

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1336

of 25 September 2020

imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 30 July 2019, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain polyvinyl alcohols ('PVA') originating in the People's Republic of China ('PRC' or 'the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 19 June 2019 by Kuraray Europe GmbH ('the complainant') on behalf of producers representing more than 60 % of the total Union production of PVA. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

- (3) 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 authorities of the PRC, the known importers and users about the initiation of the investigation and invited them to participate.
- (4) 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. All interested parties who so requested were granted a hearing.

1.3. Comments on initiation

- (5) After the initiation, several users of the product concerned argued that the non-confidential summary of the information provided in the open version of the complaint was not sufficiently detailed or was incomplete, thus did not allow for a reasonable understanding of the substance of the confidential information.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 256/03, 30.7.2019, p. 4.

- (6) The Commission considered that the non-confidential version of the complaint open for inspection by interested parties contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their rights of defence throughout the proceedings.
- (7) Article 19 of the basic Regulation and Article 6(5) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade allow for the safeguarding of confidential information in circumstances where its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information.
- (8) The information provided confidential treatment falls under these categories. In any event, the complainant provided summaries of the contents of the confidential segments of the complaint and the relevant bracketing of numerical data. The Commission verified these documents before initiation. It concluded that they satisfied the provisions of Article 19 and allowed for a reasonable understanding of the substance of the confidential information.
- (9) The claim was therefore dismissed.
- (10) One interested party claimed that the complaint is part of a strategy of the complainant to enhance its monopoly on the Union market, by deliberately reducing sales volume and increasing prices.
- (11) The information collected during the investigation showed no evidence of any anti-competitive practices carried out by the Union industry. On the contrary specific evidence, such as commercial offers and email exchanges, that the industry is capable and willing to supply any user of the product concerned was collected.
- (12) The complainant itself had [25 % – 30 %] market share of the Union free market during the investigation period, far below the share to allow it to exercise dominance of any kind.
- (13) Concerning the alleged strategy to reduce volumes and increase prices, the investigation showed that the complainant initially attempted to improve its economies of scale, increasing production output and investments in order to reduce its unit costs of production. Moreover it tried to follow Chinese dumped prices with price suppression of its own in order to maintain market share. This strategy did indeed allow the complainant to maintain market share but pushed it into significant losses. As explained below in recital (528), the complainant was thus forced to abandon its attempts to maintain market share against imports from the PRC, and consequently concentrated its sales on more expensive grades where profitable sales could still be achieved albeit with a corresponding significant loss of market share.
- (14) Therefore this claim was rejected.
- (15) After the initiation, a Union producer, Wacker Chemie AG, claimed that the estimation of the Chinese overcapacity in the complaint was inaccurate and presented its own estimation.
- (16) The estimation of the Chinese overcapacity in the complaint was based on an objective and established source, IHS Chemical Economics handbook. Whilst different estimations of the supply and demand on the Chinese market may justifiably exist, the Commission considered that the estimation in the complaint met the criteria of sufficient accuracy and reliability required for *prima facie* evidence. Therefore, this claim was rejected.
- (17) Wacker Chemie AG also submitted comments as regards the methodology for calculating the dumping margins pursuant to Article 2(6a) of the basic Regulation, notably arguing that the application of Article 2(6a) of the basic Regulation would be WTO-inconsistent and that there was absence of evidence of cost distortion. The issues related to the existence of significant distortions and application of the Article 2(6a) of the basic Regulation are discussed in the section 3.1.1 below.
- (18) After the initiation, Wacker Chemie AG also claimed that the complainant's estimation of the dumping margin and the normal value was incorrect because Chinese producers were vertically integrated and did not buy vinyl acetate monomer (VAM) for their production.

- (19) The complaint indicated distortions for a number of raw materials that can be used for production of the VAM, depending on the production method. These same raw materials are also used in case the producers are vertically integrated and do not purchase VAM from other companies, and therefore, the distortions of these raw materials were relevant for the calculation of the normal value. It should also be noted that the normal value calculation in the complaint is sufficient evidence of dumping and that the investigation established the normal value based on the verified data of the cooperating Chinese exporting producers. Therefore this claim was dismissed.
- (20) At initiation Wacker and Carbochem claimed that the Commission used a PCN system that did not properly ensure price comparability. The argument was reiterated after disclosure by Wacker, Carbochem, Gamma Chimica, FAR Polymer and Ahlstrom-Munksjö.
- (21) Wacker claimed that the PCN had too wide ranges of viscosity, hydrolysis and methanol contents and did not take into account the particle size and the pH value. Carbochem, Gamma Chimica and FAR Polymer argued that the molecular weight was not taken into account by the PCN, while Ahlstrom-Munksjö argued that the ash content range was too wide.
- (22) The Commission disagreed that there is an issue with the PCN structure. The PCNs contained the basic and essential properties of the product concerned, universally defined by the core elements therein included in the PCN (i.e. viscosity, hydrolysis, ash and methanol content). These parameters are essential for all PVA grades and considered industrial standards for all applications of the product concerned. Thus, while it may be true that certain characteristics not present in the PCN could be relevant for certain applications, these are user (and not product) specific.
- (23) The argument was therefore rejected.

1.4. Sampling

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

1.4.1. Sampling of Union producers

- (25) 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 reported production volume of the like product in the Union. This sample consisted of 3 Union producers. The sampled Union producers accounted for more than 90 % of the estimated total EU production of the like product. The Commission invited interested parties to comment on the provisional sample.
- (26) One party expressed reservations about the inclusion in the sample of a producer, Wacker Chemie AG, which manufactures the product concerned exclusively for its captive use. In its opinion, the inclusion of Wacker in the sample, with no sales in the free market, could have potentially distorted the injury analysis.
- (27) The Commission also took note of the situation of one of the sampled companies. However, it must be noted that the entire Union industry, including the three Union producers initially sampled, produce the product concerned for captive consumption as well. Therefore, it was considered that the inclusion of Wacker Chemie AG in the sample did not distort the injury analysis, and allowed the Commission to analyse thoroughly the situation also of the captive market of PVA in the Union. Therefore, the sample was considered representative of the Union industry.
- (28) In order to have a complete assessment of the facts of the case, the Commission considered the interest of the Union producers Wacker and Solutia also as users of the product under investigation.
- (29) Later in the proceeding, one of the three sampled producers, Sekisui Specialty Chemicals Europe S.L., informed the Commission that it could not cooperate in full as a sampled producer. In fact, its reply to the questionnaire only included information with respect to macro-indicators, which was insufficient for the purposes of the investigation. Hence, the Commission decided to revise the sample of Union producers by removing Sekisui Specialty Chemicals Europe S.L.
- (30) The amended sample, composed of two union producers, represents more than 80 % of the estimated total EU production of the like product. The sample is representative of the Union industry.

1.4.2. *Sampling of importers*

- (31) To decide whether sampling was 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 three unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comments were made.

1.4.3. *Sampling of exporting producers in the PRC*

- (33) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (34) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three, 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 interested parties, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were received.

1.5. **Individual examination**

- (35) Originally, all four groups of exporting producers that returned the sampling form requested individual examination under Article 17(3) of the basic Regulation. On the day of the initiation, the Commission made the questionnaire for exporting producers available on its website. Moreover, when announcing the sample, the Commission informed the exporting producer that was not sampled that it was required to provide a full questionnaire reply if it wished to be examined individually. The exporting producer did not provide a questionnaire reply. In the absence of a reply, the exporting producer did not comply with the requirements and, therefore, individual examination could not be granted.

1.6. **Questionnaire replies and verification visits**

- (36) 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'). The questionnaires for the Union producers, importers, users, and exporting producers were made available online on the day of initiation.
- (37) Questionnaire replies were received from the two sampled Union producers and the three sampled exporting producers. As mentioned in recital (29) above, an incomplete questionnaire reply was received also by another Union producer, which was for this reason excluded from the sample. Nine users and three unrelated importers provided the Commission with a questionnaire reply. No reply was received from the GOC.
- (38) The Commission sought and verified all the information deemed necessary for a 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:

- Kuraray Europe GmbH, Germany ('KEG');
- Wacker Chemie AG, Germany ('Wacker');

Unrelated Importers:

- Carbochem Srl, Italy ('Carbochem');
- Omya Hamburg GmbH, Germany ('Omya');
- Wegochem Europe B.V., Netherlands ('Wegochem');

Users:

- Cordial B.V., Netherlands ('Cordial');

— Solutia Europe SPRL/BVBA, Belgium ('Solutia');

— Wacker Chemie AG, Germany ('Wacker');

Exporting producers and their related companies in the People's Republic of China:

Shuangxin:

— Inner Mongolia Environment-Friendly Material Co., Ltd ('Shuangxin');

Sinopec Group:

— Central-China Company, Sinopec Chemical Commercial Holding Co., Ltd ('Sinopec Central China');

— Sinopec Chongqing SVW Chemical Co., Ltd ('Sinopec Chongqing');

— Sinopec Great Wall Energy & Chemical (Ningxia) Co., Ltd ('Sinopec Ningxia');

— Sinopec Shanghai Petrochemical Co., Ltd;

Wan Wei Group:

— Anhui Wan Wei Updated High-Tech Material Industry Co., Ltd ('Wan Wei');

— Inner Mongolia Mengwei Technology Co., Ltd ('Mengwei').

1.7. Investigation period and period considered

- (39) The investigation of dumping and injury covered the period from 1 July 2018 to 30 June 2019 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period ('the period considered').

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

- (40) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (41) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation, the Commission invited all exporting producers in the country concerned to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing PVA. Four exporting producers submitted the relevant information.
- (42) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the GOC. No reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (43) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*.
- (44) After the initiation, three Chinese exporting producers submitted comments as regards the methodology for calculating the dumping margins pursuant to Article 2(6a) of the basic Regulation, notably arguing that the Commission has not proved that the alleged governmental intervention has demonstrably led to the price distortions of inputs. The issues related to the existence of significant distortions are discussed in the section 3.1.1 below.
- (45) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

- (46) On 2 October 2019, the Commission published a first note for the file ('the Note of 2 October 2019') ⁽³⁾ seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries (namely Brazil, Malaysia, Mexico and Thailand).
- (47) The Commission gave all interested parties the opportunity to comment. The Commission received comments from three exporting producers, one importer and user and the complainant. The GOC did not provide any comments.
- (48) The Commission addressed the comments received on the Note of 2 October 2019 in the second note on the sources for the determination of the normal value of 20 December 2019 ('the Note of 20 December 2019') ⁽⁴⁾. The Commission also provided the revised list of factors of production. Based on the comments received the Commission added also Turkey to the list of possible representative countries and, after further research, concluded that, at that stage, Turkey was considered an appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission also determined the list of codes used by Turkey and made available the relevant Turkish customs statistics in the open file.
- (49) The Commission invited interested parties to comment. The Commission received comments from one exporting producer, three traders of the product under investigation in the Union and the complainant.
- (50) The Commission addressed the comments received following the Note of 20 December 2019 in the third note on the sources for the determination of normal value of 30 March 2020 ('the Note of 30 March 2020') ⁽⁵⁾. In that note the Commission also further clarified some of the sources for the determination of the normal value and invited the interested parties to comment. Following the Note of 30 March 2020, the Commission received comments only from three traders of the product under investigation in the Union. This Regulation addresses those comments in recitals (219), (220), (264), (342) and (343).

1.9. Non-imposition of provisional measures and subsequent procedure

- (51) On 9 March 2020, in accordance with Article 19a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional measures and to continue the investigation.
- (52) Since no provisional measures were imposed, no registration of imports was performed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (53) The product concerned ⁽⁶⁾ is certain polyvinyl alcohol (PVA), whether or not containing un-hydrolysed acetate groups, in the form of homopolymer resins with a viscosity (measured in 4 % aqueous solution at 20 °C) of 3 mPa·s or more but not more than 61 mPa·s and a degree of hydrolysis of 80,0 mol % or more but not more than 99,9 mol %, both measured according to the ISO 15023-2 method, originating in the People's Republic of China (PRC) ('the product concerned').
- (54) During the investigation it became apparent that the product description, in particular regarding the measurement method of viscosity and degree of hydrolysis, was not sufficiently precise and could lead to misinterpretation and/or misclassification by national customs authorities. Furthermore, there was a risk that economic operators had misinterpreted that description and, on that basis, may have decided not to come forward as interested parties. For that reason, the Commission clarified the wording of the product scope description included in the Notice of initiation by publishing a Notice on 7 November 2019 ('Clarification Notice') ⁽⁷⁾. The Clarification Notice also gave the possibility for parties to come forward within a prescribed time limit to make themselves known and to request a questionnaire, if they wished so. One user of the product concerned, Henkel AG & Co., came forward asking to be regarded as interested party in the proceeding. No interested parties requested a questionnaire.

⁽³⁾ No. t19.005031.

⁽⁴⁾ No. t19.006513.

⁽⁵⁾ No. t20.002714.

⁽⁶⁾ As clarified in the Notice of Clarification.

⁽⁷⁾ Notice clarifying the Notice of initiation of an anti-dumping proceeding concerning imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ C 378, 7.11.2019, p. 9).

- (55) PVA is used as an additive, precursor or agent by, mainly, four user industries in: (i) the production of paper and carton board; (ii) the production of PVB (Polyvinyl Butyral) resins used in the production of PVB-films; (iii) the production of polymerisation aids for plastics; and (iv) the production of emulsions and adhesives.

2.2. Like product

- (56) 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;
 - the product produced and sold on the domestic market of the country concerned;
 - the product produced and sold in the Union by the Union industry.

- (57) The Commission found that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Segmentation

- (58) The product concerned is produced and sold in the form of several different product types defined by the industry as 'grades'. Each grade consists of a specific combination of viscosity levels, methanol and ash content, as well as degree of hydrolysis, resulting in a wide range of combinations manufactured to meet the demands of customer specifications in different industries.
- (59) The investigation revealed a large number of PVA grades both for Chinese imports and Union production/sales. The different characteristic combinations of these grades were categorised by the Commission within different product control numbers ('PCN'). During the investigation period 34 PCNs of the product concerned were imported into the Union by the sampled exporting producers, while the sampled Union producer sold around 39 different PCNs in the same period.
- (60) The information collected during the investigation also showed that some of these grades (sold both by the Union industry and exporting producers) have a broad range of application and, generally, have a lower price. Other more specialised grades designed for applications with narrow specifications (such as pharmaceutical products or the PVB-film production) are on average more expensive. These grades are also sold by Union and exporting producers.
- (61) However, despite a large number of grades, the Commission found that there is no defined segments in the PVA market. Different users can source a number of PVA grades, depending on their required technical specifications. For some users the ash content is the most important element, for others the viscosity, and some are able to use mostly any of the specification. Each user industry can use a different set of PVA grades interchangeably. Even though certain users (such as PVB, pharmaceutical industry) are more limited in terms of the number of grades they can use, their grade range still overlaps with other type of users, which are able to source a wider range of grades.
- (62) For the reasons above, the Commission concluded that all grades compete with each other, at least to a certain extent, and therefore a segment analysis was not warranted nor appropriate in this case. In order to analyse the price effect among different grades while ensuring a fair comparison, the Commission conducted adjustments to reflect differences in some of the characteristics of the different grades. These adjustments are explained in Section 4.4.2 below.
- (63) After disclosure several interested parties, Carbochem, Gamma Chimica FAR Polymer, Wacker and Cordial, claimed that the Commission failed to take into account that the PVA market is divided in two segments: high quality PVA and low quality PVA. The parties claimed that the products pertaining to these segments are not directly interchangeable and that Chinese imports are mostly present in the low quality PVA segment. In addition they claimed that certain users can only use certain specific grades of the product concerned in their production process.
- (64) The analysis carried out by the Commission confirmed that the different grades, as explained in recital (61), are interchangeable between each other, at least to a certain extent. Even if it is true that certain users can source only a limited set of grades for their application, these grades do not pertain exclusively to one user's downstream industry but overlap with the grades sourced by other downstream applications. Moreover, the investigation revealed that the Chinese exporting producers supply grades for all the four main applications of PVA and compete in full with the grades sold by the Union industry.

- (65) The claim was therefore dismissed.

2.4. Claims regarding product scope

- (66) One user, Solutia, producer of PVB-film, and one unrelated importer, Wegochem, claimed that 'Low-Ash NMWD PVA' ⁽⁸⁾ should be excluded from the scope of the product concerned. The parties reiterated their claim after disclosure.
- (67) According to them 'Low-Ash NMWD PVA' is fundamentally different from standard grade PVA as it has different physical, technical and chemical characteristics and requires a high-value added production process. Due to these specific characteristics, production of Low-Ash NMWD is technically difficult and complex. Only a few manufacturers are qualified to manufacture this particular grade, used in the production of PVB film, and only one of them is active in the PRC. In particular, the molecular weight distribution, the iron content, the low ash and low methanol contents are not standard characteristics of the product concerned and makes this grade of PVA unique and extremely difficult to produce, as its characteristics have to be within a narrow specification for all the parameters simultaneously.
- (68) Based on the evidence on file, the Commission disagreed with this analysis. As mentioned in recital (58), PVA is sold in several different grades, according to the final use. Each grade has a unique combination of properties (e.g. viscosity, hydrolysis, ash and methanol content) that are specifically requested by each user to the producer at the time of the purchase order. With regards to the different chemical and physical characteristics, contrary to the arguments of the parties, low ash content PVA products fall fully within the product definition as regards its essential characteristics (i.e. viscosity, hydrolysis methanol and ash content). Moreover all the producers of low ash content PVA produce it on a standard production line, without exceptional production processes being applied.
- (69) As regards the narrow molecular weight distribution ('NMWD'), this is not a characteristic akin to hydrolysis, viscosity or ash content. NMWD does not change from production batch to production batch. Once a production line is qualified to produce NMWD PVA all the PVA produced by that line will meet the requirements as it does not involve any additional steps in the production process and it does not have any peculiar characteristics radically different from any other grades. In addition, it is not exclusively used to produce PVB resin but also used for the production of adhesives and water-soluble barrier coatings.
- (70) Finally, the investigation revealed that, in terms of supply, several PVA producers can produce low ash NMWD PVA. In addition to the Chinese origin low ash NMWD PVA, comparable low ash content PVA, can be sourced from producers located in the United States of America ('USA') and from the Union producers.
- (71) After disclosure, the parties argued that the Commission failed to take into account that all the relevant characteristics of 'Low-Ash NMWD PVA' must be met simultaneously and that there are few producers qualified to supply low ash NMWD PVA.
- (72) Contrary to the parties' claim, the Commission in fact took into consideration that all the parameters for 'Low-Ash NMWD PVA' must be met simultaneously. Both the methanol and the ash contents fall fully within the product definition as regards its essential characteristics, as well as within the Commission's categorisation based on PCNs. The investigation also showed that both the Union producers and exporting producers are able to meet the required specifications. As regards the narrow molecular weight distribution in combination with the other two parameters, as explained above in recital (69), once a production line is qualified to produce NMWD PVA, all the PVA produced by that line will meet the requirements for narrow molecular weight distribution, and can then be combined with the appropriate methanol and ash content according to each customer's requirement. Hence it's not a characteristic pertaining exclusively to PVA produced for Solutia.
- (73) As regards the second point, Solutia had a multi-sourcing strategy, producing PVA for its own consumption, as well as extensively using multiple sources of supply of PVA from the Union industry, the exporting producers in the PRC and the producers in third countries. The Commission found that there are at least four producers in three different continents that are able to produce 'Low-Ash NMWD PVA'. Thus, while it is true that the qualification of a new PVA supplier could be a difficult and long process, the investigation showed that there are several alternative sources that would limit significantly the risk of a shortage of supply for Solutia even with the measures in force. Moreover, in the Commission's view, the level of the anti-dumping duties would not prevent Solutia's supplier from the PRC to continue to export PVA at a fair price.

