food industry chain, increase product added value [so that] [b]y 2025, the scale of the province's food processing industry will reach RMB 850 billion yuan. [...] In the canned fruit and vegetable sector, [we shall] build vegetable and fruit processing bases [...] and expand and strengthen the fruit and vegetable processing cluster in southeastern Fujian' <sup>(73)</sup>.
- (121) Sunflower Food Industry Xinfeng Co. Ltd is located in Jiangxi and Zhangzhou Tongfa Food Industry Co. Ltd is located in Fujian.
- (122) Moreover, Heilongjiang, in its 14th FYP on Economic and Social Development and 2035 Perspectives, aims at '[m]oderately expanding high-yield food crops such as corn, [...] and building a national corn and soybean high-quality grain production base' <sup>(74)</sup>.
- (123) More specifically for the sector of the product concerned, Heilongjiang issued a Development Plan for the Corn Processing Industry (2021-2025) <sup>(75)</sup>, according to which the province plans to 'cultivate and create a group of leading and backbone enterprises led by [RMB] "10 billion-level" enterprises, so as to provide the main support for building a modern corn processing industry system' and to '[p]romote the transformation and upgrading of enterprises to become better and stronger, [...] [p]romote corn processing enterprises to accelerate technological transformation, adopt advanced and applicable technologies and processes, eliminate old equipment, introduce and purchase advanced equipment and production lines, and enhance core competitiveness.' <sup>(76)</sup>.
- (124) Furthermore, in 2024, Shandong launched a 'pilot project' to promote, upgrade and develop the corn industry <sup>(77)</sup>, providing important tax support for research and development.
- (125) Similarly, Jilin issued specific preferential policies benefitting the industry of the product concerned. According to a report released on its website, the Jilin Provincial Taxation Bureau 'formulates and adjusts the list of policy benefits as well as the list of topics requiring quick response. Enterprises have needs, taxation responds. On the way to industry upgrading, there are enough policy tools available' <sup>(78)</sup>.
- (126) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (127) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector. Such measures impede market forces from operating freely.

<sup>(70)</sup> See at: <https://dsynews.com.cn/shipin/2023/03/31/17765.shtml> (accessed on 10 June 2025).

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

<sup>(72)</sup> Ibid.

<sup>(73)</sup> See at: [https://gxt.fujian.gov.cn/jdhy/zxzcfcg/sjzcfcg/202107/t20210707\\_5641856.htm](https://gxt.fujian.gov.cn/jdhy/zxzcfcg/sjzcfcg/202107/t20210707_5641856.htm) (accessed on 12 June 2025).

<sup>(74)</sup> See Section III.2, available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dfzgh/202106/P020210628416237004949.pdf> (accessed on 12 June 2025).

<sup>(75)</sup> See Heilongjiang Development Plan for the corn processing Industry (2021-2025), released June 2021.

<sup>(76)</sup> Ibid., Section III.1.

<sup>(77)</sup> See at: [https://www.sohu.com/a/756699103\\_121769698](https://www.sohu.com/a/756699103_121769698) (accessed on 12 June 2025).

<sup>(78)</sup> See at: [http://jilin.chinatax.gov.cn/art/2023/11/6/art\\_334\\_710476.html](http://jilin.chinatax.gov.cn/art/2023/11/6/art_334_710476.html) (accessed on 12 June 2025).

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

- (128) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement.
- (129) The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the state in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings <sup>(79)</sup>.
- (130) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China <sup>(80)</sup>. All land is owned by the state (collectively owned rural land and state-owned urban land) and its allocation remains solely dependent on the state. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates <sup>(81)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(82)</sup>.
- (131) Much like other sectors in the Chinese economy, the producers of the product concerned are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the chemical, and therefore sweetcorn, sector. The present investigation revealed nothing that would call those findings into question.
- (132) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product concerned.

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

- (133) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of fundamental ILO conventions, in particular those on freedom of association and on collective bargaining <sup>(83)</sup>.
- (134) Under national law, only one trade union organisation is active. However, this organisation lacks independence from the state authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary <sup>(84)</sup>. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area.

<sup>(79)</sup> Report – Chapter 6, p. 171-179.

<sup>(80)</sup> Report – Chapter 9, p. 260-261.

<sup>(81)</sup> Report – Chapter 9, p. 257-260.

<sup>(82)</sup> Report – Chapter 9, p. 252-254.

<sup>(83)</sup> Report – Chapter 13, p. 360-361, 364-370.

<sup>(84)</sup> Report – Chapter 13, p. 366.

(135) This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration <sup>(85)</sup>. Those findings lead to the distortion of wage costs in China.

(136) No evidence was submitted to the effect that the sweetcorn sector would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

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

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

(138) First, the Chinese financial system is characterised by the strong position of state-owned banks <sup>(86)</sup>, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similar to non-financial SOEs, the banks remain connected to the state not only through ownership but also via personal relations (the top executives of large state-owned financial institutions are ultimately appointed by the CCP) <sup>(87)</sup> and they regularly implement public policies designed by the GOC.

(139) In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the state <sup>(88)</sup>. While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

(140) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the state's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues <sup>(89)</sup>. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries' <sup>(90)</sup>.

<sup>(85)</sup> Report – Chapter 13, p. 370-373.

<sup>(86)</sup> Report – Chapter 6, p. 137-140.

<sup>(87)</sup> Report – Chapter 6, p. 146-149.

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

<sup>(89)</sup> See the *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)* issued by the China Banking and Insurance Regulatory Commission ('CBIRC') on 28 August 2020; available at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 21 October 2024). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management'.

<sup>(90)</sup> See the *Notice on the Commercial banks performance evaluation method* issued by the CBIRC on 15 December 2020, available at: [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (accessed on 12 June 2025).

- (141) For instance, Sunflower Food Industry Xinfeng Co. Ltd., under the supervision of the Ganzhou Municipality's Financial Office, signed a cooperation agreement with the Ganzhou subsidiary of the state-owned Jiujiang Bank 'to support the enterprise to expand its business scale, increase its market share and help the development of the enterprise' <sup>(91)</sup>.
- (142) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government <sup>(92)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(93)</sup>. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (143) Second, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (144) Third, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 <sup>(94)</sup>. Official media in China have recently reported that the CCP called for 'guiding the loan market interest rate downwards' <sup>(95)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (145) Overall credit growth in the China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (146) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (147) No evidence was submitted in the present investigation demonstrating that the sector of the product concerned is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

### 3.2.1.8. Systemic nature of the distortions described

- (148) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above and in Part II of the Report.

<sup>(91)</sup> See at: <http://www.gzjrw.com.cn/Item/396372.aspx> (accessed on 12 June 2025).

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

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

<sup>(94)</sup> OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris, p. 29, see at: [https://doi.org/10.1787/eco\\_surveys-chn-2019-en](https://doi.org/10.1787/eco_surveys-chn-2019-en) (accessed on 12 June 2025).

<sup>(95)</sup> See at: [http://www.gov.cn/xinwen/2020-04/20/content\\_5504241.htm](http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm) (accessed on 12 June 2025).

- (149) The Commission recalled that in order to produce the product concerned, certain inputs are needed. When the producers of the product concerned purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors. These distortions were described in detail above, in particular in section 3.2.1.1. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, sweetcorn producers being subject to those rules as any other economic operator in China. The distortions have therefore a direct bearing on the cost structure of the product concerned.
- (150) As a consequence, not only the domestic sales prices of the product concerned are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report.
- (151) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (152) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

### 3.2.2. *Representative country*

#### General remarks

- (153) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank <sup>(96)</sup>;
  - Production of the product under investigation in that country;
  - Existence of relevant readily available data in the representative country;
  - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (154) As explained in recitals 53 and 54 above, the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

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

- (155) In the First Note, the Commission identified Colombia, Malaysia, Mexico, Serbia, Thailand and Türkiye as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product under investigation was known to take place.

<sup>(96)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

- (156) AETMD argued that for Colombia, Malaysia, Serbia, Thailand or Türkiye the Commission's First Note stated that not all data relating to factors of production and sale were available. They also stated that prices and costs of factors of production and sale were distorted. They therefore supported the use of Mexico as a representative country.
- (157) CFNA argued that Malaysia was a suitable representative country because data was available for a company in the same general category as the product concerned, i.e. the production and sale of packaged food products including canned food and drinks. CFNA also argued that Thailand, Colombia and Türkiye should be excluded in the suggested representative countries because of high quantities of imports from China of fresh sweetcorn. In addition, CFNA stated that Mexico should be excluded as it did not import large quantities of cans.

#### Existence of relevant readily available data in the representative country

- (158) In the First Note the Commission indicated that for the countries identified as countries where product under investigation is being produced, i.e. Colombia, Malaysia, Mexico, Serbia, Thailand and Türkiye, the availability of data needed to be further verified in particular with regard to the readily available financial data from producers of the product under investigation.
- (159) For Colombia, Serbia and Türkiye no readily available financial data was identified.
- (160) For Malaysia it was noted that one company (Fraser and Neave Holdings BHD) had readily available financial data covering the whole investigation period.
- (161) For Mexico it was noted that one company (Grupo Herdez) had readily available financial data for 2023.
- (162) For Thailand it was noted that two companies (Chin Huay PCL and Sunsweet PCL) had readily available financial data for 2023.
- (163) Comments on the First Note were received from CFNA and AETMD.
- (164) CFNA argued that Malaysia was a suitable representative country because data was available for a company in the same general category as the product concerned, i.e. the production and sale of packaged food products including canned food and drinks.
- (165) In its Second Note the Commission agreed with interested parties that Colombia, Serbia and Türkiye should not be further considered as a representative country, at the provisional stage, due to the lack of readily available financial data.
- (166) In light of the above considerations, the Commission informed the interested parties with the Second Note that it intends to use Malaysia as an appropriate representative country and the company Fraser and Neave Holdings BHD, in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (167) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country and of Fraser and Neave Holdings BHD as a producer in the representative country.
- (168) Tongfa Group argued against using the proposed company for SG&A and profit data (Fraser and Neave Holdings BHD) because it does not produce the product under investigation. In its place Tongfa Group proposed a sweetcorn producer in Thailand. The Commission noted that this was contrary to their views on the First Note, at which time Tongfa Group proposed Fraser and Neave Holdings BHD as a suitable company in the representative country.
- (169) The Commission could not accept this claim as Thailand has already been rejected as a suitable representative country. In addition, Fraser and Neave Holdings BHD, manufactures products in the same general category as the product under investigation, i.e. food and drink products including canned products.
- (170) For Malaysia it was noted that over 70 % of imports of cans and under 15 % of imports of fresh sweet corn were from the PRC.

- (171) For Mexico it was noted that there were no imports of fresh sweet corn recorded in GTA. In respect of cans less than 20 % were from the PRC.
- (172) For Thailand it was noted that almost all imports of fresh sweet corn and over half the imports of cans were from the PRC.
- (173) AETMD argued that for Malaysia and Thailand the Commission's First Note stated that not all data relating to factors of production and sale were available. They also stated that prices and costs of factors of production and sale were distorted due to the influence of Chinese imports. They therefore supported the use of Mexico as a representative country.
- (174) CFNA argued that Thailand, Colombia and Türkiye should be excluded in the suggested representative countries because of high quantities of imports from China of fresh sweetcorn. In addition, CFNA stated that Mexico should be excluded as it did not import large quantities of cans.
- (175) In its Second Note the Commission noted that Thailand should not be further considered as a representative country, at the provisional stage, due to the large quantities of imports from China of fresh sweetcorn and cans which make up around 75 % of the cost of manufacturing.
- (176) The Commission also stated that Mexico should not be further considered as a representative country because of a lack of imports into Mexico of the main raw material (fresh sweetcorn).
- (177) The Commission also commented in the Second Note that there was no evidence of that the prices of imports into Malaysia of cans from China had affected the prices of other imports. Furthermore, less than 15 % of the imports of fresh sweet corn were from China.
- (178) In light of the above considerations, the Commission informed the interested parties with the Second Note that it intends to use Malaysia as an appropriate representative country in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (179) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country.
- (180) Following the issue of the Second Note AETMD provided data of exports of fresh sweetcorn from USA to Mexico. It argued that in the light of this data the Commission should use Mexico as a representative country rather than Malaysia. In its rebuttal CFNA pointed out that this information was export data meaning that additional costs were needed to bring the prices to a CIF Mexico duty paid level. CFNA also challenged the value of this data as it pointed out that the quantities involved were limited and therefore the prices were not representative.
- (181) The Commission noted that the price of these exports was so high that it was not clear if a distorting factor affected these prices or even if the product exported was comparable to the product under investigation.
- (182) CFNA pointed out that there was a discrepancy in the Second Note in relation to the source of cans to be used because the Note suggests using Mexico as a source whereas Malaysia was the representative country. CFNA presumed that an error had been made. This comment was accepted as the reference to Mexico was indeed an error.
- (183) CFNA made a further point regarding the use of Malaysia as a source for cans as it suggested using the average price of codes 7310 21 91 and 7310 21 99. However, this comment was rejected as code 7310 21 91 concerns cans of tinplate and code 7310 21 99 relates to can other than tinplate. Therefore, the Commission decided to use solely code 7310 21 91 as shown in Table 1 above.
- (184) CFNA and Tongfa Group also claimed that Mexico's import quantity of cans was too small in absolute terms and therefore its import price was not representative. However, these parties did not specify to which code its comment referred. The Commission noted that there were no imports of cans into Mexico under code 7310 21 91.

(185) Following the issue of the Second Note and a review of the comments made by interested parties the Commission concluded that Malaysia remained the most appropriate source to establish undistorted costs. This was largely due to the availability of undistorted benchmarks for the main FOPs (fresh sweetcorn and cans). In addition, there remained a lack of suitable undistorted and representative data available for fresh sweetcorn and cans into Mexico.

#### Level of social and environmental protection

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

#### 3.2.2.1. Conclusion

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

#### 3.2.3. Sources used to establish undistorted costs

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

(189) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of some of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Malaysian national statistics for establishing undistorted costs of labour <sup>(97)</sup> <sup>(98)</sup> <sup>(99)</sup> and energy <sup>(100)</sup> <sup>(101)</sup>.

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

<sup>(97)</sup> [http://www.dosm.gov.my/uploads/release-content/file\\_20241108110530.pdf](http://www.dosm.gov.my/uploads/release-content/file_20241108110530.pdf).

<sup>(98)</sup> <https://www.rippling.com/country-hiring/malaysia-employees>.

<sup>(99)</sup> <https://www.mida.gov.my/setting-up-content/human-resources-development-fund/>

<sup>(100)</sup> <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>.

<sup>(101)</sup> <https://www.st.gov.my/>

## 3.2.3.1. Factors of production

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

Table 1

**Factors of production of product under investigation**

| Factor of Production | Commodity Code | Undistorted value (CNY) | Unit of measurement |
|----------------------|----------------|-------------------------|---------------------|
| <b>Raw materials</b> |                |                         |                     |
| Fresh Sweet Corn     | 0709 99 10     | 1,68                    | Kg                  |
| Cans                 | 7310 21 91     | 28,13                   | Kg                  |
|                      |                |                         |                     |
| <b>Consumables</b>   |                |                         |                     |
| <b>Labour</b>        |                |                         |                     |
| Labour               | N/A            | 39                      | Hours worked        |
| <b>Energy</b>        |                |                         |                     |
| Natural gas          | N/A            | 1,79                    | m <sup>3</sup>      |
| Electricity          | N/A            | 0,548                   | kWh                 |
| Biomass              | 4401 39        | 3,65                    | Kg                  |

(192) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount, the Commission used the costs incurred by the sampled exporting producers as a percentage of the direct costs of manufacturing. The methodology is duly explained in recital 202.

## Raw materials

(193) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council<sup>(102)</sup>. The Commission decided to exclude imports from the PRC into the representative country as it concluded in section 3.2.1 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices.

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

(194) For a number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in recital 190.

(195) Duties applicable to the importation of the factors of production into Malaysia were added where applicable.

(196) The Commission added a percentage to the imported prices to cover transportation of the factors of production from the border to the cooperating exporting producer in order to obtain the undistorted transport cost. This addition was equivalent to the actual percentage of delivery costs for raw materials of each sampled exporting producer. The Commission considered that, in the context of this investigation, this methodology could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

#### Labour

(197) The Malaysian Department of Statistics <sup>(103)</sup> publishes detailed information on wages in different economic sectors in Malaysia. Its reports show monthly salaries and wages in the manufacturing sector. The average monthly value in the investigation period has been duly adjusted for other contributions by adding the Employees Provident Fund (EPF) contributions, (13 %), the Social Security Organization (SOCSO) contributions (1,75 %), the Employment Insurance System (EIS) contributions (0,2 %) and the Human Resource Development Fund (HRDF) contributions (1 %) <sup>(104)</sup> <sup>(105)</sup>.

#### Electricity

(198) The Commission has used the electricity price statistics published by Tenaga Nasional Berhad <sup>(106)</sup>. The Commission used the data of the industrial electricity prices in the consumption band 'Tariff E2 - Medium Voltage Peak/Off-Peak Industrial Tariff for peak usage in kWh, 0,355 RM per kWh (0,548 CNY per kWh).

#### Natural gas

(199) The price of natural gas for industrial users in Malaysia is published by the Malaysian Energy Commission (Suruhanjaya Tenaga) <sup>(107)</sup>. The Commission used the most recent available data and indexed it for inflation to reflect the price of the investigation period

(200) The Commission therefore used the data of the average industrial gas prices covering the investigation period, namely 1,79 CNY/m<sup>3</sup>.

#### Manufacturing overhead costs, SG&A and profits

(201) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

(202) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

(203) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial data for Fraser and Neave Holdings BHD as extracted from its Annual Report 2024 (excluding transport) covering the investigation period.

<sup>(103)</sup> [http://www.dosm.gov.my/uploads/release-content/file\\_20241108110530.pdf](http://www.dosm.gov.my/uploads/release-content/file_20241108110530.pdf).

<sup>(104)</sup> <https://www.rippling.com/country-hiring/malaysia-employees>.

<sup>(105)</sup> <https://www.mida.gov.my/setting-up-content/human-resources-development-fund/>

<sup>(106)</sup> <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>.