⁽⁸⁾ 'Low-ash narrow molecular weight distribution PVA'.

- (74) The claim was therefore rejected.
- (75) Three other interested parties, namely Cordial, Carbochem and Wacker, claimed repeatedly, and reiterated their claims after disclosure, that the product concerned imported from the PRC differed substantially from the like product produced by the Union industry. Their main argument was that the PVA imported from the PRC had a significantly broader range of tolerance in terms of ash content, sodium-acetate percentage and methanol content as compared to the PVA produced and sold by the Union industry. While in the production of PVB resins and certain emulsions these characteristics had a significant impact, for other applications such as paper, adhesives and textile additives they were not relevant. Therefore, in their opinion, the product concerned and the like product were substantially different and suitable for different applications, and the Union market was divided into high-quality and low-quality PVA.
- (76) The investigation revealed that for almost all applications, the customers set the maximum acceptable limit of ash content, and can easily accept PVA with much lower ash content than their top thresholds. In addition, the difference between the costs of production of the alleged 'standard' PVA (i.e. ash content above 0,5 %) versus 'low ash content' PVA (ash content below 0,5 %) was negligible, as the production process for PVA in terms of the ash content is always the same. However, it is true that the ash content is less relevant for applications such as paper or adhesives. The investigation also found that, except for one user, all user industries were purchasing PVA with both low and high ash content.
- (77) Concerning the methanol content, the Union industry produces PVA with a significantly lower methanol content than the Chinese producers. However, both the product concerned and the like product are perfectly in range with the different methanol thresholds established during the investigation. Moreover, also for methanol, differences are a matter of maximum acceptable levels and not of narrow specification. In addition, the investigation revealed that the methanol content, both in the PRC and in the Union, has a negligible effect on both the selling price and the cost of manufacturing of PVA.
- (78) Moreover, as explained above in recitals (58) to (62), the various grades of PVA share the basic characteristics and their uses are to a large extent identical and interchangeable. The sole ash or methanol content levels do not define, alone, the applications or the price of the product concerned as it is the combination with the other relevant characteristics, such as viscosity and hydrolysis, which defines the grade characteristics, its possible end use and the selling price.
- (79) The evidence collected in the investigation revealed that, while the average price difference between the PVA grades with 'low ash content' versus those with 'standard ash content' is about 10 %. However, PVA prices can vary up to 40 % between PVA grades with the same ash content. In addition, certain allegedly cheaper grades with a 'standard' ash content can be up to 27 % more expensive than those with 'low ash content' grades. Therefore it cannot be concluded, as the interested parties claimed, that the Union market was divided into high-quality PVA (produced by the Union industry) and low-quality PVA (imported from the PRC) based on the ash and methanol content, neither that this alleged division is reflected in the prices and the production cost. On the contrary, as explained above in recitals (58) to (62), several grades with alleged 'standard' specifications are also in competition with alleged 'high-end' grades of the like product.
- (80) After disclosure, Wacker argued that the Commission assessment that methanol content has a negligible effect on the selling price and the cost of manufacturing of PVA was incorrect.
- (81) The investigation showed that PVA with a very low methanol content has a higher production cost than PVA with the same characteristics but with higher methanol content. However, as explained above in recital (77), the data collected during the investigation also showed that for both the Union producers and the exporting producers the different methanol levels had a negligible impact on the selling prices. Therefore, the Commission found that the methanol content has a negligible effect on the selling price of PVA. It is true that the Union industry can produce PVA with a very low methanol content. However this is a niche product, sold in negligible quantities, while the largest part of the PVA sold in the Union market has standard methanol content.
- (82) The claim was therefore rejected
- (83) Another party, Cordial, claimed that the PVA produced in the Union is not suitable for its use as it required PVA in powder form and with a hydrolysis level above 89 %.

- (84) PVA is usually produced in a white solid granular form. However it can be further processed and transformed in powder form through a grinding process. As the investigation revealed, the Union industry is perfectly capable to carry out this further step.
- (85) Concerning the hydrolysis level, the data collected in the proceeding showed that the Union industry produced, and sold PVA with a hydrolysis level above 89 % during the IP. The claim was therefore rejected.

3. DUMPING

3.1. Normal value

- (86) 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'.
- (87) According to Article 2(6a)(a) of the basic Regulation, '(i)n 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'. As further explained below, the Commission concluded in the present investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

3.1.1. Existence of significant distortions

3.1.1.1. Introduction

- (88) Article 2(6a)(b) of the basic Regulation defines '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'.
- (89) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product concerned. Indeed, as that list is non-cumulative, not all the elements need to be given regard to 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. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) 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 provides 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.

- (90) 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'.
- (91) Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter 'the Report') ⁽⁹⁾, showing 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 in specific sectors (such as steel and chemicals). The Report was placed on the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation.
- (92) The complaint contained information on a number of distortions in the PVA market in China. First, the prices of raw materials needed to produce VAM: petroleum, natural gas or coal are distorted, due to governmental intervention in form of sectoral plans, presence of SOEs and subsidies. Secondly, the complainant refers to distortions in the cost of other intermediary materials, notably in the chemical sector. The complainant mentions the problem of overcapacity in the chemical sector, presence of SOEs and very low production utilisation in methanol, acetic acid, calcium carbide and acetylene having an impact on the prices of those materials. Third, the complainant lists the distortions in the cost of energy due to state interference by governmental pricing policy, presence of SOEs and preferential energy prices for certain industries, such as the producers of calcium carbide. Furthermore, the complaint mentions supply of capital, access to finance, as well as lack of effective environmental controls as factors having impact on prices in China. Finally, the complaint points out that the largest PVA producers are SOEs and that there are ambitious plans to further expand the PVA industry in Inner Mongolia, which point to the involvement of the Chinese state.
- (93) As indicated in recital (42), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand. Only following the final disclosure did the GOC comment on the Report and evidence concerning the existence of significant distortions. The GOC submitted, first, that the publication of the Report put the EU industry in an advantageous position when bringing complaints. In the GOC's view, this allows for judgment without trial, it goes against the spirit of rule of law and it results in punishing certain business in the name of national or sectorial distortions. Second, the GOC submitted that the Commission has issued only one report, i.e. the Report on China. Third, according to the GOC, the Commission has not carried out any evaluation on whether the EU market or markets of its Member States would contain the elements of significant distortions. Neither has a similar evaluation been carried out in the context of determining the appropriate representative country in investigations. Fourth, the GOC submitted that the content of the Report is misrepresentative, one-sided, or even absurd, severely deviating from the facts. Relying on the Report instead of an actual investigation is, according to the GOC's submission, manifestly inconsistent with the principle of due process. Fifth, the GOC raised the question whether the Report, as a Commission staff working document, complies with the criteria of the basic Regulation requiring a report to be produced, made public and regularly updated by the Commission.
- (94) In reply to the GOC's comments, the Commission notes, first, that according to Article 2(6a)(c) of the basic Regulation, where the Commission has well-founded indications of the possible existence of significant distortions in country or sector, it is under an obligation to produce a report describing the relevant market circumstances. According to the same provision of the basic Regulation, the possibility for interested parties to rely on the evidence contained in such report is complemented by a corresponding possibility for other interested parties to rebut, supplement or comment on the report and its evidence. Second, as the Commission has publicly stated at various occasions, the reason to publish a reports on China first was motivated by the relative importance of China in the Commission's trade defence practice. This does not mean that the Commission would intend to only publish the Report. The Commission is considering similar reports about other countries Third, the Commission recalls that for the purpose of establishing the existence of significant distortions in the sense of 2(6a)(b) of the basic Regulation, the potential impact of one or more of the elements listed in that provision is analysed on prices and

⁽⁹⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter 'Report').

costs in the exporting country. The cost structure and price formation mechanisms in other markets, such as in the EU, are not taken into consideration in this context. In addition, the process of selecting a representative country is described in detail below in Section 3.1.2. Fourth, the Commission notes that the GOC fails to indicate specific instances of where it considers the Report being misrepresentative, one-sided or absurd in view of which the Commission is not in position to address such general allegations. Nevertheless, with respect to the principle of due process, the Commission refers to the various instances in the course of the present investigation where interested parties, including the GOC, were given an opportunity to participate in the investigations, including to comment on the existence of significant distortions (see above, recitals (3) and (25)). Fifth, the Commission notes that Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication or intervals for updating the reports. The Commission can only reiterate once again that while being given ample opportunity to comment on the content of the Report, the GOC has chosen not to do so (see recitals (37) and (42) above). For all these reasons, the Commission rejected the arguments raised by the GOC.

- (95) Further comments concerning the existence of significant distortions were submitted on behalf of all three exporting producers. First, they claimed that sections of the Report referred to in the complaint, did not prove there is anything that can amount to significant price distortions such that the methodology under Article 2(6a) of the basic Anti-Dumping Regulation was applicable. Rather, the Report only claimed some alleged government interventions in some markets in China, notably in the energy sector.
- (96) Secondly, they claimed that the EU should not deviate from the standard methodology in establishing the normal value that is to use only domestic prices and costs of the exporting country, unless the ADA permits otherwise. In light of the above, the EU should follow the standard methodology in accordance with Article 2 of the ADA. Moreover, the interested parties also claimed that the notion of significant distortions does not even exist in the ADA. According to the submitted comments: 1. there is no legal basis in the ADA or in GATT 1994 for such specific action; and 2. the *EU – Biodiesel (Argentina)* case establishes that investigating authorities must use the production costs actually incurred by producers or exporters for the calculation of constructed normal value. As a result, the construction of the normal value is not consistent with Articles 2.2 and 2.2.1.1 of the ADA.
- (97) To reply to the first argument, the Commission recalls that the Notice of Initiation⁽¹⁰⁾ referred to a number of irregularities in the Chinese PVA market, including ‘inter alia, in Section 4.2.1 “Structure of the Chinese Planning System”, Section 10.1.1 “Energy Market Overview”, Section 10.1.2 “Plans” in the Energy sector, Section 10.2.1.2 “Price Differentiation”, Section 11.2 “Access to Capital”, Section 11.4.4.1 “Evergreening and Zombie Companies”, Section 11.4.4 “Government Response to Debt a Risk”, Section 16.2.5 “State-Owned Enterprises” in the Chemical Sector, Section 16.3 “Regulatory Framework/Quantitative Development Targets” and Section 16.2.6 “Overcapacity” of the country report.’ Furthermore, the Notice of Initiation referred to the 12th and 13th Five Year Plans as well as a number of reports referred to by the complainant. Therefore the Commission considers that the list of evidence listed in the Notice of Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation.
- (98) Second, for the purpose of this investigation the Commission has concluded in recital (171) that it is appropriate to apply Article 2(6a) of the basic Regulation. The Commission does not agree with the submission of the interested party that the Commission must not apply Article 2(6a). On the contrary, the Commission considers that Article 2(6a) is applicable and must be applied in the circumstances of this case. In addition, the Commission considers that this provision is consistent with the European Union’s WTO obligations. It is the Commission’s view that, as clarified in DS473 *EU-Biodiesel (Argentina)*, the provisions of the basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second sub-paragraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission finally recalled that the dispute DS473 *EU-Biodiesel (Argentina)* did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. Therefore, the Commission rejected this claim.

⁽¹⁰⁾ See Notice of initiation of an anti-dumping proceeding concerning imports of certain polyvinyl alcohols originating in the People’s Republic of China (OJ C 256, 30.7.2019, p. 4), point 3.

- (99) Furthermore, one interested party, namely Wacker, submitted comments with regard to the existence of significant distortions. First, Wacker submitted that the methodology set out under Article 2(6a) of the Basic AD Regulation is inconsistent as such with Articles 2.1 and 2.2.2 of the Anti-Dumping Agreement. This is because, the concept of 'dumping' concerns the pricing behaviour of individual exporters/foreign producers, as noted by the Appellate Body in US – Stainless Steel from Mexico, para. 86. Furthermore, Article 2.2 of the ADA doesn't allow for the possibility to resort to the calculation of cost of production based on costs from outside the country where the exported product originates. Last, [Wacker] submitted that the Commission intends to use third country costs for all the Chinese factors of production, which is inconsistent with Article 2.2.1.1 of the ADA as also confirmed by the Appellate Body in EU – Biodiesel (Argentina) and by the Panel in EU – Biodiesel (Indonesia).
- (100) The question of Article 2(6a) compatibility with WTO law was already discussed in recital (98) above.
- (101) Secondly, Wacker claimed that as clarified by the Appellate Body in US – Carbon Steel (India), the mere fact the government is a predominant supplier of a good in a country does not make prices in that country low/cheap/distorted or non-market oriented.
- (102) The Commission recalled that the US – Carbon Steel (India) dispute concerned countervailing measures and thus deals with the compatibility of the measures with the SCM Agreement. Therefore, the findings in this case are irrelevant for an anti-dumping investigation, which is subject to ADA.
- (103) Third, the adjustment of the selling, general and administrative costs ('SG&A') and the cost of production on account of the alleged distortion of the raw material costs as well as labour costs among others, is inconsistent with Article 2.2.2 of the ADA. In any event, Wacker claimed that the application of Article 2(6a) cannot be justified as there is no distortion of input costs or SG&A.
- (104) The Commission noted that once it is determined that due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b) basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value in the country of origin is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). The same provision of the basic Regulation also allows the use of domestic costs if they are positively established not to be distorted. Therefore, the exporting producers had the possibility to provide evidence that their individual SG&A costs and/or other input costs of were actually undistorted. However, as evidenced in sections 3.1.1.2 to 3.1.1.9, the Commission has established the existence of distortions in the PVA industry and there was no evidence as to the factors of production of individual exporting producers being undistorted. Therefore, these claims were rejected.
- (105) Fourth, Wacker claimed that the fact that the Chinese PVA producers are largely state-owned is irrelevant to the present dumping investigation as the Chinese PVA market is completely market based.
- (106) The Commission recalled that according to Article 2(6a)(b) of the basic Regulation, state ownership can be an important indicator of the existence of the significant distortions. Even the privately owned PVA producers, as described in detail in sections 3.1.1.3 and 3.1.1.4, operate in the environment dominated by the state presence and guidance of the PVA industry as well as the industries related to PVA production, such as producers of raw materials for the production of PVA.
- (107) Fifth, Wacker submitted that the cost of coal, gas, crude oil and electricity is not distorted in China and in fact China is an importer of coal and gas and electricity prices are often higher than in other countries. Therefore, the Commission should use the Chinese prices for those inputs.
- (108) The Commission recalls that it doesn't have convincing evidence to establish that certain costs are not distorted. It is also noted in recital (169) that, according to evidence on the file, all the sampled exporting producers sourced all their main inputs in the PRC. Since the Commission established country wide presence of significant distortions in the PVA sector in accordance with Article 2(6a)(b) of the basic Regulation and there is no evidence according to Article 2(6a)(a) third dash of the basic Regulation, the Commission rejected this claim.

- (109) In their comments on final disclosure, one Union producer / user re-submitted a set of comments essentially identical to those described in recital (99) above, insisting that Article 2(6a) of the basic Regulation is inconsistent as such with Articles 2.2 and 2.2.2 of ADA and that the Commission, while stating that Article 2(6a) is consistent with the EU's WTO obligations, does not provide any further explanation about the legal grounds to support its statement. Instead, the Commission allegedly contradicts itself and is scrambling to find a legal justification for the application of Article 2(6a) of the basic Regulation.
- (110) Referring to Article 2.2 of the ADA, the Union producer / user submitted further in this connection that the construction of normal value is permissible only in three specific situations specified in that provision and that this list of such situations is exhaustive. Consequently, the Union producer / user argues that before resorting to construct the normal value, the Commission had to establish that one of the three situations outlined in Article 2.2 of ADA exists rather than focus on demonstrating the existence of supposed distortions in the Chinese economy. In the Union producer / the user's view, Article 2.2 of ADA does not permit any exception on the grounds of cost distortions.
- (111) One user submitted a similar line of arguments, even quoting the above argumentation of the Union producer / user. Correspondingly, this other user considered the methodology applied by the Commission to be in violation of WTO law because the ADA only permits the use the cost of production to calculate the normal value when there are no sales in the ordinary course of trade in the domestic market because or in case of a particular market situation affecting the comparability of the prices. In addition, the user submits that should the significant distortions referred to by the Commission be considered to amount to a particular market situation, such distortions would equally affect Chinese domestic and the export prices which in turn would prohibit the Commission to depart from using the sales prices in the PRC.
- (112) Similarly to the above arguments of the Union producer / user, one sampled exporting producer submitted in its comments on final disclosure that the use of Article 2(6a) of the basic Regulation results in various violations of Article 2 ADA which, in the exporting producer's view is confirmed by several Panel and Appellate Body Reports.
- (113) Identical arguments were presented also in other sampled exporting producers' comments on final disclosure, submitting that the Commission not failed to establish normal value by conducting a strict comparison with Chinese prices or costs but that it effectively ignored Article 2 ADA altogether. To illustrate the alleged shortcomings of the Commission's approach, which, according to the sampled exporting producers, results in inflated dumping margins, the producers provide an illustrative alternative approach on how the normal value could be established. In addition, these sampled exporting producers referred to the findings of the panel in the DS494 EU – Cost adjustment methodologies (Russia). The sampled exporting producers submitted that the findings of the panel would support their view that Article 2(6a) of the basic Regulation is WTO inconsistent since, according to the sampled exporting producers, Article 2(6a) of the basic Regulation is nothing more than a reinforced Article 2(5).
- (114) In addition, the GOC considered constructing the normal value in line Article 2(6a) of the basic Regulation as inconsistent with Article 2.2 of the ADA which provides an exhaustive list of three situations where the normal value can be constructed, none of which covers the conditions foreseen by Article 2(6a) of the basic Regulation. Moreover, the GOC took the view that when constructing normal value WTO rules require using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits when constructing normal value. However, Article 2(6a) of the Basic AD Regulation broadened the scope of data sources to include the costs of production and sale in an appropriate representative country, or international prices, costs or benchmarks.
- (115) In its comments on final disclosure, one interested party, without elaborating further on its argument, claimed that the Commission was not entitled to resort to a constructed normal value.
- (116) In reply to the Union producer / the user's arguments, the Commission reiterates its position explained above in recital (98) that Article 2(6a) of the basic Regulation is fully consistent with the European Union's WTO obligations. Union producer / the user's argument therefore must be rejected. The corresponding arguments of the sampled exporting producers, the interested party and the GOC described above in recitals (112) – (115) are rejected for the same reasons. As for the alternative approach to construct normal value proposed by some

sampled exporting producers, this argument is addressed below in recital (271). As for the reference to DS494 EU – Cost adjustment methodologies (Russia), the Commission notes moreover that the panel explicitly stated that Regulation 2017/2321 ⁽¹¹⁾ which had introduced Article 2(6a) into the basic Regulation was not within its terms of reference.