<sup>(107)</sup> <https://www.st.gov.my/>

### Calculation

- (204) On the basis of the above, the Commission constructed the normal value per product type on an *ex-works* basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (205) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producers. These consumption rates were verified during the verification. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in section 3.2.3.
- (206) In respect of the Sunflower Group, a revised version of the consumption rates per product type was received during the verification visit.
- (207) In respect of the Tongfa Group, the method used to apportion consumed hours for labour to the product under investigation was discussed during the verification visit. It was explained that Tongfa Group produced many canned products in the investigation period. The method used to apportion consumption rates for labour hours for the production under investigation as compared to other products was challenged at the verification visit by the Commission because the method used was only supported by data in spreadsheets which did not constitute a verifiable system as they could not be cross-checked against other company records. Moreover, the case team inquired why Tongfa Group did not use, for labour, the same allocation key used for other factors of production (e.g. energy), being the share of the volume of the product under investigation in the volume of total company's production. The Commission therefore issued a letter under Article 18 of the basic Regulation to inform Tongfa Group of its proposal to base the consumption of labour hours on the facts available.
- (208) Tongfa Group replied by stating that it had cooperated with the investigation to the best of its ability in respect of the issue of labour and all aspects of the investigation. It wished to be considered as a fully cooperating party.
- (209) Although the Commission still regards Tongfa as a cooperating party in this investigation, the Commission maintains that Article 18 should apply since Tongfa did not provide the necessary information in relation to the calculation of labour hours. Accordingly, labour hours should be calculated using the facts available. Therefore, at this stage, labour hours consumed were calculated using an apportionment ratio of production quantity of the product under investigation to total production quantities of all products.
- (210) Once the undistorted manufacturing cost was established, the Commission applied the manufacturing overheads, SG&A, profit and depreciation as noted in recital 203. They were determined on the basis of the financial statements of Fraser and Neave Holdings BHD as explained in section 3.2.2.
- (211) Then the Commission added manufacturing overheads and depreciation to the undistorted cost of manufacturing in order to arrive at the undistorted costs of production. As explained in recital 192, this accounted in total for around 6 % of the direct costs of manufacturing of each sampled company. The calculation of the overhead percentages used was disclosed to each sampled company.
- (212) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of Fraser and Neave Holdings BHD. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 17 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 19 %.
- (213) On that basis, the Commission constructed the normal value per product type on an *ex-works* basis in accordance with Article 2(6a)(a) of the basic Regulation.

### 3.3. Export price

- (214) In respect of the Sunflower Group, the exporting producer exported to the Union either directly to independent customers in the Union or through unrelated traders outside the Union.

- (215) In respect of the Tongfa Group, the producer (Zhangzhou Tongfa Foods Industry Co., Ltd - hereinafter 'ZT') first sold the product concerned to a related trader (Fujian Tongfa Foods Group Co., Ltd - hereinafter 'FT'). FT then sold to the Union either directly to independent customers in the Union or through unrelated traders outside the Union.
- (216) The export price of both groups was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

#### 3.4. Comparison

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

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

- (218) As explained in recital 210, the normal value was established at the *ex-works* level of trade by using costs of production together with amounts for SG&A (excluding transport) and for profit, which were considered to be reasonable for that level of trade. Therefore, no adjustments were necessary to net the normal value back to the *ex-works* level.

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

- (219) In order to net the export price back to the *ex-works* level of trade, adjustments were made on the account of inland freight, handling loading and ancillary expenses.
- (220) Allowances were made for the following factors affecting prices and price comparability: credit costs, bank charges and packaging.
- (221) In respect of the Tongfa Group, as all Union sales were made via a related trader in China (FT), an adjustment to the export price was made to cover the SG&A and profit of the related trader under Article 2(10)(i) of the basic Regulation. The source and level of these rates was disclosed to the party concerned.
- (222) In respect of the Sunflower Group, the method used to calculate credit costs was discussed during the verification. The company used the interest rates of the China exchange trade system<sup>(108)</sup>. The case team highlighted during the verification that these interest rates were not appropriate as they were not the interest rate charged by commercial banks for commercial loans. The case team therefore asked the company to review the level of the interest rate for the calculation of the credit costs. However, the Sunflower Group did not provide the necessary revised information in relation to the interest rates.
- (223) The Commission therefore issued a letter under Article 18 of the basic Regulation to inform the Sunflower Group of its proposal to base the credit costs on the facts available.
- (224) Sunflower Group replied by stating that they used the rates available to them at the time and that if the Commission used alternative rates these should reasonably reflect the situation surrounding international trade transactions.
- (225) The Commission, therefore, maintained that in respect of the calculation of credit costs Article 18 should apply, meaning that the credit costs should be calculated using the facts available. Credit costs were thus calculated using rates of the Bank of China. Such rates more reasonably reflected the rates applicable for commercial loans.

<sup>(108)</sup> Source - [www.chinamoney.com.cn/](http://www.chinamoney.com.cn/).

- (226) In respect of both sampled exporting producers' exports to the Union were made on a FOB basis. Therefore, the methodology used to calculate CIF prices, by adding ocean freight and insurance, was discussed during the verification. It was found that both companies had underestimated significantly these ocean freight rates. The case team therefore asked the company to review the level of freight rates for the calculation of the CIF prices. However, the sampled exporting producers did not provide any revised necessary information on ocean freight rates, nor the estimated CIF prices.
- (227) The Commission therefore issued a letter under Article 18 of the basic Regulation to inform both groups of its proposal to base the ocean freight rates on the facts available as the data supplied had been false or misleading and since, in any event, the company had failed to supply the necessary information within the time limit prescribed by the Commission.
- (228) Sunflower Group replied by stating that they acquired the rates used from a customer and it covered a 15-day period in July 2024. Sunflower Group therefore disagreed that the information was false or misleading. However, the investigation showed that the freight rates in the investigation period fluctuated substantially and during the 15-day period in July 2024 of the ocean freight rates were very high. The Commission considered it inappropriate to use these ocean freight rates to the whole of the investigation period and found that it was misleading of the Sunflower Group to have submitted such information arguing that these rates should be applied to the whole IP.
- (229) Tongfa Group replied to the Article 18 letter by stating that they had cooperated to the best of their ability and did not consider that the information they had supplied was false or misleading. However, the investigation showed that the data supplied was accurate for only around 70 % of sales to the Union by net weight. The Commission pointed out during the investigation that for the remaining 30 % of sales the approach taken did not take into account the date of the shipment and consequently, the approach taken for such sales was clearly inaccurate. Therefore, it was appropriate to recalculate the freight rates for 30 % of the Union sales.
- (230) Sunflower Group proposed that the Commission used the actual ocean freight costs incurred by exporting producers in other anti-dumping investigations. However, this claim was rejected as the ocean freight rates used by the Commission related to the product concerned and therefore were more accurate.
- (231) The Commission, therefore, maintained that in respect of the calculation of the CIF prices, Article 18 should apply, meaning that ocean freight rates should be calculated using the facts available. Such ocean freight rates were calculated using average monthly information of four customers of the sampled exporting producers. Such ocean freight rates were considered appropriate as they related to exports from China to the Union of the product concerned during the investigation period.
- (232) The rates involved were disclosed to the sampled producers.

### 3.5. Dumping margins

- (233) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (234) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

| <i>Company</i>                                                                                                                                   | <i>Provisional dumping margin</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| Sunflower Group:<br>— Sun Flower Food Industry (Xinfeng) Co., Ltd,<br>Ganzhou City, China<br>— Sunny Food Industry Co., Ltd, Ganzhou City, China | 42,4 %                            |

| <i>Company</i>                                                | <i>Provisional dumping margin</i> |
|---------------------------------------------------------------|-----------------------------------|
| Zhangzhou Tongfa Foods Industry Co., Ltd,<br>Zhangzhou, China | 54,3 %                            |
| Other cooperating companies                                   | 48,1 %                            |
| All other imports originating in country concerned            | 54,3 %                            |

(235) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers, disregarding the margins of the exporting producers with zero and *de minimis* dumping margins. As explained in recitals 40 to 42 above, the Commission has applied Article 18 to a limited number of issues concerning the data supplied by each of the sampled exporting producers and for the most part revised the companies' data rather than replace it with other data. The application of Article 18 did not have a major impact on the calculation of the normal value. For this reason, the Commission considered it appropriate to establish the dumping margin for other cooperating companies on the basis of the dumping margins established for the sampled exporting producers.

(236) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 48,1 %.

(237) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of Eurostat.

(238) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted over 90 % of the total imports during the investigation period. On this basis, the Commission decided to establish the dumping margin for non-cooperating exporting producers at the level of the cooperating sampled individually examined company with the highest dumping margin.

#### 4. INJURY

##### 4.1. Unit of measurement

(239) Import statistics are reported in Eurostat (Comext) as the net weight, representing the weight related to the sweetcorn kernels and the liquid. Consequently, the net weight is used as the unit of measurement during this investigation.

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

(240) The like product was manufactured by 11 producers and producer groups in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(241) The total Union production during the investigation period was established at around 259 400 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as direct information from the sampled Union producers and the Union producers supporting the complaint. As indicated in recital 30, the two sampled Union producers represented more than [29 - 38] % of the total Union production of the like product.

##### 4.3. Union consumption

(242) The Commission established the Union consumption on the basis of sales made by the Union industry on the Union market and Eurostat data for imports.

(243) Union consumption developed as follows:

Table 2

**Union consumption (tonnes/net weight)**

|                                              | 2021    | 2022    | 2023    | Investigation period |
|----------------------------------------------|---------|---------|---------|----------------------|
| Total Union consumption (tonnes/ net weight) | 299 021 | 307 619 | 295 208 | 272 245              |
| Index                                        | 100     | 103     | 99      | 91                   |

Source: Data from the Union industry and Eurostat (Comext).

(244) The total Union consumption increased by 3 % between 2021 and 2022 from about 299 020 tonnes in 2021 to about 327 620 tonnes in 2022. Between 2022 and 2023, consumption decreased by 4 percentage points to about 295 208 tonnes. Until the end of the investigation period, consumption dropped further by 8 percentage points to 272 245 tonnes.

#### 4.4. Imports from the country concerned

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

(245) The Commission established the volume of imports on the basis of Eurostat (Comext) data. The market share of the imports was established on the basis of the available Eurostat data.

(246) Imports into the Union from the country concerned developed as follows:

Table 3

**Import quantity (tonnes/net weight) and market share**

|                                                                     | 2021  | 2022   | 2023   | Investigation period |
|---------------------------------------------------------------------|-------|--------|--------|----------------------|
| Quantity of imports from the country concerned (tonnes/ net weight) | 6 484 | 17 712 | 46 631 | 40 052               |
| Index                                                               | 100   | 273    | 719    | 618                  |
| Market share (%)                                                    | 2     | 6      | 16     | 15                   |

Source: Data from the Union industry and Eurostat (Comext).

(247) The volume of imports from China showed a strong increase over the period considered. While the imports increased between 2021 and 2022 by 173 % from about 6 500 tonnes to 17 710 tonnes, they surged between 2022 and 2023 by 446 percentage points to 46 631 tonnes. Until the end of the investigation period, the imports were slightly reduced to about 40 050 tonnes, remaining at a very substantial level.

(248) The market share of imports from China showed a similar development as the volume of imports with a sharp increase from 2 % in 2021 to 15 % in the investigation period.

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

(249) The Commission established the prices of imports on the basis of EUR per tonne (net weight) reported in Eurostat statistics (Comext). Price undercutting of the imports was established on the basis of CIF prices for the sampled exporting producers and the verified questionnaire replies of the sampled Union producers.

(250) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 4

#### Import prices (tonnes/ net weight)

|                                          | 2021  | 2022  | 2023  | Investigation period |
|------------------------------------------|-------|-------|-------|----------------------|
| Average price from the country concerned | 1 164 | 1 570 | 1 285 | 1 192                |
| Index                                    | 100   | 135   | 110   | 102                  |

Source: Eurostat (Comext).

(251) The average price of imports from the PRC showed an increase of 35 % between 2021 and 2022 from 1 164 EUR per tonne to 1 570 EUR per tonne. However, these prices fell by 25 percentage points in 2023. Prices in the investigation period were only 2 % higher than in 2021. Overall, import prices remained substantially lower compared to Union prices as reflected in Table 8.

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

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

(253) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. It showed a significant weighted average undercutting margin of between 7,2 % and 28,6 % by the imports from the country concerned on the Union market.

(254) The adjustments made to the export price as described at section 3.4.2 above also apply to the CIF prices used in the undercutting calculations.

(255) In any event, regardless of the findings of undercutting, the Commission found that the imports from China suppressed the prices of the Union industry, especially via the tender mechanism, as explained below in section 4.6.4 and caused a significant drop of sales volume and market share of Union producers.

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

##### 4.6.1. General remarks

(256) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

- (257) As mentioned in recital 30, sampling was used for the determination of possible injury suffered by the Union industry.
- (258) The sweetcorn market is characterised by the existence of two sales channels, i.e. sales under the producer's own brand and sales under retailer's brand. Retailer's brand sales command lower selling prices are in competition with imports from China and are under significant price pressure and represented about 70 % of the sales in the Union during the IP and [35 – 55 %] for the sampled Union producers. Sales related to own brand products will usually trigger higher selling costs intended notably for marketing and advertising and will also command higher selling prices. Evidence collected by the Commission points to the existence of price pressure exercised by the imports also with respect to this second sales channel. In essence, the evidence collected by the Commission pointed to the existence of injury caused by the product concerned as a whole, regardless of the sales channel.
- (259) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the questionnaire reply submitted by the complainant covering data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (260) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (261) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

#### 4.6.2. *Macroeconomic indicators*

##### 4.6.2.1. *Production, production capacity and capacity utilisation*

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

Table 5

#### **Production, production capacity and capacity utilisation**

|                              | 2021    | 2022    | 2023    | Investigation period |
|------------------------------|---------|---------|---------|----------------------|
| Production quantity (tonnes) | 368 786 | 319 410 | 375 541 | 333 973              |
| <i>Index</i>                 | 100     | 87      | 102     | 91                   |
| Production capacity (tonnes) | 436 428 | 449 694 | 463 575 | 471 406              |
| <i>Index</i>                 | 100     | 103     | 106     | 108                  |
| Capacity utilisation (%)     | 85      | 71      | 81      | 71                   |
| <i>Index</i>                 | 100     | 84      | 96      | 84                   |

Source: Verified macro-questionnaire.

- (263) The production volume decreased by 13 % between 2021 and 2022 from about 368 790 tonnes to 319 410 tonnes. This development can be linked to the bad sweetcorn harvest that is described in recital 313, which resulted in lower production volumes. In 2023, the production volume increased by 15 percentage points to about 375 540 tonnes, representing a recovery from the bad harvest in the Union. However, during the investigation period, the production quantity dropped again significantly by 11 percentage points to about 333 970 tonnes, coinciding with the increase of Chinese imports. Overall, the production volume decreased by 9 % over the period considered.
- (264) The production capacity of the Union industry showed a steady increase of 8 % over the period considered due to investments that were decided before the increase of the Chinese imports. Between 2021 and 2022, the capacity increased by 3 %, followed by a further increase of 3 percentage points in 2022 and an additional 2 percentage points during the investigation period.
- (265) The capacity utilisation followed the trend in production quantity. Between 2021 and 2022, it decreased from 85 % to 71 %, followed by an increase up to 81 %. During the investigation period, capacity utilisation dropped again to 71 %.

#### 4.6.2.2. Sales quantity and market share

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

Table 6

#### Sales quantity and market share

|                                                    | 2021    | 2022    | 2023    | Investigation period |
|----------------------------------------------------|---------|---------|---------|----------------------|
| Union sales volume to unrelated customers (tonnes) | 284 883 | 279 277 | 241 039 | 225 854              |
| <i>Index</i>                                       | 100     | 98      | 85      | 79                   |
| Market share of the Union industry (%)             | 95      | 91      | 82      | 83                   |
| <i>Index</i>                                       | 100     | 96      | 86      | 88                   |

Source: Verified macro-questionnaire.

- (267) Throughout the period considered, the Union sales volume dropped significantly by 21 %. Between 2021 and 2022 the sales volume decreased by 2 % from about 284 880 tonnes to about 279 280 tonnes. In 2023, the sales dropped significantly by 13 percentage points to about 241 040 tonnes. During the investigation, the sales dropped by an additional 6 percentage points to about 225 850 tonnes.
- (268) In terms of market share, Union sales decreased from 95 % in 2021 to 91 % in 2022, representing a decrease of 4 %. In 2023, market share dropped significantly to 82 %, a decrease of 14 % compared to 2021. During the investigation period, market share slightly increased by 1 percentage point to 83 %.
- (269) The decrease in sales volume in 2022 can be linked to the bad harvest that is mentioned in recital 313 and the reduced production volume that is reported in Table 5. However, the main decrease in Union sales volume in 2023 and the investigation period was due to the market penetration of the Chinese imports at prices which undercut the Union industry as shown in recital 253.
- (270) The development of the market share over the period considered was impacted by the same factors and the main loss of market share in 2023 coincided with the increased market share of Chinese imports.

## 4.6.2.3. Growth

(271) The Union industry lost 12 percentage points of market share over the period considered due to the imports from China. The sales volumes dropped significantly by 21 %. The main loss in market share can be attributed to the imports from China as it coincided with the increased Chinese market share, which increased significantly from 2 % to 15 % over the period considered, and exceeded the reduction in Union consumption that decreased by 9 %. Therefore, the Union industry did not experience any growth in terms of production and sales volumes, despite the expansion in production capacity.

## 4.6.2.4. Employment and productivity

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

Table 7

**Employment and productivity**

|                                    | 2021  | 2022  | 2023  | Investigation period |
|------------------------------------|-------|-------|-------|----------------------|
| Number of employees                | 3 648 | 3 449 | 3 658 | 3 456                |
| Index                              | 100   | 95    | 100   | 95                   |
| Productivity (tonnes/<br>employee) | 101   | 93    | 103   | 97                   |
| Index                              | 100   | 92    | 102   | 96                   |

Source: Verified macro-questionnaire.

(273) The Union industry employment decreased by 5 % from about 3 460 full time employees ('FTEs') in 2021 to 3 456 FTEs during the investigation period. This development largely follows the trend in production capacity shown in Table 5.

(274) As the figures for production and employment are closely linked, productivity in terms of tonnes per employee is in line with the trend of production volume shown in Table 5.

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

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

(276) Sweetcorn was subject to a previous anti-dumping investigation. Definitive anti-dumping measures on imports from Thailand were imposed in 2007 <sup>(109)</sup> and extended following expiry reviews in 2013 <sup>(110)</sup> and 2019 <sup>(111)</sup>. Following the imposition of measures, the Union industry was able to recover, at least partially its level of profitability and market share.

<sup>(109)</sup> Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared and preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14–25, ELI: <http://data.europa.eu/eli/reg/2007/682/oj>).

<sup>(110)</sup> Council Implementing Regulation (EU) No 875/2013 of 2 September 2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 244, 13.9.2013, p. 1–18, ELI: [http://data.europa.eu/eli/reg\\_impl/2013/875/oj](http://data.europa.eu/eli/reg_impl/2013/875/oj)).

<sup>(111)</sup> Commission Implementing Regulation (EU) 2019/1996 of 28 November 2019 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 310, 2.12.2019, p. 6–28, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/1996/oj](http://data.europa.eu/eli/reg_impl/2019/1996/oj)).