- (117) In their comments on final disclosure, the same Union producer / user further submitted that it had provided significant evidence from the Commission's own reports on the electricity and gas markets showing that the electricity and LNG costs in China are higher than in the EU Member States and were higher in China during 2018 and 2019. In this respect, the Union producer / user claimed that the Commission had not addressed that evidence but had instead reversed the burden of proof in noting that none of the Chinese companies proved that their costs were not distorted. the Union producer / user argued in this connection that the Commission's burden of proof is not discharged by primarily relying on the Report which is in any event based on historical information preceding the investigation period, which does not specifically cover the PVA sector and which does not take into account the Commission's own finding that Chinese electricity, gas, and oil prices are higher than in EU Member States.
- (118) In reply to the Union producer / user's arguments, the Commission recalls that the existence of significant distortions under Article 2(6a) of the basic Regulation is not a function of absolute or relative values of certain inputs, such as electricity, gas or oil. Instead, the relevant criterion to establish the existence of significant distortions is whether reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention. The Commission carried out the assessment in sections 3.1.1.2 to 3.1.1.9 below and, on the basis of this analysis, concluded in section 3.1.1.10 that it is not appropriate to use domestic prices and costs to establish normal value. The Commission recalls further that where prices and costs are affected by significant distortions, domestic costs can only be used as a source to construct normal value to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. However, as explained above in recital (108) there is no accurate and appropriate evidence to that effect. Union producer / user's argument that the Commission reversed the burden of proof must therefore be rejected.
- (119) In an additional argument submitted upon final disclosure, Union producer / user claimed that the way in which the Commission constructed the normal value is illegal since the Commission disregarded the requirements of the last sentence of Article 2.2 of ADA. Referring to the EU-Biodiesel (Argentina) dispute, the Union producer / user submitted that when relying on any out-of-country information to determine the cost of production, the Commission is obliged to ensure that such information is used to arrive at the cost of production in the country of origin. However, the Commission has simply replaced the production/ input costs of the Chinese PVA exporting producers with Turkish costs, failing to make the relevant adjustments. This resulted in inflated raw material costs since the Commission, on the one hand, included domestic transport costs, international freight and insurance costs, as well as import duties from the Turkish benchmark costs and, on the other hand, the Commission has made no effort to adapt the Turkish import prices to reflect the cost of production in China. To illustrate the allegedly inflated and illogical Turkish costs used by the Commission to construct normal value, the Union producer / user submits that it purchases certain raw materials, such as acetic acid or coal, at the EU market at a significantly lower price than the Turkish benchmark prices used by the Commission.
- (120) The same line of argumentation was echoed by one user which, in its comment on final disclosure, submitted that the normal value calculation of the Commission in EU – Biodiesel (Argentina) is similar to the methodology described by Article 2(6a) of the basic Regulation and the Commission cannot therefore dismiss the Appellate Body's decision in EU – Biodiesel (Argentina) by merely stating that Article 2(6a) of the basic Regulation was only introduced later on.
- (121) In reply to the Union producer / user's argument, the Commission reiterates first of all, as already stated above in recital (98), that the dispute DS473 EU-Biodiesel (Argentina) did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. According to Article 2(6a)(a), the normal value in the country of origin should reflect the undistorted price of the raw materials in the representative country which, in the present case, is Turkey. Union producer / user's references

⁽¹¹⁾ Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 338, 19.12.2017, p. 1).

to its own purchasing prices in the EU are therefore not relevant for the purpose of constructing the normal value. In the same vein, Union producer / user's argument that the Commission has made no effort to adapt the Turkish import prices to reflect the distorted cost of production in China ignores the fact under Article 2(6a)(a) the normal value needs to reflect an undistorted price of the raw materials, based on information from the representative country. Union producer / user's argument that domestic transport costs, freight and insurance and import duties should be disregarded must also be rejected, as explained in more detail below in recital (269).

- (122) The argument that the Commission cannot depart from domestic prices referring merely to the fact that the provision of Article 2(6a) of the basic Regulation was introduced later than the EU-Biodiesel (Argentina) must be also rejected. As stated already above in recital (98), the EU-Biodiesel (Argentina) did not concern the application of Article 2(6a). Consequently, the Commission considers the EU-Biodiesel (Argentina) decision as not relevant in the present case not due to the point in time when Article 2(6a) was introduced into the basic Regulation but because of its distinct legal nature. In any event the EU-Biodiesel (Argentina) case confirms that there are circumstances in which the normal value in the country of origin may be constructed by having regard to information from a representative third country.
- (123) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned.

3.1.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (124) The Chinese economic system is based on the concept of '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'⁽¹²⁾. 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. 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⁽¹³⁾.
- (125) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('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. 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. 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.*'⁽¹⁴⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. 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.
- (126) 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⁽¹⁵⁾. 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.

⁽¹²⁾ Report – Chapter 2, p. 6-7.

⁽¹³⁾ Report – Chapter 2, p. 10.

⁽¹⁴⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 15 July 2019).

⁽¹⁵⁾ Report – Chapter 2, p. 20-21.

- (127) 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. 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 while this was a regular feature in previous planning cycles. 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.). 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 (see also section 3.1.1.5 below) ⁽¹⁶⁾.
- (128) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial 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 (see also section 3.1.1.8 below) ⁽¹⁷⁾. 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 other than the banking 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 ⁽¹⁸⁾.
- (129) 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 ⁽¹⁹⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over the 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 ⁽²⁰⁾.
- (130) 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 ⁽²¹⁾.

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

- (131) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (132) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between

⁽¹⁶⁾ Report – Chapter 3, p. 41, 73-74.

⁽¹⁷⁾ Report – Chapter 6, p. 120-121.

⁽¹⁸⁾ Report – Chapter 6, p. 122 – 135.

⁽¹⁹⁾ Report – Chapter 7, p. 167-168.

⁽²⁰⁾ Report – Chapter 8, p. 169-170, 200-201.

⁽²¹⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.1.1.4), as well as through shaping the corporate structure of the SOE sector ⁽²²⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽²³⁾.

- (133) Specifically in the PVA sector, a substantial degree of ownership by the GOC persists. Out of the sampled companies, Anhui Wan Wei High Tech Materials belonging to the Wan Wei Group is a SOE with an annual capacity of 350 000 tonnes/year, accounting for 28 % of the nominal domestic PVA production capacity and 40 % of the actual production capacity ⁽²⁴⁾. It is also the largest PVA producer in China, next to Sinopec and Inner Mongolia Shuangxin ⁽²⁵⁾. Mengwei, another company belonging to the Wan Wei Group, is actively promoted to become a major PVA producer as part of the industrialisation project of Inner Mongolia. According to the Mengwei's website: 'The annual output of the project is 200 000 tonnes of vinyl acetate (VAC) and 100 000 tonnes of PVA, with a total investment of about 1,5 billion yuan, which is the largest one-time investment capacity PVA project in China. [...] The company plans to continue to invest more than 7 billion yuan during the "12th Five Year Plan" period, and then build a 100 000 tonne PVA production line, [...] At that time, a new modern industrial city will stand on the beautiful land of Inner Mongolia ⁽²⁶⁾.'
- (134) Sinopec Group is another major Chinese SOE and a PVA producer. Chongqing Chuanwei Chemical Co., Ltd with a capacity of 160 000 tonnes per year of polyvinyl alcohol ⁽²⁷⁾ and was launched as an official project of the government of China: The project started construction on April 17, 2009 and was listed by the Ministry of Industry and Information Technology as a key construction project to boost domestic demand ⁽²⁸⁾.
- (135) The third sampled company, Inner Mongolia Shuangxin, even though is a privately owned enterprise, has governmental links through the party organisation (see recital (140)).
- (136) With the high level of government intervention in the PVA industry and a high share of SOEs in the sector, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the PVA sector are also subject to policy supervision and guidance as set out in section 3.1.1.5 below.

3.1.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (137) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽²⁹⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³⁰⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been

⁽²²⁾ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

⁽²³⁾ Report – Chapter 5, p. 104-9.

⁽²⁴⁾ See http://pdf.dfcfw.com/pdf/H3_AP201809031187055296_1.pdf

⁽²⁵⁾ 'Today, there are 12 main PVA producers in China. Among those, the biggest ones are Wanwei High tech, Sichuanchuanwei (SINOPEC), Shuangxin, Ningxia Land totalling 770 000 tonnes/year.' See <http://www.ccxr.com.cn/pdf/201891717121180715.pdf>

⁽²⁶⁾ <http://www.wwgf.com.cn/Article/lists/cateid/10.html>

⁽²⁷⁾ https://www.sohu.com/a/336366992_617351

⁽²⁸⁾ See <https://www.yicai.com/news/942233.html>

⁽²⁹⁾ Report – Chapter 5, p. 100-1.

⁽³⁰⁾ Report – Chapter 2, p. 26.

followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline⁽³¹⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies⁽³²⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of PVA and the suppliers of their inputs.

- (138) Specifically in the PVA sector, as already pointed out, many of the PVA producers are owned by the State. Wan Wei Group's Mengwei, which was part of the sample, is subject to SASAC administration, for example it's PVA production project is described in the following way: 'Phase II of the Mengwei 100 000 tonnes/year special polyvinyl alcohol resin project and [...] are the fund-raising projects included in the company's "Plan for 2015 non-public Development Bank A-share stock". They have been approved by the State-owned Assets Supervision and Administration Commission of the People's Government of Anhui Province (Letter [2015] 599): "Approval on relevant matters of non-public Development Bank stock of Anhui Wan Wei high tech materials Co., Ltd" as was also approved by the first extraordinary general meeting of shareholders of 2015.'⁽³³⁾ Furthermore, Wan Wei is subject to party building activities: 'Regarding the construction of the party's work style and clean government in the next stage, Wu Shangyi, the person in charge of the Discipline Inspection Committee of the joint-stock company, pointed out that one must accurately grasp the situation of the construction of the party's work style, [...] focus on the current central work of Anhui's reform and development, with style construction as the main line, and further create a clean and upright corporate environment to provide a strong disciplinary guarantee for the high-quality development of the group company. Tang Xiaohong, deputy secretary of the Discipline Inspection Commission of the group company, put forward: [...] solidly promote the implementation of the party style and clean government [...]'⁽³⁴⁾.
- (139) Sinopec, another company sampled in the investigation is also an SOE and underlines it's adherence to the party principles in numerous instances. According to the Sinopec website: 'In 2018, the company adhered to the guidance of Xi Jinping's new era socialist ideology with Chinese characteristics and the spirit of the 19th National Congress of the Party, fully implemented the general requirements for party building in the new era, closely focused on the strategic deployment of building a world-class enterprise, and led by political construction, vigorously strengthen the capacity building of the party committees of directly-owned enterprises to manage the overall situation, vigorously implement the grassroots party organization organizational improvement project, vigorously enhance the vitality of team officers and entrepreneurship, coordinate and strengthen all party construction work, and continuously improve the quality of party construction to provide a strong guarantee for building Sinopec into a world-class enterprise with global competitiveness. Adhere to study, propaganda and implementation of Xi Jinping's new era of socialism with Chinese characteristics and the spirit of the 19th National Congress of the Communist Party as the primary political task, and adopt a variety of methods such as touring, special training, and themed Party Day to promote learning, thinking, and practice. Unity, education and guidance of party members and cadres continue to strengthen the consciousness and consciousness of resolutely achieving "two safeguards," and practice loyalty to the party with practical actions'⁽³⁵⁾.
- (140) Inner Mongolia Shuangxin lists on its website party building activities in the following way: 'The company established a party branch in 2005. In May 2012, the organization Department of the Otog Banner Committee of the Chinese Communist Party formally approved our company to establish the Party Committee of Inner Mongolia Shuangxin Resources Holdings Co., Ltd and convened its first party member congress. Related subsidiaries have set up a second-level party committee (with 5 party branches under their jurisdiction), 2 general party branches (with 3 party branches under their jurisdiction), and 3 party branches'⁽³⁶⁾.
- (141) The State's presence and intervention in the financial markets (see also section 3.1.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market⁽³⁷⁾. Thus, the State presence in firms, including SOEs, in the PVA and other related sectors (such as the financial and input sectors further discussed in Section 3.1.1.7 below) allow the GOC to interfere with respect to prices and costs.

⁽³¹⁾ Report – Chapter 2, p. 31-2.

⁽³²⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 15 July 2019).

⁽³³⁾ See http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2018/2018-4/2018-04-03/4189060.PDF, page 138.

⁽³⁴⁾ See <http://www.wwgf.com.cn/Home/Article/show/id/3038.html>

⁽³⁵⁾ See <http://www.sinopecgroup.com/group/gsjd/ddjs>

⁽³⁶⁾ <http://www.shuangxinpva.com/dangqunjianshe/>

⁽³⁷⁾ Report – Chapters 14.1 to 14.3.

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

- (142) 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 and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽³⁸⁾.
- (143) The PVA industry is regarded as an important industry by the GOC. This is confirmed in the numerous plans, directives and other documents focused on the chemical sector and PVA in particular, which are issued at national, regional and municipal level, including the documents listed in the following recitals.
- (144) PVA is mentioned in the National Development and Reform Commission (NDRC) Decision on the provisions amending the 'Guiding Catalogue for Industry Restructuring (2011 edition) ⁽³⁹⁾ (applicable during the IP). PVA appears in the chapter on encouraged sectors: '19-Light industry: 14: New packaging materials such as vacuum coated aluminium, silicon oxide spray, PVA coating-type film, Functional polyester (PET) film, oriented polystyrene (OPS) film, paper-plastic based multilayer extrusions or compounds.', furthermore, it is listed in the chapter on restricted sectors: 'Textile: 13: Adopting polyvinyl alcohol slurry (PVA) sizing technology and products (polyester and cotton products, except high-count high-density products of pure cotton)' as well as in the chapter on eliminated sectors/ obsolete products: 'Polyvinyl alcohol and its acetals for interior and exterior walls (106, 107 coatings, etc.)'. Those instances show that GOC is steering the PVA industry and the use of PVA in different sectors.
- (145) The Guiding Catalogue was in the meantime updated and the new version, in force as from 1 January 2020 ⁽⁴⁰⁾ In this new version, PVA appears also as an encouraged sector: 'Light industry 11: New packaging materials such as vacuum coated aluminium, silicon oxide spray, PVA coating-type film plastic based multilayer extrusions or compounds.'. For the restricted and eliminated industries the new version of the Guiding Catalogue is identical with the version described in recital (144) above.
- (146) Inner Mongolia Wuhai and surroundings' industry transformation and upgrading plan 2016-2020 ⁽⁴¹⁾ mentions PVA in section IV.2: 'fine Chemicals: -Give full play to the advantages of basic chemical industries such as chlor-alkali, coking and organic silicon, -promote horizontal connections between industries and extend the industrial chain vertically,-vigorously develop deep-processed products such as 1,4-butanediol, PVA, -foster products such as medicines, pesticides, and synthetic dyes, organic pigments, paints, functional polymer materials, -create a fine chemical industry cluster -develop a new pillar industry.' as well as section VII.2: '[a]ctively support enterprises to develop international production capacity cooperation, -Encourage specific competitive products such as cement, coking, polyvinyl chloride, polyvinyl alcohol, technologies as well as equipment so as to bring them to "go out",-explore and develop international markets.'
- (147) Upon disclosure, one interested party, namely Wacker, submitted that PVA is not an encouraged industry and emphasized that the Commission itself mentions in its respective second findings of recitals (144) and (145) that PVA is listed in the chapter of restricted industries. On this basis, Wacker submits that Chinese PVA industries cannot benefit from any supposed subsidies or support available only to encouraged industries. Consequently, in Wacker's view, the Commission's assessment lacks factual evidence.

⁽³⁸⁾ Report – Chapter 4, p. 41-42, 83.