## 4.6.3. Microeconomic indicators

## 4.6.3.1. Prices and factors affecting prices

(277) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

**Sales prices in the Union**

|                                                                          | 2021            | 2022            | 2023            | Investigation period |
|--------------------------------------------------------------------------|-----------------|-----------------|-----------------|----------------------|
| Average unit sales price in the Union to unrelated customers (EUR/tonne) | [1 302 - 2 028] | [1 473 - 2 294] | [1 754 - 2 732] | [1 843 - 2 870]      |
| <i>Index</i>                                                             | 100             | 113             | 135             | 142                  |
| Average unit cost of cost of goods sold (EUR/tonne)                      | [1 146 - 1 784] | [1 323 - 2 059] | [1 590 - 2 476] | [1 655 - 2 577]      |
| <i>Index</i>                                                             | 100             | 115             | 139             | 144                  |

Source: Sampled Union producers.

(278) The average sales price to unrelated customers in the Union increased throughout the period considered by 42 %. Between 2021 and 2022, the average sales price increased by 13 % from [1 302 - 2 028] EUR/tonne to [1 473 - 2 294] EUR/tonne. In 2023, the average sales price increased by an additional 22 percentage points to [1 754 - 2 732] EUR/tonne. In the investigation period, the average sales price increased further by 7 percentage points to [1 843 - 2 870] EUR/tonne.

(279) This apparent positive trend in average sales prices should be seen in the context of important increase of costs, especially raw material cost related to sweetcorn, cans, and energy. Despite the sales price increases, the sampled Union producers were not able to increase prices at sufficient levels, fully in line with the cost increases.

(280) The average unit cost of cost of goods sold increased between 2021 and 2022 by 15 % from [1 146 - 1 784] EUR/tonne to [1 323 - 2 059] EUR/tonne. In 2023, the cost further increased to [1 590 - 2 476] EUR/tonne, representing an additional increase of 24 percentage points compared to 2022. During the investigation period, the average unit cost per tonne increased by 5 percentage points to [1 655 - 2 577] EUR/tonne. As a result, the average import prices during the period considered described in recital 250 remained consistently below the average unit cost of the cost of goods sold.

## 4.6.3.2. Labour costs

(281) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

**Average labour costs per employee**

|                                         | 2021              | 2022              | 2023              | Investigation period |
|-----------------------------------------|-------------------|-------------------|-------------------|----------------------|
| Average labour costs per employee (EUR) | [29 702 - 46 250] | [34 296 - 53 404] | [30 203 - 47 030] | [33 281 - 51 823]    |
| <i>Index</i>                            | 100               | 115               | 102               | 112                  |

Source: Sampled Union producers.

(282) The average labour costs per employee increased in 2022 by 15 %, followed by a decline of 13 % in 2023. In the investigation period, the average labour costs per employee increased again by 12 %. The increase in the average labour costs was linked to increases in minimum wages due to inflation.

## 4.6.3.3. Inventories

(283) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

**Stocks**

|                                                 | 2021               | 2022               | 2023               | Investigation period |
|-------------------------------------------------|--------------------|--------------------|--------------------|----------------------|
| Closing stocks (tonnes)                         | [72 917 - 113 542] | [70 300 - 109 467] | [89 648 - 139 596] | [112 712 - 175 509]  |
| <i>Index</i>                                    | 100                | 96                 | 123                | 155                  |
| Closing stock as a percentage of production (%) | [143 - 222]        | [150 - 234]        | [274 - 427]        | [355 - 553]          |
| <i>Index</i>                                    | 100                | 105                | 192                | 249                  |

Source: Sampled Union producers.

(284) Between 2021 and 2022, the closing stock of the sampled Union producers decreased by 4 % from [72 917 - 113 542] to [70 300 - 109 467] tonnes. However, in 2023, the closing stock increased substantially by 27 percentage points [89 648 - 139 596] tonnes, with an even further increase by an additional 32 percentage points compared to 2021 [112 712 - 175 509] tonnes.

(285) The reduced stock level of 2022 can be linked to the bad harvest in the Union. While the increased level of stocks can be connected to a seasonal effect at the end of the calendar year, the substantial surge in inventories in 2023 and the IP was a clear effect of the rise in dumped imports from China indicating that Union producers were not able to sell their products.

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

(286) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

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

|                                                                                  | 2021                     | 2022                         | 2023                          | Investigation period     |
|----------------------------------------------------------------------------------|--------------------------|------------------------------|-------------------------------|--------------------------|
| Profitability of sales in the Union to unrelated customers (% of sales turnover) | [8 - 13]                 | [7 - 11]                     | [7 - 10]                      | [7 - 11]                 |
| <i>Index</i>                                                                     | 100                      | 85                           | 78                            | 85                       |
| Cash flow (EUR)                                                                  | [8 548 316 - 13 310 950] | [- 7 179 488 - - 11 179 489] | [- 26 396 595 - - 41 103 270] | [- 299 781 - - 466 801]  |
| <i>Index</i>                                                                     | 100                      | - 84                         | - 309                         | - 4                      |
| Net Investments (EUR)                                                            | [5 084 019- 7 916 544]   | [9 363 438- 14 580 211]      | [14 746 664- 22 962 663]      | [12 310 955- 19 169 915] |
| <i>Index</i>                                                                     | 100                      | 184                          | 290                           | 242                      |
| Return on investments (%)                                                        | [17 - 27]                | [15 - 23]                    | [14 - 21]                     | [13 - 20]                |
| <i>Index</i>                                                                     | 100                      | 88                           | 79                            | 76                       |

Source: Sampled Union producers.

(287) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(288) The profitability decreased by 15 % over the period considered.

(289) Despite being still profitable, the Union industry remained constantly below the target profit of 14 % during the period considered. The trend on profitability should be considered in light of the significant decrease in sales volumes, the decreased production, capacity utilisation, and employment, as well as the significant increase of stock levels and the delayed effect of the tenders and the annual duration of the contracts. In essence, the Union industry was able to maintain a positive profitability level but at the expense of its sales volumes.

(290) The net cash flow is the ability of the Union producers to self-finance their activities. Between 2021 and 2022, cash flow dropped dramatically by 184 %. In 2023, cash flow decreased further by 225 percentage points. During the investigation period, cash flow recovered to almost the same level as in 2021.

(291) The sampled Union producers continued to invest during the period considered as demonstrated by the investment figures above. Investments increased by 84 % from [5 084 019 - 7 916 544] EUR in 2021 to [9 363 438 - 14 580 211] EUR in 2022. In 2023, investments increased by 96% to [14 746 664 - 22 962 663] EUR. During the investigation period, investments increased by 38 % to [12 310 955 - 19 169 915] EUR. Investments were made for the expansion of production capacity as described in Table 5 and for the replacement of equipment. Overall, the industry is very capital intensive with the need for large investments into production facilities. The Union industry was able to raise the necessary capital. However, in case no measures will be imposed, not only future investments will be at risk but also the future of the existing production plans.

- (292) The return on investments is the profit in percentage of the net book value of investments. Between 2021 and 2022, it decreased by 12 % from [17 - 27] % to [15 - 23] %. In 2023, the return on investment further decreased by 9% to [14 - 21] %. During the investigation period, the return on investment recorded an additional decline by 3 % to [13 - 20] %.

#### 4.6.4. *Analysis of tenders*

- (293) Retailer brand products represented about 70 % of the total sweetcorn sales in the Union during the period considered and about [35 - 55] % of the sampled Union producers' sales. All retailer brand sweetcorn is sold in the Union through tender processes. During the process of tender sales, Union producers compete indirectly with Chinese exporting producers that sell their products via importers. In order to obtain the necessary insights into the sweetcorn market, the Commission requested detailed information on tenders from the sampled Union producers and importers. Information was requested on the characteristics of the tenders, such as process, timing and other relevant characteristic.

- (294) The investigation showed that tenders can be organised in different forms, such as online platforms or through email, telephone, or in-person communication, depending on the business and sales model of the negotiating parties. Tender negotiations take place between May and August of a given year for sales covering the year following the negotiations.

- (295) The tender process takes place in different stages. First, Union sweetcorn producers request information from retailers about their need of own and retail brand products. Retailers respond with their volume need. A retailer may also initiate tender discussions by requesting details regarding available volumes that producers can sell to retailers. Retailers usually initiate discussions with multiple producers simultaneously, including Union and non-Union producers. In a second step, sweetcorn producers respond to the retailer's request with volume offers and corresponding prices. Third, the retailer and Union sweetcorn producers or EU importers enter into negotiations, typically focusing on the price of sweetcorn. For own brand sweetcorn, retailers generally negotiate on the price, and not on the volume. Fourth, the retailer decides on the volume allocation among different sweetcorn producers and suppliers, and the parties finalize the sales agreement for the upcoming year. Fifth, once the negotiations are completed, Union and non-Union sweetcorn producers supply the agreed volume throughout the September-August period at negotiated prices.

- (296) Chinese imports impact the tender negotiations as they hinder the ability to negotiate fair prices and reduced the number of won tenders. As a result, production volumes of Union producers had to be reduced, the industry is subject to high fixed costs that remained unchanged and therefore the fixed costs per unit increased. The Chinese imports impacted also indirectly the sales of own brand product, considering that consumers tend to be price sensitive and prefer to buy the cheaper retailer brand product if the price gap to own brand products is significant. The information submitted by the Union producer confirmed also a significant decrease of the ratio of tenders won by the latter.

- (297) Given the nature of tenders and of the sweetcorn production and sales cycle, a delayed effect of the imports also needs to be taken into consideration. Taking into account that tenders are negotiated for the following year, starting as from September, the effect on volumes and sales prices will take effect only in the following year. Therefore, the effect of the price pressure exerted by the Chinese prices during the investigation period are still not fully visible as they will continue to develop after the period considered. As described in recital 289, stock levels increased significantly at the expense of sales volumes.

#### 4.7. Conclusion on injury

- (298) The deterioration of the economic situation of the Union industry took place in a market of slightly decreasing demand. Over the period considered, consumption decreased by 9 %, but the Union industry market share dropped of a larger extent, from 95 % in 2021 to 83 % during the period considered. This was linked to the price pressure generated by Chinese imports, with significant price undercutting and, in any event, with price suppression considering that the Chinese imports remained constantly below the average unit costs of the costs of goods sold. Such price suppression prevented the Union industry to adjust their sales prices fully in line with the price increases related to raw materials, resulting in a decreasing profit that remained constantly below target profit over the period considered, coupled with a significant decrease in sales volume.
- (299) Even though the development in sales prices showed a positive trend during the period considered with an increase of 42 %, this was linked to the significantly increased prices of the main raw materials. However, the sales price increases did not allow to fully cover the raw materials price increases that were reflected in the increase of 44% of the average unit cost of the costs of goods sold and resulted in the drop of the sales quantities of 21 %.
- (300) Most indicators showed a negative trend, with a decreased profit of 21 % and decreased cash flow of -104 %. Sales and production volumes, as well as capacity utilisation decreased significantly during the investigation period, indicating volume injury. Closing stocks of finished goods were impacted by the Chinese imports and increased significantly which also had a negative impact on cash flow and substantially increased fixed costs. Prices of Chinese imports remained constantly below the level of the Union industry's average sales prices and average unit costs of the costs of goods sold. The development of Chinese import prices in light of the increasing quantities and negative injury indicators clearly demonstrated price pressure.
- (301) During the period considered the Union industry managed to carry out investments to expand production capacities. While the decisions to carry out those investments were taken before the rise of Chinese imports, future investments might be at risk in case no measures will be imposed.
- (302) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

### 5. CAUSATION

- (303) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by known factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These known factors are: imports from third countries, export performance, reduction in consumption and other factors, including the bad sweetcorn harvest in 2022 in the EU, floods in Thailand, and the impact of the Ukraine war on raw material and energy costs.

#### 5.1. Effects of the dumped imports

- (304) As shown in Table 3, the volume of dumped imports from China increased significantly from around 6 480 tonnes in 2021 to 40 050 tonnes in the investigation period. In terms of market share, the dumped imports from China increased from 2 % in 2021 to 15 % in the investigation period.
- (305) The average price of Chinese imports was always significantly below the average price and average unit cost of the cost of goods sold of the Union industry. Between 2022 and the investigation period, the Chinese average import prices decreased significantly by 33 %, while undercutting was confirmed in recital 253.
- (306) These observations coincided with a 12 % decrease in market share of the Union industry over the period considered from 95 % in 2021 to 83 %. This drop exceeded the drop in consumption of 9 % over the period considered.

(307) The Chinese imports showed a considerable negative effect on the sales volumes of the Union industry, which dropped significantly in 2023, and the investigation period as described in recital 266. The production volume decreased by 9 percentage points during the investigation period. At the same time, the Union industry's ratio of successful tenders significantly declined, while the stocks (in absolute terms, and also both in terms of production and sales) substantially increased. Such trends, in particular those on sales volumes and market shares, can be linked to a volume injury caused by the Chinese imports.

(308) As explained in recital 255, imports from China caused price suppression to the Union industry in 2023. Such price suppression meant that, while the unit cost of the Union producers increased by more than 30 % in 2022 and an additional 13 % in 2023 due to increased raw material and energy costs, Union producers were unable to adjust their sales prices fully in line with the price increase related to raw materials. As a result of this price suppression, the profitability decreased over the period considered. Although the profit remained positive, it remained below the target profit over the period considered. The coincidence in time between the deterioration in the economic situation of the Union industry and the significant presence of dumped imports from China, undercutting the Union industry's prices, and suppressing Union market price levels, confirms a causal link between the two.

(309) Based on the above, the Commission concluded that the dumped imports from China caused material injury to the Union industry.

## 5.2. Effects of other factors

### 5.2.1. Imports from third countries

(310) The quantity of imports from other third countries developed over the period considered as follows:

Table 12

#### Imports from third countries

| Country  |                            | 2021  | 2022  | 2023  | Investigation period |
|----------|----------------------------|-------|-------|-------|----------------------|
| Thailand | Volume (tonnes)            | 4 345 | 4 863 | 3 293 | 3 638                |
|          | Index                      | 100   | 112   | 76    | 84                   |
|          | Market share (%)           | 1,4   | 1,5   | 1,1   | 1,3                  |
|          | Average price (EUR/ tonne) | 1 115 | 1 392 | 1 186 | 1 264                |
|          | Index                      | 100   | 125   | 106   | 113                  |

| Country                                                   |                          | 2021  | 2022   | 2023  | Investigation period |
|-----------------------------------------------------------|--------------------------|-------|--------|-------|----------------------|
| Total of all third countries except the country concerned | Volume (tonnes)          | 7 654 | 10 630 | 7 538 | 6 339                |
|                                                           | <i>Index</i>             | 100   | 139    | 98    | 83                   |
|                                                           | Market share (%)         | 2,4   | 3,2    | 2,4   | 2,2                  |
|                                                           | Average price (EUR/ ton) | 1 206 | 1 952  | 1 874 | 1 498                |
|                                                           | <i>Index</i>             | 100   | 162    | 155   | 124                  |

Source: Eurostat (Comext).

(311) Imports from Thailand are subject to anti-dumping measures as mentioned in recital 276. Over the period considered, the level of imports decreased slightly from 4 345 tonnes in 2021 to 3 640 tonnes in the investigation period. Consequently, the market share decreased from 1,4 % to 1,3 % and remained at an overall low level. Although the price levels of imports from Thailand were below the Union industry prices, no additional market share could be gained by Thai imports. Therefore, the impact was considered to be limited, if not negligible, and the Commission therefore concluded that they did not attenuate the causal link between the dumped imports and the material injury suffered by the Union industry.

(312) The Commission considered that imports from other third countries were at very low levels throughout the period considered. Over the period considered, the market share for all other third countries decreased from 2,4 % in 2021 to 2,2 % in the investigation period. The average price level remained below the price level of the Union industry, although they increased by 24 % over the period considered. While the Commission could not exclude that those imports contributed to the injury of the Union industry, given their low and stable volume, the impact was considered to be limited, and the Commission therefore concluded that they did not attenuate the causal link between the dumped imports and the material injury suffered by the Union industry.

#### 5.2.2. Low sweetcorn yield in the EU in 2022

(313) In their comments to the investigation, the CFNA and the unrelated importer Otto Frank considered that the low crop yield of EU sweetcorn in 2022 caused by droughts contributed to the injury suffered by the Union industry.

- (314) Otto Frank considered that the low crop yield of EU sweetcorn in 2022 that was caused by widespread droughts represented the main factor that contributed to the injury of the Union industry. As a result of this bad harvest, the importer explained that the EU maize production, including sweetcorn, decreased by 28,9 % in 2022 compared to the previous year and 24,3 % below the five-year average <sup>(112)</sup>. Consequently, raw material prices were subject to sharp price increases <sup>(113)</sup>. Otto Frank considered that following increased price estimates and risks of insufficient supplies from the Union industry, some EU retailers decided to change their procurement strategy by purchasing sweetcorn from China rather than from Union producers. The importer claimed that a low crop year will impact also the following year of production, as producers have to serve contracts from the previous season without any surplus left. As a result, retailers hesitated to change back to the supply from Union producers when contracts for the 2023 and 2024 were closed due to uncertainty about the 2023 crop yield, continued high raw material prices and previous supply from China that prevented shortage of supply. However, after a reduction in raw material prices towards the end of 2023 and a recovery of the crop yield in 2023 and 2024, the importer considered that customers purchased again sweetcorn produced in the EU and the increase in Chinese imports was considered by the importer as a temporary shift.
- (315) The CFNA claimed that the abrupt change of imports from China in 2022 was due to a large order placed by Lidl, representing about 60 % of China's total exports.
- (316) The Commission noted that the CFNA did not further specify this claim or provide any supporting evidence. Therefore, it was rejected.
- (317) The analysis of the production volume in recital 262 showed a drop in the production volume of the sampled Union producers for 2022. However, in the following year, the production volume recovered to a normal level, while Chinese imports continued to enter the Union at dumped prices. While it cannot be excluded that the low sweetcorn yield contributed to the injury of the Union industry, considering that it was limited to only one year of the period considered, it was considered that it did not attenuate the causal link to the extent of making it not genuine or not substantial.

#### 5.2.3. *Floods in Thailand*

- (318) The CFNA claimed that a shortage of supply caused by floods in Thailand represented another cause of injury.
- (319) The Commission noted that the CFNA did not further specify this claim or provide any additional supporting evidence.
- (320) While indeed Thailand experienced serious floods in 2022 with a negative impact on the agricultural sector and the production of rice in particular <sup>(114)</sup>, the import statistics described in Table 12 with the level of sweetcorn imports originating in third countries, showed that the level of sweetcorn imports from Thailand was not negatively impacted. To the contrary, the imports from Thailand increased between 2021 and 2022 from 4 345 tonnes to 4 863 tonnes, representing an increase of 12 %. The Commission therefore did not consider the floods in Thailand as a cause of injury to the Union industry.