⁽³⁹⁾ See www.gov.cn/gongbao/content/2013/content_2404709.htm

⁽⁴⁰⁾ See <http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf>

⁽⁴¹⁾ See http://fgw.nmg.gov.cn/fggz/fzgh/202001/t20200110_153847.html

- (148) However, Wacker's arguments must be rejected. The relevant analysis under the third indent of Article 2(6a)(b) of the basic Regulation does not assess whether the domestic producers of the like product receive government support. Instead, the analysis looks into the question whether public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces exist. In this respect, listing PVA among the restricted industries demonstrates the prevalence of such public policies in the same manner as listing it among encouraged industries since the very existence of such catalogues clearly demonstrates GOC's interference with market forces. It is for this reason that the Commission noted in recital (144) *in fine* that GOC is steering the PVA industry since steering, far from being limited to support, may entail a wide array of measures, including restrictions.
- (149) The GOC further guides the development of the sector in accordance with a broad range of tools, for example by providing subsidies. The annual report of Wan Wei Group lists a number of subsidies devoted to PVA: the 2016 annual report lists 'PVA project technical reform funds of RMB 8,6 million ⁽⁴²⁾, the annual report of 2017 lists: 'PVA Project Technological Reform allocation: RMB 7,666 million, discount on loans for technical renovation of PVA materials for waste molasses production RMB 2,819 million ⁽⁴³⁾' as well as 'PVA project technological transformation allocation RMB 958 333' ⁽⁴⁴⁾. In 2018 the company received RMB 5,7 million for PVA Project Technological Reform allocation and RMB 2,8 million interest discount on PVA technological transformation projects ⁽⁴⁵⁾. The 2019 annual report lists an allocation of RMB 0,958 million for PVA Project Technological Reform ⁽⁴⁶⁾.
- (150) There are also a number of distortions in the main raw materials to produce PVA, such as coal, gas, calcium carbide, acetic acid and limestone. Coal is subject to different plans and other documents, such as the 13th five year plan (FYP) for Mineral Resources on the national level as well as to plans on the local level, such as the Hebei province Coal industry development plan ⁽⁴⁷⁾. The coal industry is a substantial subsidy receiver in China which lead to overcapacity and price distortions ⁽⁴⁸⁾. Natural gas is also subject to a number of plans, including the 13th FYP for Mineral Resources on the national level, but also to plans on the local level, such as the Hebei Province Natural Gas Development Plan. Calcium carbide production is subject to a preferential electricity rate in some provinces such as Chongqing and Shaangxi ⁽⁴⁹⁾. It is also subject to the 13th FYP for the Petrochemical and Chemical Industry. Acetic acid is subject to NDRC's Catalogue for Guiding Industrial Restructuring, prescribing detailed rules for different industries. Acetic acid is included in the restricted list for petrochemicals: 'caprolactam or ethylene acetic acid with an annual output of less than 100 000 tonnes, acetic acid by oxo synthesis or methanol by natural gas with an annual output of less than 300 000 tonnes' ⁽⁵⁰⁾. Through these and other means, the raw materials used to produce PVA are subject to governmental intervention.
- (151) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries. Such measures impede market forces from operating normally.

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

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

⁽⁴²⁾ See http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2017/2017-4/2017-04-12/3210569.PDF page 127.

⁽⁴³⁾ See http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2018/2018-4/2018-04-03/4189060.PDF page 152.

⁽⁴⁴⁾ Ibid, page 167.

⁽⁴⁵⁾ See 2018 annual report, pages 156-157, <http://q.stock.sohu.com/newpdf/201934709238.pdf>

⁽⁴⁶⁾ See 2019 annual report, page 154, http://www.sse.com.cn/disclosure/listedinfo/announcement/c/2020-04-10/600063_20200410_2.pdf

⁽⁴⁷⁾ See Report, page 46.

⁽⁴⁸⁾ See Report, pages 232-233.

⁽⁴⁹⁾ See Report, pages 224 and 231.

⁽⁵⁰⁾ See Report, page 177.

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 ⁽⁵¹⁾.

- (153) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁵²⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). 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 ⁽⁵³⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁵⁴⁾.
- (154) Much like other sectors in the Chinese economy, the producers of PVA 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. The present investigation revealed nothing that would call those findings into question. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the PVA sector.
- (155) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the PVA sector, including with respect to the product concerned.

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

- (156) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ⁽⁵⁵⁾. 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 ⁽⁵⁶⁾. 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. 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 ⁽⁵⁷⁾. Those findings lead to the distortion of wage costs in the PRC.
- (157) No evidence was submitted to the effect that the PVA sector, would not be subject to the Chinese labour law system described. PVA sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

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

- (158) Access to capital for corporate actors in the PRC is subject to various distortions.

⁽⁵¹⁾ Report – Chapter 6, p. 138-149.

⁽⁵²⁾ Report – Chapter 9, p. 216.

⁽⁵³⁾ Report – Chapter 9, p. 213-215.

⁽⁵⁴⁾ Report – Chapter 9, p. 209-211.

⁽⁵⁵⁾ Report – Chapter 13, p. 332-337.

⁽⁵⁶⁾ Report – Chapter 13, p. 336.

⁽⁵⁷⁾ Report – Chapter 13, p. 337-341.

- (159) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁵⁸⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly 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) ⁽⁵⁹⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. 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 ⁽⁶⁰⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶¹⁾.
- (160) 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.
- (161) 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. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁶²⁾.
- (162) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶³⁾. This results in a bias for 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.
- (163) Secondly, 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 recent 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.
- (164) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (165) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring 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.
- (166) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

⁽⁵⁸⁾ Report – Chapter 6, p. 114-117.

⁽⁵⁹⁾ Report – Chapter 6, p. 119.

⁽⁶⁰⁾ Report – Chapter 6, p. 120.

⁽⁶¹⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁶²⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

⁽⁶³⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (167) No evidence was submitted to the effect that the PVA sector, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.1.1.9. Systemic nature of the distortions described

- (168) The Commission noted that the distortions described in the Report were characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.1.1.1–3.1.1.5 as well as in Part A 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 in Sections 3.1.1.6–3.1.1.8 above and in Part B of the Report.
- (169) The Commission recalls that in order to produce PVA, the main raw materials are: coal, natural gas and acetic acid. According to evidence on the file, all the sampled exporting producers sourced all their inputs in the PRC. When the producers of PVA 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.
- (170) As a consequence, not only the domestic sales prices of PVA 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 tainted because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.1.1.10. Conclusion

- (171) The analysis set out in sections 3.1.1.2 to 3.1.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the PVA sector (including the product concerned) showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (172) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.
- (173) In their comments on final disclosure, the GOC argued that exporting producers were not given a market distortion questionnaire. According to GOC, this left the exporting producers in confusion about the scope of market distortion issue, and what they need to submit in terms of key points to be addressed and evidence that is acceptable. This has adversely affected Chinese companies' legitimate rights, and deprived them of their opportunities to defend their interests.
- (174) The Commission disagrees with this claim. The Commission first notes that on 30 July 2019 a market distortion questionnaire was issued to the GOC. The GOC failed to reply to it. Furthermore anti-dumping questionnaires intended for exporters contain Point f.4, which explains how the exporting producers could claim that they are not affected by significant distortions. This claim was therefore rejected.

3.1.2. Representative country

3.1.2.1. General remarks

(175) The choice of the representative country was based on the following criteria:

- A level of economic development similar to the PRC. For this purpose, the Commission took into account countries with a gross national income similar to the PRC on the basis of the database of the World Bank ⁽⁶⁴⁾;
- Production of the product under investigation in that country ⁽⁶⁵⁾;
- Availability of relevant public data in that 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.

(176) As explained in recitals (46) to (50) the Commission published three notes for the file ⁽⁶⁶⁾ on the sources for the determination of the normal value.

3.1.2.2. A level of economic development similar to the PRC

(177) In the Note of 2 October 2019, the Commission explained that the product under investigation appears to be produced only in Japan, Singapore, Taiwan and the USA, none of which is a country with a level of economic development similar to the PRC in accordance with the criteria mentioned in recital (175).

(178) As all countries where there is PVA production have a different level of economic development than the PRC, the Commission considered the production of a product in the same general category and/or sector of the product under investigation. The Commission therefore indicated it would use production of PVB, a similar product to PVA, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation.

(179) Accordingly, in the Note of 2 October 2019, the Commission identified the following four countries where PVB was being produced: Brazil, Malaysia, Mexico and Thailand. These countries were regarded by the World Bank as countries with a similar level of economic development as the PRC, i.e. they are all classified as 'upper-middle income' countries on a gross national income ('GNI') basis.

(180) Three sampled exporting producers in the PRC provided comments after the Note of 2 October 2019. They agreed with the assessment that all four countries identified by the Commission appear to have a similar level of economic development. However, in their view, Malaysia appeared to be on the higher end of the scale of economic development and may therefore be less representative than the three other countries. They also pointed out that, according to their information, PVB was not produced in Brazil, as the selected company in that country stopped producing PVB. Furthermore, as regards the adequacy of protection concerning level of social, labour and environment, these exporters expressed their reservations as regards Brazil. In their view, out of the countries considered, Mexico has the highest level of compliance with ILO labour standards. Therefore, they considered that Mexico could constitute the most appropriate representative country for the determination of the normal value out of those that were identified in the note of 2 October 2019.

(181) The basic Regulation does not contain any further requirement to choose the country with the closest level of economic development as the export country. Therefore, the fact that a country may have a closer GNI than another is not a decisive factor in the selection of the appropriate representative country. As mentioned above, the relevant criterion in terms of economic development is the upper-middle income classification by the World Bank for the relevant period. This database allows the Commission to have a sufficient number of potentially suitable countries with a similar level of development to choose the most suitable source of undistorted costs and prices. As all four countries are included in the same category of the World Bank database, they are all considered to meet the criterion laid down in Article 2(6a)(a) first indent of the basic Regulation. Therefore, this claim was rejected.

⁽⁶⁴⁾ World Bank Open Data – Upper Middle Income, available at <https://data.worldbank.org/income-level/upper-middle-income> (last viewed 15 July 2019).

⁽⁶⁵⁾ If there is no production of the product under investigation in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

⁽⁶⁶⁾ Note of 2 October 2019, Note of 20 December 2019 and Note of 30 March 2020.

- (182) The Commission took note that there does not seem to be production of PVB in Brazil. A more detailed analysis of the availability and quality of the financial data for the different companies in Brazil is carried out under section 3.1.2.3 below.
- (183) With regard to the claim concerning the level of social, labour and environmental protection based on Article 2(6a)(a) first indent of the basic Regulation, it turned out there was no need to consider the different levels of protection in these four countries as explained under recital (221) below. Therefore, this claim was dismissed.
- (184) As further explained in recitals (188) and (208), based on the comments to on the Note of 2 October 2019, Turkey was added to the list of potential appropriate representative countries. Turkey is regarded by the World Bank as a country with a similar level of economic development to the PRC.

3.1.2.3. Production of the product under investigation in the representative country and availability of the relevant public data in the representative country

(a) Choice of the similar product to PVA

- (185) As explained in the recitals (177) and (178) above, the Commission informed in the note of 2 October 2019 that it intends to take PVB as a similar product to PVA to identify an appropriate representative country for the application of Article 2(6a) of the basic Regulation. Interested parties were invited to comment on the choice of PVB as similar product to PVA.
- (186) In its comments on the Note of 2 October 2019, the complainant argued that a distinction should be made between PVB film and PVB resin and it considered that PVB film cannot be used an appropriate similar product for the following reasons:
- PVB film and resin are different from each other in terms of the potential applications and physical characteristic. PVB film – in comparison to resin – has very specific limited number of applications.
 - Due to the fragile nature of the product, the PVB film plants are usually located in close proximity to the end users in order to minimize the costs of sales and risks related to transportation. PVB resin, on the other hand, has much wider portfolio of applications and can be traded and transported globally for many various purposes.
 - As PVB film is traded differently than PVA and PVB resin, the cost structures of PVB film producers are also different.
- (187) The complainant argued that Polyvinyl acetate ('PVAc') should be considered instead as an appropriate similar product based on the similarities existing in the production process of PVA and PVAc. Notably, the complainant claimed that as PVA, PVAc was also produced through the polymerisation of VAM. The complainant also considered that PVAc as a final product was similar to PVA in terms of wide range of uses and potential end-users and customers.
- (188) The complainant also identified a PVAc producer in Turkey, which is a country at the same level of economic development as the PRC. The company identified by the complainant was Organik Kimya San. ve Tic. A.Ş. Therefore, the complainant suggested to use Turkey as a representative country for the purpose of the normal value calculation.
- (189) The complainant's claim that PVB film would not be suitable as an appropriate similar product was not supported by any evidence. On the contrary, the visibility of PVB film producers on the publicly available information platforms suggests that PVB film is not limited in its application or number of potential users.
- (190) The Commission conducted its own research, in consultation with the European Chemicals Agency ('ECHA'). On this basis, the Commission found that, considering the manufacturing process, the raw materials used and cost of production, both PVB and PVAc could be used as appropriate similar products for PVA. The factors of production needed to produce both PVB and PVAc are largely the same as for PVA and, in terms of cost of manufacturing, the PVA falls between the PVB and PVAc.

- (191) Thus, the complainant's claim that PVAc, instead of PVB, should be used as appropriate similar product for PVA was rejected. However, based on the reasons explained above, the Commission accepted the argument that PVAc, together with PVB, could be considered as a potential appropriate similar product.
- (192) In its comments to the Note of 2 October 2019, Solutia, who was also considered a user ⁽⁶⁷⁾ importing the product under investigation, questioned whether the Commission considered PVB resin or PVB film as the similar product to PVA.
- (193) As explained in the recital (189) above, no distinction was made between PVB resin and PVB film as regards their suitability as an appropriate similar product. Solutia also informed the Commission that one of its affiliated companies in Mexico, namely Solutia Tlaxcala, S.A. de C.V was producing PVB film and its other affiliated company in Malaysia, Flexsys Chemical (M) SDN BHD, is producing PVB resin. The situation of these two companies was addressed in recitals (199) and (200) below.
- (b) Production of the similar product to product under investigation in the representative country and availability of the relevant public data in the representative country
- (194) In the Note of 2 October 2019 the Commission indicated that for the countries identified as countries where PVB was produced, i.e. Brazil, Malaysia, Mexico and Thailand, the availability of public data needed to be further verified in particular as far as public financial data from a producer of the similar product is concerned.
- (195) In addition to the companies identified in the Note of 2 October 2019, based on the conclusion under point (a) above, the Commission undertook further research for companies producing PVAc in the countries considered. It found one additional company in Turkey and one in Mexico, as informed to parties in the Note of 20 December 2019.
- (196) As mentioned above under point (a), the Commission also analysed the information submitted by the complainant on an additional Turkish company, and the information submitted by an importer on two additional companies in Mexico and Malaysia.
- (197) With regard to Brazil, an importer and user of the product under investigation informed the Commission that one of the companies that were identified in the note of 2 October 2019 as a PVB producer in Brazil, namely Solutia Brasil Ltda. (Eastman Chemical company), had ceased producing PVB film and was therefore not a suitable candidate for the determination of manufacturing overhead, SG&A and profit. This also concurred with the comments put forward by the exporters as discussed in section 3.1.2.2. above.
- (198) In the absence of other information on file available to the Commission on the presence of other companies producing PVB and/or PVAc in Brazil with publicly available financial data, the Commission concluded that Brazil could no longer be considered an appropriate representative country.
- (199) With regard to Malaysia, the availability of data was verified for the company identified in the note of 2 October 2019 – namely Samchem Nusajaya Sdn Bhd – and also for the company suggested by Solutia – namely Flexsys Chemical (M) Sdn Bhd, also producing PVB. The publicly available financial data for both Samchem Nusajaya Sdn Bhd. and Flexsys Chemical (M) Sdn Bhd dated back from 2017 and, as a consequence, could not be considered suitable for the investigation period, when more recent data was available for other producers. Therefore, the Commission concluded that Malaysia was not suitable to be considered as an appropriate representative country for this investigation. This conclusion was further reinforced by the analysis of imports into Malaysia, discussed in recital (203).
- (200) With regard to Mexico, the Commission also analysed the availability of the financial data for the company producing PVB suggested by Solutia, namely Solutia Tlaxcala S.A. de C.V., as well as for the company that the Commission found on basis of its own research namely Wyn De Mexico Productos Quimicos S.A. de C.V.
- (201) As regards the financial statements for 2018 of Solutia Tlaxcala S.A. de C.V., the interested party submitted full financial statements as certified by the auditors in a 'sensitive' version only. This party also stated that this comprehensive set of the financial statements submitted to the Commission were not publicly available. The Commission therefore concluded that it could not use the data of this company in the proceeding.

⁽⁶⁷⁾ Solutia is producing PVA in the Union and also purchasing PVA from the Union, Chinese and other third country producers.

- (202) As regards Wyn De Mexico Productos Quimicos S.A. de C.V., the latest publicly available financial data was only available for the first six months of 2018 and therefore it could not be considered. As a result, the Commission concluded that Mexico could not be considered as an appropriate representative country for this investigation.
- (203) With regard to Thailand, the data available for Sekisui S-Lec Co Ltd was from 2018, and because there was a partial overlap with the investigation period it could be considered suitable in principle. This company was profitable in 2018. However, in the note of 20 December 2019, the Commission also analysed the imports of the main factors of production into Turkey, Mexico, Thailand and Malaysia. The analysis of import data showed that the imports into Thailand and Malaysia of the major factors of production were affected by imports from the PRC, and therefore neither Thailand nor Malaysia could be considered as a suitable representative country. The same analysis also showed that Turkey and Mexico could be used as an appropriate representative country as their imports of the main factors of production were not materially affected by imports from the PRC or any of the countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council⁽⁶⁸⁾.
- (204) Further to the information submitted by the complainant on the Turkish company Organik Kimya San. Ve Tic. A.S., the Commission also analysed the situation with regard to Turkey by verifying the availability of data for this company, which was not covered in the Note of 2 October 2019. This company is a producer of PVAc, which was considered as an appropriate similar product to PVA as explained in the point (a) above. The last financial data available for this company was from 2018. The company was profitable. However, it was found that the publicly available data of this company in the Orbis database did not contain the appropriate data for cost of goods sold and SG&A. Therefore, the Commission concluded that the data of this company could not be used for the investigation unless this data became available.
- (205) The Commission also researched other potential producers of PVB and/or PVAc in Turkey. Another Turkish company, Ilkalem Ticaret Ve Sanayi A.S., was found to be producing PVAc adhesives. The last financial data available for this company was from 2018 and the company was profitable at the level of operating profits. However, the financial expenses of 2018 were extraordinary high and therefore made the company loss-making in that year. The Commission compared the financial data for that company with the previous years where there was no such extraordinary situation and concluded that the financial expenses for 2018 should indeed be considered extraordinary and appropriately adjusted. Therefore, the Commission concluded that, after the appropriate adjustment to the extraordinary financial expenses, the data of Ilkalem Ticaret Ve Sanayi A.S. could be considered as suitable for this investigation. This conclusion was communicated to interested parties in the Note of 30 March 2020. The Commission received comments from three traders of the product under investigation. These comments are addressed in the recitals (219) and (220) below.
- (206) In light of the above considerations, the Commission informed the interested parties with the Note of 20 December 2019 that it intends to use Turkey as an appropriate representative country and the Turkish company Ilkalem Ticaret Ve Sanayi A.S. 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.
- (207) Interested parties were invited to comment on the appropriateness of Turkey as a representative country and of Ilkalem Ticaret Ve Sanayi A.S. and – in case its financial data would become available – Organik Kimya San. Ve Tic. A.S. as producers in the representative country.
- (208) Following the Note of 20 December 2019, one sampled exporting producer argued that, unlike Mexico, Turkey was not mentioned in the Note of 2 October 2019 on the sources for the determination of the normal value.
- (209) The initial selection of potential representative countries and of suitable companies with publicly available data does not prevent the Commission from the possibility to supplement or refine such selection and its research at a later stage, including by putting forward new suggestions in terms of potential representative country and similar product. Indeed it is the very purpose of the Notes on factors of production, to invite interested parties

⁽⁶⁸⁾ 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).

to comment on the Commission services' preliminary research and, if warranted, to receive alternatives for the Commission services' further consideration. The Notes even contain a specific annex to guide parties in submitting information on possible additional representative countries and/or companies for the purpose of Article 2(6a)(a) of the basic Regulation. Following the comment by the complainant related to Turkey and another potential similar product – PVAc – the Commission performed additional research in collaboration with ECHA as mentioned in the recitals (204) to (206) above. This research demonstrated that both PVAc and PVB could equally well be considered as similar products to PVA. The additional research also confirmed that PVAc was produced in Turkey. On this basis the Commission added Turkey to the list of potential representative countries and designated PVAc as a similar product. Therefore, the claim that Turkey could not be regarded as a representative country since it was not mentioned in the Note of 2 October 2019 is rejected.

- (210) The same exporting producer claimed that Mexico would constitute a more appropriate representative country due to, inter alia, the availability of data for coal and natural gas. Further, this exporting producer also claimed that for a number of major input factors, there were substantial Chinese exports into Turkey while the Mexican import data shows substantial purchases from the USA. The exporting producer also argued that the volume of imports of other factors of production into Turkey was limited when compared to the volume of imports into Mexico. Based on these considerations, this exporting producer expressed the view that the data from Wyn De Mexico Productos Quimicos S.A. de C.V. should be used even if it was only available for the first six months of 2018.
- (211) The situation of Chinese imports of the main factors of production into Turkey, compared with the respective imports into Mexico was further analysed in the Note of 30 March 2020. This analysis, in line with the analysis made in the Note of 20 December 2019, mentioned in the recital (203), confirmed that the level of Chinese imports to Turkey of the main factors of production used by the sampled cooperating exporting producers not affected by PRC imports were representative. Therefore, the imports from PRC to Turkey were not such that it would render Turkey inappropriate as a representative country under Article 2(6a)(a) of the basic Regulation. Therefore, this claim was rejected.
- (212) The Commission also clarified in the Note of 30 March 2020 that no updated financial data had become available for any of the Mexican companies mentioned in the note of 20 December 2019. For Wyn De Mexico Productos Quimicos S.A. de C.V., the latest publicly available financial data covered only the first six months of 2018. It was recalled that this data has no overlap with the investigation period and also that it relates only to a period of 6 months. Any 6 months period cannot be considered representative of a whole year, inter alia, due to potential seasonal fluctuations in the items of the profit and loss statement. Furthermore, a complete financial year has a beginning and closing date where audits are performed, appropriate accruals are recorded and necessary corrections are made. It is less than certain that all this would be done on the basis of a 6 months period. Furthermore, even if a company showed profit for a period of 6 months it does not mean that it would be profitable for the entire year. Indeed, the company suggested by the exporting producer was not profitable in 2017, the latest full year available. For all these reasons the Commission did not agree with the comment made by this exporting producer claiming that the use of this 6 months data would yield a more accurate normal value than using data from Turkey. As regards the other potential company from Mexico referred to in the note of 20 December 2019, namely Solutia Tlaxcala S.A. de C.V., the financial statements of this company were not publicly available. Therefore, the Commission maintained that the data available from the two Mexican companies could not be considered suitable. Therefore, this claim was rejected.
- (213) As regards the Turkish company Ilkalem Ticaret Ve Sanayi A.S., the Commission explained in the note of 20 December 2019 that the data could be considered as suitable for this investigation to establish the undistorted SG&A and profit. As explained in the recital (205) it was also noted that the financial expenses of 2018, which made the company loss-making in that year, should be considered extraordinary.
- (214) In line with the Commission's observation, the same exporting producer also noted that the company Ilkalem Ticaret Ve Sanayi A.S became loss making due to financial items. This party further claimed that the financial information available for this company did not allow breakdown between overhead and SG&A expenses.

- (215) As regards the overheads and SG&A expenses, it should be noted that the source for the former is normally not based on the company in the representative country. Furthermore, contrary to what was claimed by the interested party, the SG&A of the Ilkalem Ticaret Ve Sanayi A.S. were in fact disclosed in its publicly available financial information in Orbis database. It should also be noted that the publicly available data for this company is generally on the same level of detail as any publicly available financial data normally used by the Commission in these investigations. Therefore, the level of detail currently available for this company contains all the necessary information and does not make the company unsuitable for this investigation. As regards the financial items, the Commission notes that the abnormal level of these items in the profit and loss statement of 2018 should be considered extraordinary as explained in recital (205) above. Considering the above, Commission maintained that the data of Ilkalem Ticaret Ve Sanayi A.S. can be considered suitable after making appropriate adjustments for the extraordinary financial items as explained in the recital (307). Therefore, these claims were rejected.
- (216) Following the Note of 20 December 2019, three traders of the product under investigation claimed that the company Ilkalem Ticaret Ve Sanayi A.S. is not suitable since the company is not specialised in PVAc production but that this product represents only a limited part of its total product portfolio. These parties claimed that manufacturing overhead cost, SG&A and profits of this company are not apportioned only to PVAc production and that the 'factors of production, electricity as well as manufacturing overhead costs, SG&A and profits for PVAc are heavily affected by the overall production and sale activity' and that cost of production varies for each category of products. Notably these parties claimed that cost of sales of non-PVAc products and their after sales assistance are much higher than for PVAc products. Furthermore, these parties claimed that in absence of analytic accounting for PVAc cost of production and profit, Ilkalem Ticaret Ve Sanayi A.S. may not be considered as a reliable source of data.
- (217) The claim that the cost of sales of non-PVAc products and their after sales assistance are much higher than for PVAc products was not substantiated by any evidence. Furthermore, it is not exceptional that the companies considered suitable in the context of Article 2(6a)(a) of the basic Regulation are producing more than one product. It is likewise also common that the level of detail of publicly available financial data of suitable companies in the representative country usually does not allow a more granular analysis of the SG&A and profit at the level of individual products. It is also recalled that as regards cost of production, factors of production, and electricity, the choice of any individual company has no relevance to the outcome since this data is retrieved from other sources, namely statistical import data or domestic data of the representative country, as well as data from exporting producers. Therefore, these claims were rejected.
- (218) Following the Note of 20 December 2019, the complainant argued that the financial data of Ilkalem Ticaret Ve Sanayi A.S. was affected for the 2018 by extraordinary events, namely the currency fluctuation due to political developments in Turkey and the expansion of the company's capacity. The complainant therefore suggested that the financial data for this company for 2018 could be used, 'but other than profit before tax'. However, complainant did not further substantiate these possible reasons for the abnormal financial expenses in 2018, neither did it contest the approach suggested by the Commission, which is making an appropriate adjustment for the extraordinary amounts of financial expenses in 2018. Therefore, the Commission in the Note of 30 March 2020 informed that it intends to maintain the approach suggested in the note of 20 December 2019, i.e. using the data of Ilkalem Ticaret Ve Sanayi A.S. adjusted for the extraordinary financial expenses.
- (219) Following the note of 30 March 2020 the Commission received repeated comments from three traders of the product under investigation. These parties reiterated their claim that Ilkalem Ticaret Ve Sanayi A.S. is a non-suitable company because its cost of sales of non-PVAc products and after sale assistance are much higher than for PVAc products. These parties made reference to Ilkalem Ticaret Ve Sanayi A.S. website claiming that its portfolio of products shows that the core business is formed by non-PVAc product lines and that PVAc is a side business only. Further, these parties claimed that the non-PVAc sectors require more resources for research and development and technical assistance as well as investments and sales organisation and after sale assistance and claimed that profit in these non-PVAc sectors are 'usually quite high'. These interested parties did not however provide any additional evidence substantiating their claim. Therefore, these claims are rejected as already explained in the recital (217) above.

- (220) Following the note of 30 March 2020, the same parties also repeatedly reiterated their claim that accounting data of Ilkalem Ticaret Ve Sanayi A.S. are not suitable since PVAc production represent only a limited part of its total product portfolio and manufacturing, overhead cost, SG&A and profits of this company are not apportioned only to PVAc production. These parties further suggested that Ilkalem Ticaret Ve Sanayi A.S.'s financial data are unsuitable for determining costs, SG&A and profits, unless the company supplies to the Commission financial data limited to the PVAc product line. As already explained in the recital (217), granular analysis of the SG&A and profits at the level of individual products is usually not possible and not necessary for a company to be considered suitable in the context of Article 2(6a)(a) of the basic Regulation. Therefore, this claim was rejected.

3.1.2.4. Level of social and environmental protection

- (221) Having established that Turkey 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.

3.1.2.5. Conclusion

- (222) In view of the above analysis, Turkey 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.
- (223) In their comments on final disclosure, one sampled exporting producer referred to its comments on the Note of 20 December 2019, where it disagreed with the choice of Turkey as the appropriate representative country.
- (224) The Commission noted that these comments were addressed in the Note of 30 March 2020 (as well as in section 3.1.2.3 above) and that the exporting producer did not submit any further comments in response to that Note. As those claims had already been replied to and the exporting producer did not present any new argument or evidence, they were rejected.
- (225) In their comments on final disclosure, one user and one union producer / user disagreed with the choice of Turkey as representative country, arguing that it did not respect labour conventions and standards nor complied with climate and environmental rules. The user further disagreed with the use of data of Ilkalem Ticaret Ve Sanayi A.S. since, PVAc production represented only a limited part of its business. Consequently, according to the user, the company's costs, overheads, SG&A and profit for PVAc were affected by its overall production and sales activity. The user argued that, by using the Turkish producer's SG&A costs and profit, the Commission inflated the normal value. The user asked the Commission to adapt the constructed normal value accordingly.
- (226) The Commission disagreed with these claims. At the outset, the Commission noted that neither of these arguments were put forward by the user in response to the Notes of 2 October 2019, 20 December 2019 and 30 March 2020, where the Commission explicitly requested such comments, subject to deadlines. The Commission then pointed out that, according to Article 2(6a)(a) of the basic Regulation, preference must be given, where appropriate, to countries with an adequate level of social and environmental protection, where there is more than one potential representative country to choose from. As mentioned in recital (221), having established that Turkey was the only available appropriate representative country in this case, there was no need to carry out an assessment of the level of social and environmental protection. This claim was therefore rejected.
- (227) As far as the choice of Ilkalem Ticaret Ve Sanayi A.S. is concerned, the Commission first noted that, other than SG&A, it did not use the company's costs and overheads. As far as SG&A and profit go, the user presented no evidence on why these would be inflated by using the Turkish producer's company-wide figures. Furthermore, the user noted the Commission explanation in recital (220) that granular analysis of the SG&A and profits at the level of individual products is usually not possible and not necessary for a company to be considered suitable in the context of Article 2(6a)(a) of the basic Regulation. The user opposed this argument by claiming that there is no need to bring detailed evidence substantiating that a company whose PVAc production is only a by-product has a significantly different cost structure and profit margin than a company whose primary focus is the production of PVA. On this point, the Commission noted that claims should generally be supported by valid evidence, however detailed. Furthermore, the SG&A and profits, reported by the sampled exporting producers were not inconsistent with what was reported by the producer in the representative country. These claims were therefore rejected.

- (228) In their comment on final disclosure, one Union producer / user argued that the data in Turkey was not publicly available as it has to be purchased from, for instance, Global Trade Atlas ('GTA'). The Commission noted that, According to Article 2(6a) of the basic Regulation, the data does not have to be 'publicly available' but 'readily available'. The Commission noted that 'publicly available' means available to the public at large whereas 'readily available' means available to everybody, provided that certain conditions, like a payment of a fee, have been fulfilled. Important to mention that all the information used to construct the normal value was made available on the open file. That means that even when the information is only available upon payment, all interested parties had access to it. This claim was therefore rejected.
- (229) In their comments on final disclosure, two sampled exporting producers argued that the financial data for Solutia Tlaxcala S.A. de C.V. were readily available within the meaning of Article 2(6a)(a) of the basic Regulation and thus the Commission was wrong to dismiss Mexico as a potential appropriate representative country. As mentioned in recital (201), the financial data for Solutia Tlaxcala S.A. de C.V. were submitted to the Commission by Solutia only in 'sensitive' version because, as explained by the user, the data were not publicly available. According to the sampled exporting producers there is a difference between 'readily available' within the meaning of Article 2(6a)(a) of the basic Regulation and 'publicly available'. The sampled exporting producers argued that 'publicly available' means available to the public at large whereas 'readily available' means available to everybody, provided that certain conditions, like a payment of a fee, have been fulfilled. The sampled exporting producers then argued that, since the data for Solutia Tlaxcala S.A. de C.V. was allegedly available on Dun&Bradstreet database ⁽⁶⁹⁾ for a fee, this data were readily available within the meaning of Article 2(6a)(a) of the basic Regulation.
- (230) The Commission disagreed with this claim. At the outset, the Commission noted that none of these arguments were put forward by the sampled exporting producers in response to the Notes of 20 December 2019 and of 30 March 2020, despite being explicitly requested subject to deadlines. The Commission then explained that it did not consider the financial data of Solutia Tlaxcala S.A. de C.V. as not readily available because Solutia requested confidentiality and confirmed that this data was not publicly available. The Commission considered the data as not readily available because it was unable to find it in the services it has access to for this purpose. Furthermore, none other interested party, including the sampled exporting producers, submitted this data in a non-confidential form, despite being explicitly requested to do so in the Notes of 2 October 2019, 20 December 2019 and 30 March 2020. Finally, the Commission noted that even in their comments on final disclosure, the exporting producers did not submit allegedly readily available data of Solutia Tlaxcala S.A. de C.V. They merely pointed to a paid database that allegedly holds that data and later called it '*prima facie* evidence that the financial data of Solutia Tlaxcala S.A. de C.V. can readily be obtained from other sources'. The Commission is unable to use data that it has no access to or that has not been submitted by any of the interested parties in a non-confidential form. Furthermore, without being able to cross-check whether the allegedly readily available data contain necessary figures or that these figures correspond to those in the data submitted by Solutia in confidence, the Commission was unable to use the latter for the purpose of Article 2(6a)(a) of the basic Regulation. A mere *prima facie* evidence of the availability of Solutia's data, as put by the exporting producers, is insufficient for that purpose. The Commission finally noted that all the information used to construct the normal value, when not widely available, has to be made available to all interested parties in the open file. To this end, the Commission ensures that even when it take recourse to paid data, it is contractually allowed to share the relevant information used in the investigation with interested parties. These claims were therefore rejected.
- (231) In their comments on final disclosure, the same sampled exporting producers argued that Mexico was the most appropriate representative country for the normal value determination since: (i) it has a level of economic development similar to the PRC; (ii) it has an established PVB production; (iii) the relevant data are readily available by virtue of the financial statements of Solutia Tlaxcala S.A. de C.V.; and (iv) Mexico has a higher level of social and environmental protection than Turkey.
- (232) The Commission disagreed with this assessment. The Commission noted that the first two arguments are equally applicable to Turkey. As explained in recital (230), the third argument is factually incorrect, which renders the fourth argument moot. This claim was therefore rejected.

⁽⁶⁹⁾ <https://www.dnb.com>

- (233) In their comments on final disclosure, the same sampled exporting producers argued that, if the Commission insists on using the SG&A costs and profit of the producer in the representative country, it should at least consider the use of Mexico for the undistorted benchmarks.
- (234) The Commission disagreed with this claim. The Commission noted that, as explained in sections 3.1.2.2 and 3.1.2.3 above, contrary to what is being claimed, the Commission did consider the use of Mexico as the appropriate representative country and dismissed it as it did not find any readily available financial data for PVAc or PVB producing company in that country. The Commission also noted that neither in response to the Notes of 2 October 2019 or 30 March 2020 nor in the comments on final disclosure, did the exporting producers present a valid argument why Turkey should not be used as a source for undistorted benchmarks. This claim was therefore rejected.
- (235) In their comments on final disclosure, the same sampled exporting producers contested the use of the data of the Turkish producer, Ilkalem Ticaret Ve Sanayi A.S. as the source for SG&A and profit on the basis that its reported financial expenses were extraordinary high and needed to be adjusted as explained in the recital (205) above. The exporting producers argued that, if the SG&A and profit data had to be adjusted, it cannot be considered as undistorted and thus cannot be used. The exporting producers went on questioning the readily available nature of the Turkish producer's data, since that data had to be adjusted to be used. The exporting producers also questioned the reliability of readily available financial information of Ilkalem Ticaret Ve Sanayi A.S. found in Orbis database and provided alternative financial data for this company obtained from another source – 'EMIS' – showing different profit and loss statement for the year 2018 than the one used in the dumping calculation. The exporting producers argued that, on these basis Turkey should have been disregarded as potential representative country, or both Turkey and Mexico should have been considered, as the producer in the latter country allegedly had readily available data. Finally, the sampled exporting producers recalled that the Commission dismissed their request for further breakdown of SG&A of the producer in the representative country. In this regard the exporting producers mentioned that it would have been useful to ask the producer in the representative country to fill in a detailed profit and loss table that could then be verified by the Commission.
- (236) The Commission disagreed with these claims. At the outset Commission noted that the exporting producers did not raise any of these issue following the publication of the Note of 30 March 2020, which outlined and explicitly requested, subject to a deadline, comments on now criticised approach and figures. With regards to Turkish company's data being distorted, as explained in the Note of 30 March 2020, as well as in recitals (205), the Commission indeed considered the SG&A to contain extraordinary expenses, which should not be taken into account for the construction of the normal value. This is why the Commission adjusted the data by removing these expenses. Contrary to what was claimed by the exporting producers, the adjustment does not affect the readily available nature of the data. It was done solely on the basis of readily available figures and it was explained in detail in the Note of 30 March 2020, as well as in recital (205). These claims were therefore rejected.
- (237) With regards to contradictory data of the Turkish company in other sources, the Commission first noted that this data was not provided in response the Note of 30 March 2020 within the given deadline. The exporting producers did not specify on which basis the report provided by them was compiled, that is, whether it is based on generally accepted accounting principles and statutory accounts or for example a specific reporting template and different accounting conventions particular to EMIS. Therefore, the Commission considers that the financial data obtained from an established and widely used database – Orbis – remains an appropriate and reliable source for the purpose of this investigation. Moreover, the combined SG&A and profit obtained from the Orbis database (21,6 %) for the producer in the representative country is only marginally lower than the one reported in EMIS (22,4 %). Therefore, using the data from EMIS would in fact (marginally) increase the dumping margin for all exporting producers.
- (238) With regards to the request for further breakdown of the SG&A costs of the producer in the representative country, the Commission recalled its reply that such detailed data was not readily available. As to additional questionnaire on detailed profit and loss to be sent to the producer in the representative country and verified by the Commission, the basic Regulation provides that the Commission must use information which is readily available and does not foresee any requests to producers in the representative country. Even if it was possible to request and verify such information from those producers, the data collected would be business confidential information and therefore not readily available to interested parties. Therefore, this data was considered not be readily available within the meaning of Article 2(6a) of the basic Regulation.