#### 5.2.4. *Decrease in consumption*

- (321) As described in recital 243, the Union consumption increased by 3 % between 2021 and 2022, followed by a significant drop of 9 % in the investigation period compared to 2021. At the same time, Chinese imports increased significantly from 6 % in 2022 to 16 % in 2023, while the Union industry market share dropped from 91 % to 82 %.

<sup>(112)</sup> [https://agriculture.ec.europa.eu/system/files/2023-03/cmo-16-3-2023-summary\\_en.pdf](https://agriculture.ec.europa.eu/system/files/2023-03/cmo-16-3-2023-summary_en.pdf).

<sup>(113)</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:F4\\_Developments\\_of\\_output\\_price\\_indices\\_for\\_cereals\\_\(2015\\_%3D\\_100,\\_EU,\\_2015-2023\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:F4_Developments_of_output_price_indices_for_cereals_(2015_%3D_100,_EU,_2015-2023).png).

<sup>(114)</sup> <https://www.world-grain.com/articles/17685-thailands-rice-crop-hurt-by-flooding>.

(322) Although the decline in consumption could have contributed to a reduction in production and sales due to the decreased demand, the Commission observed that the decrease in market share of the Union industry coincided with the market share gained by the Chinese exports. Hence, in the Commission's view, the decrease in consumption did not attenuate the causal link between the dumped Chinese imports and the material injury to the extent of making it not genuine or not substantial.

#### 5.2.5. Raw material and energy costs

(323) CFNA considered that the war in the Ukraine may have provided challenges to Union producers in the form of increased energy costs and challenges in security of supply.

(324) As mentioned in recital 280, the average unit cost of cost of goods sold increased by more than 30 % in 2022 and an additional 5 % in 2023, driven mainly by price increases of the main raw materials such as energy, cans, and sweetcorn. However, due to the price pressure of the Chinese imports, the Union industry was not able to increase its prices in line with the increase in its costs and to remain viable.

(325) While it could not be excluded that the increases in raw material prices contributed to the injury of the Union industry, the Commission considered that it did not attenuate the causal link to the extent of making it not genuine or not substantial.

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

(326) The volume of exports of the sampled Union producers developed over the period considered as follows:

Table 13

#### Export performance of the sampled Union producers

|                         | 2021              | 2022              | 2023              | Investigation period |
|-------------------------|-------------------|-------------------|-------------------|----------------------|
| Export volume (tonnes)  | [51 698 - 80 502] | [46 673 - 72 677] | [36 129 - 56 260] | [35 794 - 55 738]    |
| <i>Index</i>            | 100               | 90                | 70                | 69                   |
| Average price (EUR/ton) | [1 285 - 2 003]   | [1 466 - 2 285]   | [1 671 - 2 603]   | [1 786 - 2 782]      |
| <i>Index</i>            | 100               | 114               | 130               | 139                  |

Source: Sampled Union producers.

(327) The export volume of the Union industry decreased by 31 % over the period considered. The sales prices of these exports increased by 39 % over the same period.

(328) Bearing in mind that the export volumes represent only around 10 % of Union sales and that the trend of sales volumes and prices was similar to the trend observed for Union industry sales in the Union, it is evident that the export performance of the Union industry is not a key element in the overall assessment in the economic situation of the Union industry.

(329) Therefore, the Commission concluded that the export performance of the Union industry did not cause material injury to the Union industry or was able to attenuate the causal link with respect to Chinese imports.

#### 5.4. Conclusion on causation

- (330) The Commission established a causal link between the material injury suffered by the Union industry and the dumped imports from China. The increase of the Chinese imports in 2023 and the investigation period coincided with the deterioration of the Union industry's situation. The sharp increase in Chinese market share resulted in a significant drop of sales by Union producers in 2023 and the investigation period, and a decline in production volumes in the investigation period. At the same time, stock levels increased dramatically, and the ratio of successful tenders decreased. The trend of these volume indicators showed a clear volume injury. Chinese imports were made at prices significantly undercutting the Union industry's sales prices. While the profitability remained positive, it remained below the target profit.
- (331) Other factors examined were imports from other third countries, the export performance of the Union industry, floods in Thailand, decreased Union consumption, and a bad sweetcorn harvest in 2022.
- (332) Therefore, the Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. None of the factors, collectively or separately, were found to have a bearing on the situation of the Union industry sufficient to call into question the conclusion that the Chinese imports were causing material injury.
- (333) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury consists mainly of lost volumes related to sales and production volumes, capacity utilisation, and increased stock levels. At the same time, the Union industry suffered from low import prices that were undercutting the Union sales prices and reducing the level of profitability, which remained consistently below target profit.

### 6. LEVEL OF MEASURES

- (334) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (335) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. At this stage of the investigation, the Commission has not taken any decision regarding the raw material distortions which will be taken at the definitive stage of the investigation.

#### 6.1. Underselling margin

- (336) The injury would be removed if the Union industry were able to obtain a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.
- (337) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country concerned, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.

- (338) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. This basic profit was established based on the profitability of the Union industry that was considered to be achieved in the absence of the dumped Chinese imports. Such profit margin was established at 14 %. This level of profitability was already confirmed in the previous anti-dumping investigation considering imports from Thailand <sup>(115)</sup>.
- (339) On this basis, the Commission calculated a non-injurious price for the like product of the Union industry by applying the above-mentioned target profit margin to the cost of production of the sampled Union producers during the investigation period.
- (340) The Commission then determined the underselling margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in the country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (341) The adjustments made to the export price as described at section 3.4.2 above also apply to the CIF prices used in the underselling calculations.
- (342) The underselling level for 'other cooperating companies' and for 'all other imports originating in China' is defined in the same manner as the dumping margin for these companies and imports (see recital 234).

| Country | Company                                                                                                                                       | Dumping margin (%) | Injury margin (%) |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------|
| China   | Sunflower Group:<br>— Sun Flower Food Industry (Xinfeng) Co., Ltd, Ganzhou City, China<br>— Sunny Food Industry Co., Ltd, Ganzhou City, China | 42,4               | 37,5              |
|         | Zhangzhou Tongfa Foods Industry Co., Ltd, Zhangzhou, China                                                                                    | 54,3               | 81,8              |
|         | Other cooperating companies                                                                                                                   | 48,1               | 61,2              |
|         | All other imports originating in country concerned                                                                                            | 54,3               | 81,8              |

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

- (343) As explained in the Notice of Initiation, the complainant has provided sufficient evidence in the complaint that there are raw material distortions within the meaning of Article 7(2a) of the basic Regulation in the country concerned with regard to the product concerned. According to the evidence in the complaint, steel cans, accounting for at least 17 % of the cost of production of the product concerned, is subject to export VAT in the country concerned.

<sup>(115)</sup> Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14, ELI: <http://data.europa.eu/eli/reg/2007/682/oj>).

(344) The Commission will continue to investigate the alleged distortions to conduct the assessment on the appropriate level of measures in accordance with Article 7(2a) of the basic Regulation at the definitive stage of the investigation. Therefore, the Commission concluded to, at this stage, determine the amount of provisional duties in accordance with Article 7(2) of the basic Regulation.

(345) With regards to the Sunflower Group, the provisional anti-dumping duty is therefore set at the level of the underselling margin.

(346) With regards to the Tongfa Group, the provisional anti-dumping duty is therefore set at the level of the dumping margin.

### 6.3. Conclusion on the level of measures

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

| <i>Country</i> | <i>Company</i>                                                                                                                                      | <i>Provisional anti-dumping duty</i> |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| China          | Sunflower Group:<br>— Sun Flower Food Industry (Xinfeng) Co., Ltd,<br>Ganzhou City, China<br>— Sunny Food Industry Co., Ltd, Ganzhou City,<br>China | 37,5 %                               |
|                | Zhangzhou Tongfa Foods Industry Co., Ltd,<br>Zhangzhou, China                                                                                       | 54,3 %                               |
|                | Other cooperating companies                                                                                                                         | 48,1 %                               |
|                | All other imports originating in country<br>concerned                                                                                               | 54,3 %                               |

## 7. UNION INTEREST

(348) Having decided to apply Article 7(2) of the basic Regulation at this stage, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, wholesalers, retailers, users, consumers, and farmers.

### 7.1. Interest of the Union industry

(349) The Union industry is composed of 11 producers or groups of producers, employing about 3 460 people (FTE). The producers are spread throughout the Union with several producers located in Hungary and France.

(350) Given the findings of the material injury to the Union industry, imposing measures would allow the Union industry to increase its sales prices and improve its profitability in line with the cost increases and maintain a competitive level in their market. The Union industry would be also able to regain lost market share by increasing production and sales quantities on the Union market. Due to the increased Chinese imports, Union producers were not able to sell their production volume and acquired a high level of stocks in 2023 and the investigation period. Imposing measures would allow the Union industry to sell of their existing stock levels to decrease the fixed costs.

(351) The absence of measures is likely to have further significant negative effects on the Union industry in terms of lower sales and production volumes, as well as further increasing stock levels. Further price suppression leading to further financial deterioration of its economic situation in terms of profitability and future investment, jeopardizing its future and employment.

(352) It is therefore concluded that provisional measures are in the interest of the Union industry.

## **7.2. Interest of unrelated importers and traders**

(353) On the date of initiation, 20 unrelated importers, traders, and retailers were contacted. As described in recital 32, six unrelated importers and traders provided the requested information. A sample of two unrelated importers was selected out of which one unrelated importer provided a questionnaire reply that was verified. The cooperating importer represented about [17 - 27] % of the sweetcorn imports during the investigation period. A hearing took place with the importer associations FRUCOM and Waren-Verein.