(239) These claims were therefore rejected.

3.1.3. Sources used to establish undistorted costs

- (240) In the Note of 2 October 2019, 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.
- (241) Subsequently, in the Note of 20 December 2019, 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 most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Turkish Statistical Institute for establishing undistorted costs of labour ⁽⁷⁰⁾ and energy ⁽⁷¹⁾. Moreover, the Commission also informed that for the cost of water for industrial use, it would use the prices published by the Presidency of the Republic of Turkey Investment Office ⁽⁷²⁾ based on sources from the Istanbul water and Sewerage administration, the Eskişehir Water and Sewerage Administration and the Antalya Water and Sewerage Administration.
- (242) In the note of 20 December 2019, 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.
- (243) Following the Note of 20 December 2019, the Commission received comments on factors of production from one sampled exporting producer, the complainant and three traders of the product under investigation.
- (244) The sampled exporting producer claimed that according to GTA there were no imports of coal ⁽⁷³⁾ and natural gas into Turkey. The party expressed reservations whether Turkish prices could be used in these circumstances as the absence of imports of these two inputs 'may indicate' that certain barriers exist on the Turkish market and prevent imports and 'may therefore result in inflated/distorted prices on the Turkish domestic market'.
- (245) There are indeed no reported imports of coal under the HS classification 2701 19 and natural gas into Turkey. However, the claims made by the exporting producer concerning trade barriers and price distortions were not substantiated by any evidence. Also, the Commission examined the existence of the export restrictions and according to the information available to the Commission, there are no such barriers or price distortions on the Turkish market. Therefore, this claim was rejected.
- (246) After receiving the comments on the Note of 20 December 2019, the Commission however looked further into the types of coal used by the exporting producers in China and also requested inspection reports for these types of coal. The examination of these inspection reports revealed that coal initially proposed to be classified by some of the exporting producers under HS 2701 19, could be classified under HS 2701 12. GTA, lists import data for Turkey for this HS code, namely 37 113 666 tonnes during the investigation period – none of which is imported from the PRC. Therefore, in the note of 30 March 2020, the Commission informed the interested parties that it intends to use the data for HS 2701 12, as published by GTA, as benchmark for all types of coal. After the Note of 30 March 2020, no interested parties sent any further comments as regards the use of data for HS 2701 12, as published by GTA, as benchmark for all types of coals.

⁽⁷⁰⁾ <http://www.turkstat.gov.tr> => Press releases => select Labour Cost Statistics.

⁽⁷¹⁾ <http://www.turkstat.gov.tr> => Press releases => select Electricity and Natural Gas prices.

⁽⁷²⁾ <https://www.invest.gov.tr/en/investmentguide/pages/cost-of-doing-business.aspx>

⁽⁷³⁾ The coal in question is according to the exporting producer in the PRC classified under HS 270 119.

- (247) In the note of 30 March 2020, the Commission maintained that, in absence of any evidence of the alleged trade barriers or price distortions concerning the natural gas in Turkey, the price of gas for industrial users in Turkey as published by the Turkish Statistical Institute is a suitable benchmark for this investigation. Following the Note of 30 March 2020, no interested party submitted any further comments on this point and the proposed approach.
- (248) In the Note of 20 December 2019, the Commission stated its intention to use the statistics published by the Turkish Statistical Institute as benchmark for labour costs in the manufacturing sector for 2016, for the economic activity C.23 (Manufacture of other non-metallic mineral products) according to NACE Rev.2 classification. In its reaction to this note, the complainant proposed that the economic activity category C.20 (Manufacture of chemicals and chemical products) would be more suitable to reflect the labour costs of PVA (chemical product) compared to processing of non-metallic mineral products.
- (249) The Commission examined this claim and looked into which economic category is more suitable for broader economic activities considering the high level of vertical integration of the Chinese producers, and the variety of labour involved. It was found that the economic activity category C.20 (Manufacture of chemicals and chemical products) would be more suitable. Therefore, the Commission used the economic activity category C.20 as benchmark for labour cost.
- (250) Following the Note of 20 December 2019, three traders of the product under investigation stated that they fail to understand why the Commission had disclosed 'such a long list' of raw materials among factors of production and claimed that some of the listed factors of production are not used in the PVA production.
- (251) This claim appears to stem from a misunderstanding about the origins of data of the factors of production disclosed in the notes of 2 October and 20 December 2019. As explained in the note of 2 October 2019, the primary source of the factors of productions was information submitted by the interested parties, notably the cooperating exporting producers. It is also recalled that the sampled cooperating exporting producers have different levels of integration and use different production processes, which explains the relatively long list of inputs for which there is a need to identify the corresponding undistorted costs in the representative country. Therefore, this claim was contradicted by the data submitted by the Chinese exporting producers and verified by the Commission, and thus it is rejected.
- (252) The same interested parties also requested the Commission to make available to all interested parties the specific production process it intends to adopt in order to assess the normal value for PVA. First, it is recalled that the calculation of the constructed normal value is not based on any specific production process as such, but rather on the value of factors of production and their actual consumption by each exporting producer based on their own production process. It is further recalled that the Chinese exporting producers have as part of their replies to the anti-dumping questionnaire explained their production process and outlined their factors of production. The non-confidential versions of these replies have already been available for inspection by all interested parties since September 2019. Therefore, this request was moot.
- (253) Following the Note of 20 December 2019, the same interested parties (three traders of the product under investigation) also made claims regarding factors of production, calculation of the normal value and comparison. These claims are addressed in recitals (264), (342) to (346) and (359) below. Following the Note of 30 March 2020, these parties repeatedly reiterated their arguments, however without submitting any further information or evidence to support their claims.

3.1.4. Undistorted costs and benchmarks

3.1.4.1. Factors of production

- (254) As stated in recital (46), in the Note of 2 October 2019, the Commission sought to establish an initial list of factors of production and sources concerning PVA intended to be used for all factors of production such as materials, energy and labour used in the production of the PVA by exporting producers.
- (255) Furthermore, as stated in recital (48), in the Note of 20 December 2019, the Commission provided a revised list of factors of production and established the Turkish goods codes corresponding to the relevant factors of production in Turkey, the representative country.

- (256) The Commission did not receive any comments concerning the list of factors of production following the Note of 2 October 2019. As explained in recital (243), one sampled exporting producer, the complainant and three traders of the product under investigation submitted comments following the note of 20 December 2019. As explained in the recitals (246) to (249) the Commission in the Note of 30 March 2019, addressed those comments and revised the codes for coal and labour.
- (257) The Commission did not receive any further comments concerning the list of factors of production following the Note of 30 March 2020.
- (258) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and HS codes, where applicable, have been identified:

Factor of Production	Code in the Turkish tariff classification	Undistorted value
Raw Materials		
Polyvinyl alcohol	3905 30 00 0000	16,44 CNY/kg
Acetic acid	2915 21 00 001	4,85 CNY/kg or 4 853,54 CNY/tonne
Azodiisobutyronitrile (AZO) / azobisisobutyronitrile (AZN)	2927 00 00 00	27,71 CNY/kg
Calcium carbide	2849 10 00 0000	5,30 CNY/kg
Carbon (activated)	3802 10 00 0000	14,73 CNY/kg
Carbon (catalytic activated with zinc acetate)	2915 29 00 9019	20,44 CNY/kg
Caustic soda / sodium hydroxide (liquid)	2815 12 00 0000	2,46 CNY/kg
Coal	2701 12	0,75 CNY/kg or 749,38 CNY/tonne
Semi-coke	2704 00	2,05 CNY/kg
Electrode paste	3801 30 00 0000	4,81 CNY/kg
Limestone	2521 00 00 0000	4,08 CNY/kg
Methyl alcohol (methanol)	2905 11 00 101	2,59 CNY/kg
Plastic-paper composite bags	3923 29 90 0019	41,65 CNY/kg
Polypropylene woven container bags	6305 33 90 0000	32,22 CNY/kg
Sulfuric acid (pure)	2807 00 00 0011	1,23 CNY/kg or 1 230,74 CNY/tonne
Vinyl acetate	2915 32 00 0000	7,36 CNY/kg
Zinc acetate	2915 29 00 9019	20,44 CNY/kg
Labour		
Labour costs in manufacturing sector	NACE 20	47,16 CNY/hour

Factor of Production	Code in the Turkish tariff classification	Undistorted value
Energy		
Electricity	Turkish Statistical Institute	CNY/kWh (per 1 000 MWh consumption band) 0,45 (20 ~ 70 MWh) 0,44 (70 ~ 150 MWh) 0,44 (> 150 MWh)
Natural gas	Turkish Statistical Institute	1,63 CNY/m ³ or 1 632,39 CNY/m ³ × 1 000

(1) Raw materials and by-products/waste

- (259) During the verification visits, the Commission verified the raw materials used and the by-product/waste generated in the manufacturing of the product concerned.
- (260) For all raw materials with the exception of Oxygen and Acetaldehyde, absent any information on the market of the representative country, the Commission relied on import prices. 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⁽⁷⁴⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recitals (171) to (172) 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. After excluding the PRC, the imports from other third countries remained representative ranging from 34 %⁽⁷⁵⁾ to 100 % of total volumes imported to Turkey for the factors of production listed in the table above.
- (261) As mentioned in the recital above, there were no public reference prices available for oxygen (oxygen 99,6 %, 2,5 bar pipeline transportation) and acetaldehyde (industrial acetaldehyde). While, according to GTA, there are imports of oxygen into Turkey under HS code 2804 40, these are imports of oxygen in cylinders. The price of these imports is likely driven by the cost of transport and storage, which are not relevant when oxygen is being captured close to the production site and transported there by a pipeline. In that case, the costs are being driven primarily by the costs of the machinery and the installation. For this reason, it was considered inappropriate to use the GTA benchmark. As the market of oxygen delivered by pipeline is characterised by the proximity between the producer/seller and the customer, it is not traded on the spot market. As a consequence, there are no indicative prices published on the national or international trading places, thus there are no public available reference prices. For these reasons, it was found appropriate to include the costs of oxygen in the costs category of consumables. Contrary to oxygen, there were no imports of acetaldehyde (HS code 2912 12) in Turkey recorded in the GTA database, and in absence of any other publicly available reference prices or indicative prices of acetaldehyde in Turkey, it was also considered appropriate to include the costs of acetaldehyde in the costs of consumables.
- (262) A number of factors of production were mainly catalyst materials, for which 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 significant impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in the recitals (301) and (302).

⁽⁷⁴⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

⁽⁷⁵⁾ Imports from other third countries of 34 % was related to Azodiisobutyronitrile (AZO) / azobisisobutyronitrile (AZN) which were factors of production having only a minor impact on the cost of manufacturing.

- (263) In order to establish the undistorted price of raw materials delivered at the gate of the exporting producer's factory, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the import duty of the representative country and added domestic transport costs to the import price. The domestic transport costs for all raw materials as well as insurance costs were estimated based on the verified data provided by the cooperating exporting producers and are not included in the benchmarks mentioned in the table above.
- (264) Following the Note of 20 December 2019, three traders of the product under investigation claimed that the VAM cost incurred by the Chinese exporting producers is not distorted and is in line with the costs in the international open market. The interested parties brought elements on file to show that the VAM price in China was higher during the investigation period than the VAM price in Europe and Russia. The interested parties requested the Commission to take into account this claim when determining the normal value. The same parties also repeatedly reiterated to this claim following the Note of 30 March 2020 without submitting any further evidence. First, it is recalled that according to Article 2(6a)(a), third indent of the Basic Regulation, domestic costs can only be used to the extent that it is positively established that they are not distorted. The claim of these parties is based on general aggregate figures concerning prices of VAM in the PRC as opposed to the Union or to Russia. However, the investigation has not established that the VAM prices in the PRC were not distorted. Secondly, due to their production process, VAM is not even an important factor of production for any of the cooperating exporting producers. Therefore these claims are rejected.
- (265) In their comments on final disclosure, three importers reiterated their claim, which was summarised and addressed in recital (264) that VAM prices in the PRC are not distorted. In reiterating this argument they argued that the Commission ignored the evidence they submitted in support of VAM prices not being distorted, as it did not come from exporting producers. They pointed at the alleged contradiction where the Commission on the one hand did not consider VAM as major factor of production, while in the injury analysis in recital (462) the Commission refers to it as a major raw material.
- (266) The Commission disagreed with these claims. The Commission first reiterated its conclusion from recital (264) that the mere fact that Chinese VAM prices are similar and sometimes higher than international VAM prices is not evidence of lack of distortions. As seen in recital (264), contrary what the three importers claimed, the Commission did not ignore this claim and the evidence that was supporting it. The Commission just considered that mere price level is not evidence of lack of distortion. This claim was therefore rejected.
- (267) With regards to VAM being a major factor of production, the Commission does consider it an important raw material for PVA production in general but a minor factor of production from the point of view of cooperating exporting producers. In their comments on final disclosure, the three importers noted themselves that the exporting producers are vertically integrated and therefore produce their own VAM. They do not purchase it in significant quantities and therefore it is not considered as a major factor of production for these exporting producers. In recital (462), the Commission refers to the Union industry which does not produce the VAM internally, but purchases it. As a consequence, in the latter case, the fluctuations of the prices of VAM in the market affect the cost of production of PVA. This claim was therefore rejected.
- (268) In their comments on the final disclosure, three sampled exporting producers, one Union producer / user and three importers argued that, when establishing the benchmarks for factors of production, the Commission should not have added import duties and domestic transport costs. In particular the three importers referred to VAM and coal. Furthermore, the sampled exporting producers and Union producer / user argued that the import price taken from the import statistic should have been brought down from CIF to EXW level, therefore costs in the country of origin (including additional packing expenses for certain factors of production), freight and insurance should be removed. This claim was motivated by the fact that all three sampled exporting producers sourced their raw materials locally.
- (269) The Commission disagreed with this claim. The Commission noted that, according to Article 2(6a)(a) of the basic Regulation, the normal value should reflect the undistorted price of the raw materials in the representative country, in this case Turkey. It should therefore reflect the price that a producer of PVA would pay in Turkey for a raw material delivered at the factory gate. As mentioned in recital (263), the methodology applied by the Commission reflects this approach. If the adjustments suggested by the interested parties were made, the resulting price would not reflect the undistorted price on the Turkish market but the average EXW price (when sold for export) in the countries that sell to Turkey. This would be contrary to Article 2(6a)(a) of the basic Regulation and thus these claims were rejected.

- (270) In their comments on final disclosure, two sampled exporting producers, after questioning the compatibility of the Article 2(6a) of the basic Regulation with the WTO rules, suggested that the Commission should simplify its approach by simply taking the benchmark for PVA, the product concerned, and compare it with the export price of each exporting producers.
- (271) The Commission disagreed with this approach. The Commission first noted that the compatibility of the method enshrined in Article 2(6a) of the basic Regulation with the WTO rules was discussed in recital (98). The Commission then noted that, the methodology proposed by the sampled exporting producers would violate Article 2(6a) of the basic Regulation, which prescribes the construction of the normal value exclusively on the basis of costs of production and sale reflecting undistorted benchmarks for each exporter and producer separately. In essence this provision requires the Commission to take into account the particular production method and consumption of inputs by each exporting producer individually instead of applying a wholesale benchmark value for all exporting producers without regard to their particular production process. These claims were therefore rejected.
- (272) In their comments on final disclosure, the same sampled exporting producers argued that the benchmark for coal is unreasonably higher than the price level on the market when compared to prices quoted by U.S. Energy Information Administration. Considering that China is rich in coal, the sampled exporting producers argued that the Commission should consider using the US prices.
- (273) The Commission disagreed with this claim. The Commission first pointed out that, as stated in recital (246), the benchmark for coal was extensively discussed in the Note of 30 March 2020. As also mention in that recital, no comments on this point were received within the given deadline. The sampled exporting producer sole argument was that the prices actually used are significantly higher than the prices quoted in the USA. The Commission noted that it is not unusual for energy and energy source prices in the USA to be relatively low. In the absence of any other argument concerning the reliability of the benchmark used, this claim was rejected.

(2) Internally produced inputs used in the production of the product under investigation

- (274) The exporting producers produced internally certain factors of production such as self-produced steam, electricity, refrigerating capacity, purified water and like. Notwithstanding the requirement in Anti-dumping questionnaire, some exporting producers had failed to allocate the consumption volumes of inputs for these self-produced factors of production to the product under investigation. Instead, these exporting producers had only allocated the consumption values and volumes of the self-produced factors of production to the product under investigation. The Commission sought to establish the undistorted price for the self-produced factors of production. Using the undistorted prices of raw materials and labour, which were determined as explained in recitals (259) to (263) and (276), the Commission recalculated the undistorted prices of the self-produced factors of production. These undistorted prices were subsequently applied in the calculation of the normal value as explained in the section 3.1.4.4.
- (275) Those raw materials and self-produced factors of production that only had a negligible weight in the total cost of production of the exporting producer as well as on a PCN level, were grouped under consumables. The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

(3) Labour

- (276) The Turkish Statistical Institute publishes detailed information on wages in different economic sectors in Turkey. The Commission used the wages reported in the Turkish manufacturing sector for 2016, for the economic activity C.20 (Manufacture of chemicals and chemical products) ⁽⁷⁶⁾ according to NACE Rev.2 classification ⁽⁷⁷⁾. The 2016 average monthly value was duly adjusted for inflation using the domestic producer price index ⁽⁷⁸⁾ as published by the Turkish Statistical Institute.

⁽⁷⁶⁾ http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab_id=2090 as last accessed on 30 April 2020.

⁽⁷⁷⁾ This is a statistical classification of economic activities used by Eurostat, <https://ec.europa.eu/eurostat/web/nace-rev2> (last viewed on 30 April 2020).

⁽⁷⁸⁾ http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab_id=2104 (last accessed on 30 April 2020).

- (277) In their comments on final disclosure, three sampled exporting producers argued that Commission should have used wages for the economic activity C.22 (manufacture of rubber and plastic products) in NACE Rev.2 classification, instead of C.20. The exporting producers argued that this is because PVA is a type of polymer or plastic, a vinyl polymer joined by only carbon-carbon linkages. The linkage is the same as those of typical plastics such as polyethylene, polypropylene, and polystyrene, and of water-soluble polymers such as polyacrylamide and polyacrylic acid.
- (278) The Commission disagreed with this claim. The Commission noted that, according to Eurostat's guidelines on NACE Rev. 2 classification⁽⁷⁹⁾, economic activity C.20, which was used by the Commission, covers, amongst other, manufacture of resins, plastics materials and non-vulcanisable thermoplastic elastomers, the mixing and blending of resins on a custom basis, as well as the manufacture of non-customised synthetic resins (C.20.16). This class includes manufacture of plastics in primary forms: polymers, including those of ethylene, propylene, styrene, vinyl chloride, vinyl acetate and acrylics; polyamides; phenolic and epoxide resins and polyurethanes; alkyd and polyester resins and polyethers; silicones; ion-exchangers based on polymers. The same guidelines describe economic activity C.22 (manufacture of rubber and plastic products), suggested by the sampled exporting producers, as 'processing new or spent (i.e., recycled) plastics resins into intermediate or final products, using such processes as compression moulding; extrusion moulding; injection moulding; blow moulding; and casting'. Economic activity C.22 is subdivided into: manufacture of plastic plates, sheets, tubes and profiles; manufacture of plastic packing goods; manufacture of builders' ware of plastic; and manufacture of other plastic products (like tableware, fitting school supplies etc.). It is therefore clear that wages for economic activity C.20 are more appropriate as labour benchmark for PVA production than wages for economic activity C.22. This claim was therefore rejected.

(4) Electricity and natural gas

- (279) To establish a benchmark for electricity and natural gas, the Commission used the electricity and gas price statistics published by the Turkish Statistical Institute⁽⁸⁰⁾ in its regular press releases. From these statistics, the Commission used the data of the industrial electricity and gas prices in the corresponding consumption band in Kuruş/kWh covering the investigation period.
- (280) In their comments on final disclosure, one sampled exporting producer and one Union producer / user argued that Turkish natural gas prices are inappropriate as a benchmark and that the US Gulf coast prices should be used instead. The exporting producer argued that Turkish natural gas prices are double the natural gas prices in the Union and more than double the US Gulf coast prices. The exporting producer argued that the gas prices in Turkey increased in the IP and were 75 % higher than at the end of 2017 even though, global gas prices during the same period essentially remained stable. The exporting producer attributed this increase to a mix of circumstances, namely: (i) a dependency on imports; (ii) geopolitical tensions with Russia affecting gas supplies to Turkey; (iii) sanctions on oil producing countries such as Iran and Venezuela; (iv) political tensions with the US; and (v) the devaluation of Turkish Lira. Considering these alleged artificially high natural gas prices, the exporting producer argued that either the US Gulf coast prices or average natural gas prices in Turkey during the 2015 to 2017 period should be used as a benchmark.
- (281) The Union producer / user further argued that Turkey has a comparably small and not liberalized natural gas market. Moreover, the Turkish gas prices pertain to gas usage for heating and electricity generation but not large scale usage for the production of chemicals. The user argued that US Gulf coast prices should be used as a benchmark.
- (282) The Commission disagreed with these claims. The Commission first pointed out that the statement that natural gas prices in Turkey are double those in the Union during the IP is factually incorrect. According to *Gas prices for non-household consumers – bi-annual data (from 2007 onwards)*⁽⁸¹⁾ published by Eurostat, in the IP, at 0,028 EUR/kWh (or 0,3 EUR/m³) the average natural gas price for non-household consumers in the Union was 43 % higher than the average gas price in Turkey (0,020 EUR/kWh or 0,21 EUR/m³). The Turkish gas prices for non-household consumers were therefore significantly lower than those in the Union during the IP.

⁽⁷⁹⁾ NACE Rev. 2 – Statistical classification of economic activities; <https://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/KS-RA-07-015> (last accessed on 22 July 2020).

⁽⁸⁰⁾ [http://www.turkstat.gov.tr/PreTablo.do?\(262\)alt_id=1029](http://www.turkstat.gov.tr/PreTablo.do?(262)alt_id=1029) (last accessed on 22 June 2020).

⁽⁸¹⁾ <https://ec.europa.eu/eurostat/data/database> (last accessed on 21 July 2020).

- (283) The Commission then noted that the picture of natural gas prices development in Turkey, painted by the sampled exporting producer, is greatly affected by not taking into consideration the significant devaluation of Turkish Lira during that period. The exporting producer noted the devaluation as an affecting factor but did not counter it by applying a conversion rate of USD or EUR in order to compare the price development to that of US Gulf coast prices or Union prices based on a currency that was relatively stable throughout the period. CNY would also be of use, especially since this is the currency into which values of factors of production are converted for construction of the normal value.
- (284) When considered in EUR, based on the data provided by Eurostat ⁽⁸²⁾ the natural gas prices in Turkey in the IP were 12 % (not 75 %) higher than in 2017 ⁽⁸³⁾. According to Eurostat, in the same period, prices for non-household consumers in the Union increased by around 11 % ⁽⁸⁴⁾. Moreover, the period of 2017 to the first semester of 2019 (therefore, the period that includes the complete IP) saw the lowest natural gas prices in Turkey between 2015 and 2019, when expressed in a stable currency. Indeed, if the Commission was to follow the request of the exporting producer and use the average natural gas prices in Turkey between 2015 and 2017 as the benchmark, this would have been to the detriment of the sampled exporting producer. Such average price would amount to around 1,70 CNY/m³ and thus would be some 4 % higher than the price actually used by the Commission in its calculation.
- (285) Considering the foregoing, whilst prices of natural gas, when expressed in Turkish Lira, are being affected by the significant devaluation of that currency, that effect is eliminated by the methodology of recalculation these prices into RMB before using them in the construction of the normal value. When considered in the USD, EUR or CNY, there is nothing unusual about these prices and their evolution between 2015 and 2019. There is therefore no reason to use out-of-the-country benchmark or an average prices during the 2015 to 2017 period.
- (286) Considering the argument that Turkey has a comparably small and not liberalized natural gas market and that gas prices in Turkey pertain to gas usage for heating and electricity generation but not large scale usage for the production of chemicals, the Commission notes that no evidence to support these claims were provided. Moreover the existence of a separate gas tariff for non-household consumers suggests otherwise.
- (287) For the reasons outlined above, these claims were rejected.
- (288) In their comments on final disclosure, the same sampled exporting producer expresses similar concerns with regards to electricity prices as these expressed about natural gas and summarised in recital (280). According to the exporting producer electricity prices in Turkey also increased dramatically (in line with the price increase observed for natural gas) during the investigation period. The exporting producer proposed to use the average of electricity prices during the 2015 to 2017 period instead of data for the IP.
- (289) The Commission disagreed with this claim. The Commission first noted that the exporting producer did not provide any figures to support it. The Commission could only assume that the claim is based on the electricity price evolution in Turkish Lira, which, as in the case on natural gas described in recital (285). As in the case of natural gas, the methodology used by the Commission where the benchmarks are recalculated in CNY counters the effect of the fluctuation of Turkish Lira.
- (290) The Commission looked at the electricity prices for non-household consumers reported in Eurostat ⁽⁸⁵⁾ in EUR. Whilst prices in Turkey in the IP were higher by around 12,7 % then in 2017 the average price in the Union has also increased by 10,7 % during the same period. Furthermore, the average price for electricity in Turkey in the IP, when expressed in EUR, was around 1 % lower than the average price during the 2015 to 2017 period, which the exporting producer is proposing to use. It follows that, when the effect of Lira devaluation is removed, it is clear that, contrary to what sampled exporting producer claimed, there was no dramatic increase of electricity prices in Turkey in the IP.
- (291) For the reasons outlined above, these claims were rejected.

⁽⁸²⁾ Ibid.

⁽⁸³⁾ Increase from 0,017 EUR/kWh (or 0,18 EUR/m³) to 0,020 EUR/kWh (or 0,21 EUR/m³) (last accessed on 21 July 2020).

⁽⁸⁴⁾ Increase from 0,025 EUR/kWh (or 0,27 EUR/m³) to 0,028 EUR/kWh (or 0,30 EUR/m³) (last accessed on 21 July 2020).

⁽⁸⁵⁾ Electricity prices for non-household consumers – bi-annual data (from 2007 onwards); <https://ec.europa.eu/eurostat/data/database> (last accessed on 22 July 2020).

- (292) In their comments on final disclosure, three importers argued that gas and power costs in Turkey are inflated by political decision. To underlie this argument they referred to the evidence submitted in their submission of 16 June 2020. In that submission, based on an email from a Chief Compliance Officer of a Turkish chemical company, they argued that Turkish gas and power market is not liberalised and prices are fixed by public authority. This conclusion was allegedly supported by Turkish gas and power market analysis but the importers did not refer to any specific part of it. They argued that based on this argument, the Commission should reconsider Turkey as the appropriate representative country or reduce the allegedly higher gas and power costs by not less than 300 %.
- (293) The Commission disagreed with this claim. Even if the Commission was to consider an email from a Chief Compliance Officer of a Turkish chemical company as valid evidence of energy price inflation in Turkey, the Commission noted that the email starts by stating that 'Turkey has a very liberal energy market in many aspects'. This already contradicts the characterisation of the email in the submission. As to the Turkish gas prices being higher than world markets, as mentioned in recitals (282), Turkish gas prices for non-household consumers are significantly lower than those in the Union. Finally, the 300 % downward adjustment for gas and power prices appears to be based on a claim in the email from the Chief Compliance Officer of a Turkish chemical company that 'oil and diesel prices are taxed at the rate of 300 %'. Whether or not correct, this is irrelevant for gas and electricity prices. These claims were therefore rejected.
- (294) In their comments on final disclosure, one exporting producer and one Union producer / user noted that the benchmarks for electricity and natural gas contain VAT. They argued that it is standard practice to use domestic sales prices and costs without VAT when calculating the normal value.
- (295) The Commission took note of this comment and adjusted the benchmark for electricity and natural gas by removing the VAT (18 %). The normal value and dumping margins were recalculated accordingly for all exporting producers. The new findings were re-disclosed as part of the additional final disclosure.
- (296) In their comments on the final disclosure, three exporting producers argued that, when applying the benchmark for electricity, the Commission should use the relevant price band applicable to the level of consumption of electricity by the exporting producer in question, instead of the average of all bands.
- (297) The Commission took note of this comment and adjusted the benchmark for electricity by applying price bands for large and medium-large consumers of electricity, where appropriate. This assessment was based on the purchases of electricity by the exporting producers rather than their consumption, as some of them produce part of the electricity they consume. The normal value and dumping margins were recalculated accordingly for all exporting producers. The new findings were re-disclosed as part of the additional final disclosure.
- (298) In their comments on additional final disclosure, the complainant argued that the magnitude of the reduction of the dumping margin following the adjustment discussed in recitals (295) and (297) above was inconsistent with what they knew about proportion of natural gas and electricity in the production costs of Sinopec. The complainant argued that whilst indeed one producing company of Sinopec could be using significant amount of natural gas, this was not the case for the other company.
- (299) In their comments on additional final disclosure a user also questioned the calculations following the adjustment discussed in recitals (295) and (297). They considered, that given high proportion of energy in production costs of PVA, they expected the impact of the adjustment to be higher. They asked the Commission to verify its calculations.
- (300) The Commission disagreed with these claims. The Commission noted that, whilst these claims were based on assumptions, the Commission's calculation of Sinopec's normal value, following the adjustment, was based on precise consumption rates provided by the exporting producer and verified by the Commission. With regards to Sinopec Ningxia, the company that allegedly did not use substantial amounts of natural gas in PVA production, as explained in recital (329), due to the use of facts available under Article 18 of the basic Regulation, for each PCN

reported by Sinopec Ningxia, the Commission used the highest constructed normal value of the other cooperating exporting producers. Whilst these indeed were not significantly affected by the removal of VAT from natural gas and electricity prices, the overall impact of individual companies on the group's dumping margin varies depending on the proportion of sales of these companies in all export sales of the group to the Union. Finally, the Commission noted that the adjustment, whilst related to natural gas and electricity did have a knock-off effect on, for instance, overheads, which were calculated as a percentage of undistorted costs of manufacturing. If these costs diminish, due to removal of VAT from natural gas and electricity prices, so do the overheads. This claim was therefore rejected.

(5) Consumables/negligible quantities

- (301) Due to the large number of factors of production of the sampled cooperating exporting producers, some of the raw materials that only had a negligible weight in the total cost of production of the exporting producer as well as on a product type level were grouped under consumables.
- (302) The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.
- (303) In their comments on final disclosure, one sampled exporting producer noted that a significant number of factors of production, which were considered by the Commission as negligible, was treated as consumables and therefore individual benchmarks were not established for these factors of production. Whilst the exporting producer did not contest this approach in principle, it did question its execution. First, the exporting producer argued that the producers had to report a disproportionate detailed information that was in the end not used to compute the normal value. Second, the exporting producer noted that the Commission established values for consumables by applying the proportion of these consumables in its total direct raw material costs to the undistorted values for these costs based on benchmarks. The exporting producer argued that this way the Commission effectively treated consumables as distorted even though no distortion has been established. The exporting producer further argued that Commission could not assume that the consumables were distorted by the same percentage as the direct raw materials. The exporting producer expressed similar reservation with the way the Commission treated overheads. In view of these issues, the exporting producer requested that the Commission caps the consumables and overheads at the values reported for both consumables and overheads by the exporting producer.
- (304) The Commission disagreed with this claim. The Commission noted that, in order to establish and verify whether a factor of production value is negligible, a detail breakdown of product types per all factors of production is necessary. The level of information requested was therefore appropriate to establish and verify all the information, including the proportion of consumables in the direct raw material costs that was used in the construction of normal value. With regards to the argument that the consumables were not distorted and that their values should be capped at the levels reported by the exporting producer, the Commission noted that significant distortions were established in section 3.1.1 above. In that case, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regards to consumables, as well as overheads, was put forward by the exporting producers, nor found by the Commission. As to the assumption that consumables were distorted by the same percentage as the direct raw materials, the Commission first recalled that the sampled exporting producer did not contest the principle of treating minor factors of production as consumables. Whilst the Commission applied to these the average distortion factor of the other direct raw materials, the exporting producer provided no evidence that such assumption was incorrect. These claims were therefore rejected.

(6) Manufacturing overhead costs, SG&A and profits

- (305) 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.
- (306) For SG&A and profit, the Commission used the financial data of the Chemical operation segment of the Turkish company Ilkalemi Ticaret Ve Sanayi A.S. for 2018 as announced in the Note of 30 March 2020 and stated in recital (218).

- (307) As explained in the recital (205), the Commission concluded that the financial expenses of Ilkalem Ticaret Ve Sanayi A.S in 2018 were extraordinary high and that they should be appropriately adjusted. Therefore, in the calculation of SG&A, the Commission disregarded the financial expenses of 2018 and replaced it with the average financial expenses of the company in 2017, 2016 and 2015. The adjustment resulted in a higher percentage of SG&A, but a lower percentage of profit. Thus, the effect of the extraordinary financial expenses of 2018 was merely a shift between SG&A and profit without any impact on SG&A and profit taken as whole. Therefore, in total, it had no influence on the level of SG&A and profit taken together.
- (308) As further explained in recital (303) in their comments on final disclosure one sampled exporting producer argued that overheads, together with consumables, should not be treated as distorted and their values should be capped at the values reported by the exporting producer. This claim was addressed and dismissed in recital (304).
- (309) In their comments on final disclosure, one sampled exporting producer argued that its indirect labour, for the purpose of normal value construction, was included in the overheads instead of being accounted for as a factor of production, especially since the Commission has identified a precise benchmark for labour. The sampled exporting producer commented that using the labour benchmark for the indirect labour would result in a more accurate undistorted cost than including it in the overheads.
- (310) The Commission disagreed with this claim. The Commission noted that the exporting producer had himself included the indirect labour in the overheads in the costs of production and at the same time had provided the indirect labour as an individual factor of production. In order to avoid double counting, the Commission removed direct labour as a factor of production and kept it as part of overheads. Considering the nature of indirect labour as overhead, the significant difference in salaries and qualifications of the staff involved in the product manufacturing and in order to avoid any double counting and ensure consistency, the Commission found no reason to change the original approach of the exporting producer, and the Commission retained the indirect labour as overhead cost. This claim was therefore rejected.
- (311) In their comments on final disclosure, two sampled exporting producers argued that Commission should have used SG&A and profit data from more than one producer. The exporting producers based this arguments on findings of the Appellate Body in *EU – Bed Linen* (DS141).
- (312) The Commission disagreed with this claim. The Commission noted that Article 2(6a) of the basic Regulation does not prohibit using SG&A data from one producer. The compatibility of this provision with WTO rules was covered in recital (98). Furthermore, as explained in section 3.1.2.3, the Commission found only one company in the representative country with readily available data. This claim was therefore rejected.
- (313) In their comments on final disclosure, three sampled exporting producers challenged the fact that the Commission removed certain freight expenses from the export price, whilst these expenses (together with handling expenses, etc. and finance expenses such as bank charges) were not removed from the SG&A costs of the producer in the representative country.
- (314) The Commission disagreed with this claim. The Commission noted that there is nothing indicating that such expenses were included in SG&A costs reported for the producer in the representative country. Furthermore, the sampled exporting producers provided no evidence to the contrary. This claim was therefore rejected.
- (315) In their comments on final disclosure, one sampled exporting producer agreed that the financial expenses of the producer in the representative country were extraordinarily high and thus SG&A for that company had to be adjusted accordingly. However, the sampled exporting producer disagreed with the adjustment of that company profit on the account of the same extraordinary expenses. The exporting producer argued that the adjustment of profits negates the one done to SG&A as the combined SG&A and profit remained the same.
- (316) The Commission disagreed with this assessment, arguing that both SG&A and profit were affected by the extraordinary financial expenses. It would make no sense correcting one but not correcting the other. In the Commission's view, the adjustment made to profit does not negate but complement the adjustment made to SG&A costs. This claim was therefore rejected.