(354) The cooperating importer considered that sweetcorn retail products from the PRC will disappear from the market in case measures will be imposed. The importer argued that in short term, importers will lose competitiveness related to sales of non-EU sweetcorn and due to the lack of alternative sources of supply from other third country markets. As a result, turnover and profits will be reduced with a potential impact on the level of employment.

(355) Considering that sweetcorn represented a relatively small share of the cooperating importer's turnover and taking into account that the number of FTEs directly related to sweetcorn is relatively small, it is considered that importers would not be disproportionately affected by the imposition of measures. Moreover, the Commission considered that for future sales contracts, the importer will be able to pass on at least partially the price increases to their customers.

(356) The cooperating importer stressed the potentially existential threat of the retroactive collection of antidumping duties.

(357) As described in recital 387, no decision of the retroactive collection of duties can be taken at this stage of the investigation.

(358) In case no measures will be imposed, importers will continue their business of importing sweetcorn from the PRC and sell it to retailers, the catering industry or other users.

## **7.3. Interest of retailers and consumers**

(359) On the date of the investigation, the Commission contacted several retailers of sweetcorn. No cooperation was obtained. Given the specification of the sweetcorn market, private consumers and other users of sweetcorn, such as catering firms are also impacted by the measures.

(360) In case measures will be imposed, retailers and other users will face higher purchasing costs of sweetcorn due to the measures.

(361) The cooperating importer criticised that the average purchase prices charged by retailers will lead to price increases of private consumers. The importer further considered that the catering sector will also be negatively affected by price increases due to the price pressure caused by increased costs and food prices and the lower willingness of customers to spend for out-of-home food. Considering that catering size canned sweetcorn is produced only in small volumes in the EU, the main supply will remain from the PRC at increased prices.

(362) In case no measures will be imposed, retailers, private consumers and other users will likely benefit from lower prices.

(363) The Commission considered that sweetcorn represented a very small share of the consumer shopping basket. Any impact from the imposition of anti-dumping duties on the financial situation of an average consumer is likely to be negligible.

(364) In light of the non-cooperation of retailers and other users and considered that sweetcorn represents only a marginal percentage of their sales and limited shelf space in retail stores, it is provisionally concluded that they will not be substantially affected by the proposed measures.

#### 7.4. Interest of suppliers

- (365) As mentioned in recital 280, the main raw materials of sweetcorn are the raw sweetcorn and cans. Following the initiation of the investigation, one can producer association came forward. In addition, the complaint was supported by farmer associations.
- (366) In case measures will be imposed, sweetcorn suppliers will be able to maintain their business.
- (367) In the absence of measures, suppliers are likely to be impacted in case Union sweetcorn producers will have to reduce their production volume. Considering that farmers and can producers are closely linked to the sweetcorn business, a reduced sweetcorn production in the Union is very likely to affect also the business of the suppliers.
- (368) The cooperating importer criticised that in case measures will be imposed, there will be no guarantee that especially the main market players will forward their additional profit.
- (369) The Commission considered that suppliers will be more significantly impacted in case no measures will be imposed, as they would lose a certain share of their business. The claim was therefore rejected.
- (370) Considering the above, it is provisionally concluded that the imposition of measures will unlikely affect suppliers in a negative way.

#### 7.5. Reduction of competition on the Union market and risk of supply shortages

- (371) The cooperating importer Otto Frank criticised in its questionnaire reply the limited competition in case measures will be imposed due to the low number of EU producers, warning of an oligopoly market situation. The importer warned also that in case of future low crop yields, the availability of sweetcorn in the Union cannot be guaranteed.
- (372) The cooperating importer considered further that besides China, no other third country is able to meet the quality standard and price competitiveness that is required by the European market.
- (373) The Commission considered that the imposition of measures will not prevent access into the Union for imports on which measures were imposed, but rather the purpose of the measures is to eliminate the impact of distorted market conditions arising from the presence of dumped imports.
- (374) During the investigation period, the Union industry consisted of 11 producers or groups of producers. As shown in recital 262, the Union industry operated during the investigation period well below full capacity. It is therefore considered that the Union industry will be able to increase its production volume before reaching any capacity constraints. Furthermore, Union producers acquired a substantial level of sweetcorn stocks due to the imports from China that are also available for sale.
- (375) The cooperating importer considered that besides China, no other third country is able to meet the quality standard and price competitiveness that is required by the European market.
- (376) Given the above considerations, market shares and number of independent suppliers of the product concerned, the above claims concerning the issues on competition are rejected.

#### 7.6. Conclusion on Union interest

- (377) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of sweetcorn originating in the PRC at this stage of the investigation.

## 8. PROVISIONAL ANTI-DUMPING MEASURES

(378) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

(379) Provisional anti-dumping measures should be imposed on imports of sweetcorn originating in China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins in recital 342 above. The amount of the duties was set at the level of the lower of the dumping and the injury margins.

(380) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

| Country | Company                                                                                                                                       | Provisional anti-dumping duty |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| China   | Sunflower Group:<br>— Sun Flower Food Industry (Xinfeng) Co., Ltd, Ganzhou City, China<br>— Sunny Food Industry Co., Ltd, Ganzhou City, China | 37,5 %                        |
|         | Zhangzhou Tongfa Foods Industry Co., Ltd, Zhangzhou, China                                                                                    | 54,3 %                        |
|         | Other cooperating companies                                                                                                                   | 48,1 %                        |
|         | All other imports originating in country concerned                                                                                            | 54,3 %                        |

(381) The individual company anti-dumping duty rates specified in this regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other imports originating in country concerned'. They should not be subject to any of the individual anti-dumping duty rates.

(382) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The application of individual anti-dumping duties is only applicable upon presentation of a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Until such invoice is presented, imports should be subject to the anti-dumping duty applicable to 'all other imports originating in country concerned'.

(383) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

- (384) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

## 9. REGISTRATION

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

## 10. INFORMATION AT PROVISIONAL STAGE

- (388) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (389) Both the Sunflower group and the Tongfa group provided comments. Following comments from the Sunflower group regarding the accuracy of calculations for consumables and domestic transport costs for the determination of normal value, the Commission revised its dumping calculations for both groups. Other comments from both groups concerned the methodology used for the dumping calculations and will therefore be addressed, where appropriate, in the definitive stage of the investigation.

## 11. FINAL PROVISIONS

- (390) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (391) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is imposed on imports of sweetcorn (*Zea mays* var. *saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen and sweetcorn (*Zea mays* var. *saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling under CN codes ex 2001 90 30 (TARIC code 2001 90 30 10) and ex 2005 80 00 (TARIC code 2005 80 00 10) and originating in the People's Republic of China.

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

| Country of origin          | Company                                                                                                                                       | Provisional anti-dumping duty | TARIC additional code |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-----------------------|
| People's Republic of China | Sunflower Group:<br>— Sun Flower Food Industry (Xinfeng) Co., Ltd, Ganzhou City, China<br>— Sunny Food Industry Co., Ltd, Ganzhou City, China | 37,5 %                        | 89SJ                  |
|                            | Zhangzhou Tongfa Foods Industry Co., Ltd, Zhangzhou, China                                                                                    | 54,3 %                        | 89SK                  |
|                            | Other cooperating companies listed in the Annex                                                                                               | 48,1 %                        |                       |
|                            | All other imports originating in the People's Republic of China                                                                               | 54,3 %                        | 8999                  |

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

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

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

## Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

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

*Article 3*

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2025/309.
2. Data collected regarding products which entered the EU for consumption not more than 90 days prior to the date of the entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

*Article 4*

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

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

Done at Brussels, 6 August 2025.

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

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## ANNEX

**People's Republic of China cooperating exporting producers not sampled**

| Country | Name                                                            | TARIC additional code |
|---------|-----------------------------------------------------------------|-----------------------|
| PRC     | Anshan N&M Foods Co., Ltd.                                      | 89SL                  |
|         | Fujian Golden Promise Food Technology Co., Ltd.                 | 89SM                  |
|         | Fujian Haishan Foods Co., Ltd.                                  | 89SN                  |
|         | Fujian Lucheng Food Co., Ltd.                                   | 89SO                  |
|         | Fujian Xingguang Foods Co., Ltd.                                | 89SP                  |
|         | Fujian Yuxing Fruit & Vegetable Foodstuff Development Co., Ltd. | 89SQ                  |
|         | Guangdong Zhicheng Food Co., Ltd                                | 89SR                  |
|         | Guilin Risheng Foods Co., Ltd                                   | 89SS                  |
|         | HEBEI PENGDA FOOD CO., LTD                                      | 89ST                  |
|         | Hebei Shuangsheng Agricultural Technology Co., Ltd.             | 89SU                  |
|         | HEZE SANQING FOOD CO., LTD.                                     | 89SV                  |
|         | Jieyang Chengfeng Industrial Co., Ltd.                          | 89SW                  |
|         | Jieyang Yuxiu Industrial Co., Ltd.                              | 89SX                  |
|         | Nanjing County Xingguang Canned Food Co., Ltd.                  | 89SY                  |
|         | SHANDONG SANGONGJU FOOD CO., LTD.                               | 89SZ                  |
|         | XINFENG RUNFENG FOODS CO., LTD.                                 | 89TA                  |
|         | Zhangzhou Gangchang Canned Foods Co., Ltd.                      | 89TB                  |
|         | Zhangzhou Jiawei Foods Co., Ltd.                                | 89TC                  |
|         | Zhangzhou Tianbaolong Food Co., Ltd.                            | 89TD                  |
|         | Zhangzhou Xiangcheng Shunxing Canned Food Co., Ltd.             | 89TE                  |