3.1.4.2. Application of Article 18 of the basic Regulation to Wan Wei, Mengwei and Shuangxin

- (317) When examining the replies to the Anti-dumping questionnaires of Wan Wei, Mengwei and Shuangxin, the Commission noted that in the parts of the replies related to the cost of production and thus the calculation of normal value, the factors of production for the internally produced inputs (self-produced steam, electricity and similar) were not appropriately allocated to the product under investigation. This went against the instructions given by the Commission in the Anti-dumping questionnaire. In the following correspondence, including deficiency letters and pre-verification letters, the Commission reiterated its request for Wan Wei, Mengwei and Shuangxin to complete their replies following the instructions given in the Anti-dumping questionnaire.
- (318) In their subsequent replies, the abovementioned three companies argued that, in their views, it was not possible to complete the questionnaire as requested by the Commission. Notably, these companies argued that there was no objective or accurate basis to separate consumption of each and every self-produced materials/energy and that it was not feasible to report of consumption and materials purchases for each self-produced material/energy separately. The subsequent revised versions of the replies remained deficient in this respect.
- (319) The Commission disagreed with this view. It explained that since these companies had already reported the inputs for producing the self-produced factors of production, these inputs could equally be allocated to the product under investigation.
- (320) The Commission informed Wan Wei⁽⁸⁶⁾, Mengwei⁽⁸⁷⁾ and Shuangxin⁽⁸⁸⁾ that due to these shortcomings of the information provided by these exporting producers as described, the Commission decided to base its findings on facts available in accordance with Article 18(1) of the basic Regulation as far as the internally produced inputs used in the production of the product under investigation are concerned.
- (321) In their replies to these Article 18 letters, the exporting producers reiterated their explanations why they considered they were unable to provide the requested data.
- (322) The Commission established the undistorted prices for the internally produced inputs and applied these prices in the calculation of the normal value as explained in the recitals (274) and (275).
- (323) During the verification visit carried out at the premises of Mengwei in November 2019, the company made several revisions to its reply to the questionnaire, including the part related to the cost of production.
- (324) At the very end of the last day of verification visit, the company submitted yet another version of the reply, thus nullifying part of the work made earlier during the verification and the related preparatory work. The affected part related to the cost of production with repercussions to the calculation of normal value. In this new version, inter alia, the number of labour hours was reduced considerably from the earlier versions. The Commission therefore informed the company that it was impossible to verify this modified information submitted at the last moment of the verification visit.
- (325) After the verification visits the Commission informed Mengwei⁽⁸⁹⁾ that the last submission of data, which was received at the very end of the verification visit, could not be verified and that the Commission will base its findings on facts available in accordance with Article 18(1) of the basic Regulation as far as this last submission is concerned. Mengwei did not come forward with any comments following this Article 18 letter.
- (326) The Commission decided to disregard a part of the information submitted at the last moment of the verification visit which could not be verified, and in this situation it resorted to and based its findings on the information submitted prior to this last version, which the Commission could verify.

⁽⁸⁶⁾ Company Limited version of mission report sent on 5 March 2020 and Article 18 letter sent on 26 February 2020 (t20.001693).

⁽⁸⁷⁾ Company Limited version of mission report sent on 5 March 2020 and Article 18 letter sent on 26 February 2020 (t20.001693).

⁽⁸⁸⁾ Company Limited version of mission report sent on 5 March 2020 and Article 18 letter sent on 26 February 2020 (t20.001692).

⁽⁸⁹⁾ Company Limited version of mission report sent on 5 March 2020 and Article 18 letter sent on 16 March 2020 (t20.002421).

3.1.4.3. Application of Article 18 of the basic Regulation to Sinopec Ningxia

- (327) During the verification visit at the premises of Sinopec Ningxia, which took place from 9 to 12 December 2019 in Yinchuan (Ningxia), the Commission identified some substantial and serious deficiencies in the reporting of the cost of production. These deficiencies significantly impeded the normal process of the investigation for that section of the questionnaire reply. In particular, Sinopec Ningxia made a wrong allocation of the value and consumption of the factors of production for the upstream phases of the PVA production (i.e. VAM, acetylene, steam, etc.), thus resulting in significant over/underestimation of the majority of factors of production used indirectly to produce PVA. As a result, the cost of production per PCN was not reliable.
- (328) The Commission considered that these substantial and serious deficiencies in the cost of production per product type in the questionnaire significantly impeded the normal process of the investigation, for this section of the questionnaire. Therefore, the Commission informed Sinopec Ningxia about its intention to apply facts available in accordance with Article 18(1) of the basic Regulation as far as the calculation of the normal value was concerned under Article 2(6a) of the basic Regulation.
- (329) In this regard, the normal value for Sinopec Ningxia was constructed using the information provided by the other cooperating exporting producers (namely the cost of production and consumption of factors of production, per product type). In particular, for each PCN reported by Sinopec Ningxia, the Commission used the highest constructed normal value of the other cooperating exporting producers.
- (330) In their comments on final disclosure, one sampled exporting producer and one union producer / user argued that by using the highest constructed normal value of the other cooperating exporting producers as the normal value for Sinopec Ningxia, the Commission used Article 18 of the basic Regulation in a punitive way. Furthermore, the exporting producer argued that, by using data from other exporting producers, which were also subject to the application of Article 18 of the basic Regulation, the Commission did not use the best fact available but – in a way – applied Article 18 twice to Sinopec Ningxia. The exporting producer further argued that the Commission should have used Sinopec Chongqing's data instead, since that company was not subject to Article 18 of the basic Regulation. According to the exporting producer, the fact that the production process of Sinopec Chongqing is different from the production process of Sinopec Ningxia does not disqualify Sinopec Chongqing's data, as production process has no impact on prices of PVA.
- (331) The Commission disagreed with these claims. The Commission first noted that, as explained in recitals (317) to (322), the application of Article 18 of the basic Regulation to the Wan Wei group and Shuangxin was limited to self-producer factors of production. As further explained in recital (274) and calculation sheets disclosed to the sampled exporting producers, in order to establish values for self-produced factors of productions that were significant in terms of costs of proportion, the Commission used the consumption rates provided by the exporting producers in question and verified by the Commission. Those rates were applied to undistorted values like for any other factor of production. As explained in recital (275), self-produced factors of production that only had a negligible weight in the total costs of production of the exporting producer, were grouped under consumables, like other insignificant factors of production. Therefore, in a very limited application of Article 18 of the basic Regulation to the Wan Wei group and Shuangxin, the Commission used exclusively verified data provided by these companies, together with the benchmarks, as for any other factor of production. The Commission therefore considered that the normal values established for the Wan Wei group and Shuangxin could be used as best facts available without penalising Sinopec Ningxia.
- (332) With regards to suitability of Sinopec Chongqing's data as best facts available, both the Commission and the exporting producer noted that the production process used in Sinopec Chongqing is different from the one used in Sinopec Ningxia. As far as the basic raw materials are concerned, production process in Sinopec Ningxia is closer to the one used in Wan Wei group and Shuangxin. Whilst this perhaps has no impact on prices of PVA, it has a significant impact on construction of normal value, which is based on factors of production (including raw materials), their use rate and benchmarks. Indeed, Sinopec Group itself acknowledged the impact of production process on the level of constructed normal value and consequently on dumping margins. In their submission of 16 June 2020, Sinopec argued that 'in several US anti-dumping investigations, the fact that its production process and the specific characteristics of its products are significantly different than those of other Chinese producers has led to a zero or very low dumping margin for Sinopec Chongqing'. Since the production process of Sinopec Chongqing is also significantly different from the one used in Sinopec Ningxia, the data of the former cannot be considered as the best facts available to establish the normal value for the latter.

(333) Finally, as far as the use of the highest normal value per product type is concerned, the Commission does not consider this approach as punitive. Since the Commission was unable to verify and therefore use the data supplied by Sinopec Ningxia for the construction of its normal value, there is no evidence suggesting that Sinopec Ningxia's normal value per product type would be below the highest normal value per product type of the other cooperating producers that use similar raw materials.

(334) For the reasons outlined above, these claims were rejected.

3.1.4.4. Calculation of the normal value

(335) In order to establish the constructed normal value, the Commission took the following steps.

(336) Firstly, the Commission established the undistorted costs of manufacturing of PVA. It applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer.

(337) Secondly, the Commission increased the undistorted costs of manufacturing by adding the manufacturing overheads determined as described in recital (305), to arrive at the undistorted costs of production.

(338) Finally, to the costs of production established as described in recital (337), the Commission applied SG&A and profit of Ilkalem Ticaret Ve Sanayi A.S explained in recitals (205) and (218).

(339) The SG&A, expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 17,6 %.

(340) The profit, expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 4,0 %.

(341) 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.

(342) Following the Note of 20 December 2019, three traders of the product under investigation claimed that the determination of normal value should take into consideration quantity rebates for factors of production, electricity, water and natural gas. These parties claimed that general indexes did not consider such rebates and that these rebates are available to purchases of large quantities. These parties requested that an adjustment should be made to the normal value on the basis of these claimed rebates on factors of production, electricity, water and natural gas. The interested parties also claimed that the vast majority of PVA producers are large companies benefiting from price reduction when acquiring raw materials and energy. The same interested parties reiterated to their claim following the Note of 30 March 2020, without submitting any further evidence to support their claim. At a later stage, the same parties also claimed that the Turkish gas and power market is not liberalised and that the prices are fixed by public authorities.

(343) It is recalled that the sources used for electricity and natural gas referred to in recital (279) contain data for industrial users. Also, it is noted that the quantity rebates claimed by the interested parties or their magnitude were merely general assertions and were not quantified, nor substantiated in any way. Finally, the information brought forward by these parties did not support their claim that the gas and power market is not liberalised and that the prices are fixed by public authorities. On the contrary, the reports submitted by these parties describe the features of the liberalised Turkish energy market and the role of the relevant regulatory bodies which is merely focused on ensuring the proper functioning of the market. Therefore, these claims are rejected as unsubstantiated.

(344) Following the Note of 20 December 2019, the same interested parties claimed that the Chinese exporters subject to this investigation did not have 'substantial sales costs' or financial costs for PVA products and that when calculating the normal value, the Commission should not include any sales cost nor financial costs of the exporting producers to the calculation. Similar claims regarding lower sales cost were repeated by the same parties also at a later stage.

(345) The claim made in the context of calculating the normal value was similar to the claim that the same interested parties had made in the context of choosing Ilkalem Ticaret Ve Sanayi A.S. as an appropriate company in the representative country, which was explained and addressed in recitals (216) and (217) above. The Commission also notes that the claim that the Chinese exporting producers did not incur any substantial sales cost or financial costs related to their PVA products was not substantiated in any relevant way and was not confirmed by the investigation. Therefore, this claim was rejected.

- (346) Following the Note of 20 December 2019, the same three interested parties also expressed their opinion on suitable methods for accounting for the depreciation of the investment in the context of calculating the normal value. At a later stage, the same parties added to their claim also that the PVA of Chinese origin did not require any Research and Development ('R&D') cost.
- (347) The general methodology for accounting for the manufacturing overhead costs, SG&A and profits, in which also the depreciation and R&D cost is included, was explained in the recital (305) above. Furthermore, the detailed methodology for each cooperating exporting producer has been disclosed to these companies in their respective specific disclosure documents. In accordance with the established practise, each of these exporting producers is always given the opportunity to comment on their respective calculations and methodology. Therefore, this claim made by traders of the product under investigation was considered factually incorrect and therefore rejected.
- (348) In their comments on the final disclosure, the GOC argued that the Commission adopted the Turkey manufacturers' cost data of PVB, including the prices of its imported raw materials, to construct normal value for Chinese companies, without making proper adjustment. According to the GOC, the constructed normal value seriously deviates from the actual production situation of the sampled exporting producers, rendering the price comparability requirements in the WTO rules meaningless.
- (349) The Commission disagreed with this claim. The Commission noted that it did not use the Turkey manufacturers' cost data of PVB, including the prices of its imported raw materials, to construct normal value. It did use the SG&A and profit percentage of the producer in the representative country. However the cost structure (including the usage rates of raw materials) was based on the data supplied by the exporting producers and verified by the Commission, to which undistorted benchmarks were applied. This claim was therefore rejected.

3.2. Export price

- (350) The sampled exporting producers exported to the Union either directly to independent customers or through related companies acting as an importer.
- (351) When the exporting producers export the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (352) When the exporting producers export the product concerned to the Union through a related company acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, actually incurred by related importer and profit (of 6,89 %), which were obtained from cooperating unrelated importers.
- (353) One of the exporting producers sold certain quantities of PVA to unrelated domestic traders, knowing that these sales were destined for the Union market. These sales were also taken into consideration when establishing the export price.
- (354) In their comments on final disclosure, one exporting producer argued that, when calculating the credit cost, the Commission should use interest rates on loans in USD rather than in RMB, as the export transactions were invoiced in USD.
- (355) The Commission disagreed with this claim. The Commission noted that, whilst the export transactions were invoiced in USD, the payments were converted and deposited in RMB. Furthermore the exporting producer did not demonstrate that they have loans in USD and therefore the correct interest rate applied to credit cost is that for RMB. This claim was therefore rejected.

3.3. Comparison

- (356) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.
- (357) Where justified by the need to ensure a fair comparison, the Commission adjusted the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments, based upon the actual figures of the cooperating company, were made for handling charges, freight, credit costs, bank charges, commissions, and indirect taxes.

- (358) For two sampled groups of companies, an adjustment under Article 2(10)(i) was also made for sales through related companies. Both groups sold PVA to the Union through their related trader / trader-producer. It was found that the functions of the related trader / trader-producer were similar to those of an agent. Those related companies were looking for customers and established contact with them. Therefore, they bore the responsibility of the selling process. The adjustment consisted of the SG&A of the respective related companies and for profit (of 6,89 %), which was obtained from cooperating unrelated importers.
- (359) Following the Note of 20 December 2019, three traders of the product under investigation claimed that the Commission should consider the elements laid down in the Article 2(10) of the basic Regulation when comparing between the export price and normal value, such as physical characteristics, discounts, rebates and quantities, level of trade, credit, after sale costs, commissions and 'other factors' (notably for the costs to certify a higher level product). Similar claims regarding credit cost and after sale technical assistance were repeated by the same parties also at a later stage.
- (360) As explained in the recital (357) above, the Commission, when justified by the need to ensure a fair comparison, adjusted the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Therefore, these claims are rejected as redundant.
- (361) In their comments on final disclosure, one user argued that the Commission should not compare the normal value based on GTA values and SG&A and profit of the producer in the representative countries with export price based on the raw material prices, SG&A and profit margin as incurred by the Chinese exporting producers in the PRC. According to the user, both the export price and the normal value must be based on the same raw material and SG&A costs.
- (362) The Commissions disagreed with this characterisation of the dumping calculation. As explained in section 3.1.4.4 the Commission established the normal value in accordance with Article 2(6a) of the basic Regulation. As explained in section 3.2, contrary to what is claim by the user, the Commission based the export price on actual prices charged by the cooperating exporting producers, not on the costs. This claim was therefore rejected.
- (363) In their comments on final disclosure, two sampled exporting producers argued that the Commission was wrong in adjusting the export price of sales via related traders under Article 2(10)(i) of the basic Regulation for commissions. They further argued that the Commission provided no evidence underlying the need for such adjustment. Both exporting producers argued that the producing and selling companies in their respective groups form a single economic entity.
- (364) The Commission disagreed with these claims. For the reasons disclosed to both groups of exporting producers in the additional final disclosure document, the Commission did not consider that either group forms a single economic entity. The details of the arguments explained in those documents contain business confidential information and cannot be summarised here in detail. In its assessment, the Commission considered in particular: (i) whether there is indeed a role split between the companies in question, namely one only sells and the other one only produces; and (ii) whether the principal function of these sales companies is to sell or to facilitate the sale of the corporate product. The Commission also looked at the location of the companies and considered in detail their selling, general and administrative expenses. Based on this assessment, these claims were rejected.
- (365) In their comments on the additional final disclosure, Sinopec Group disagreed with Commission's conclusion that an adjustment under Article 2(10)(i) of the basic Regulation was warranted. The exporting produce first argued that Sinopec Chongqing's direct sales to the USA are limited and 'unusual'. Sinopec Group also noted that Sinopec Ningxia had no direct export sales. Sinopec Group argued that only when such direct export sales are (very) substantial that the adjustment may be warranted. Sinopec Group then argued that the fact that producing companies have significant direct domestic sales is irrelevant for the purpose of determination whether a single economic entity exists. Furthermore Sinopec Group argued that the selling expenses of Sinopec Chongqing and Sinopec Ningxia related only to domestic sales and export sale to the USA, in the case of Sinopec Chongqing, and thus were irrelevant. Sinopec Group then noted that the fact that Sinopec Central China bought PVA from unrelated producers did not mean that it cannot constitute a single economic entity with the producing companies. Furthermore, Sinopec Group considered these purchases to be very limited and argued that only when purchases from unrelated parties are substantial that the adjustment can be made. Finally, Sinopec argued that the distance between the producing companies and the trader is immaterial.

- (366) The Commission disagreed with this claim. The Commission noted that, in its comments on the additional final disclosure, Sinopec Group did not contest the facts underlying the Commission's assessment and did not offer additional facts. In relation to the fact that Sinopec Central China, Sinopec Chongqing and Sinopec Ningxia are all controlled by the Sinopec Group, the Commission recalled that the existence of common control is a necessary prerequisite for the existence of a single economic entity and triggers the analysis of whether the totality of the relevant facts pertaining to the related trader demonstrate the existence of a single economic entity. The purpose is to determine whether the functions carried out by the related trader are similar to those of an internal sales department, or not. This analysis needs to be conducted on the basis of the facts established in each case and, therefore, any comparison with other investigations where it was (or not) decided to perform an adjustment under Article 2(10)(i) of the basic Regulation is not always appropriate.
- (367) Based on the uncontested facts of the case and having considered the arguments put forward by Sinopec Group in its reply to the additional final disclosure, the Commission considered that this is not the case here.
- (368) First, Sinopec Chongqing had significant direct sales to third countries. Whilst their percentage in total export sales might have been below that found in some other cases, the Commission still found it considerable. The Sinopec Group claimed that Sinopec Chongqing's export sales to third countries were 'unusual' as they were made to the USA to benefit from a zero duty rate under the relevant USA anti-dumping legislation. While the Commission was not in a position to verify the veracity of that allegation, it noted that it would not detract from the fact that Sinopec Chongqing is making genuine export sales to third country markets, which are recognised as such by the authorities of the importing country concerned. In addition, Sinopec itself acknowledged that these sales were responsible for part of Sinopec Chongqing's sales expenses.
- (369) The Commission disagreed that the existence of direct sales by the producer on the domestic market is irrelevant. As established by the Court ⁽⁹⁰⁾, a single economic entity exists where a producer entrusts tasks normally falling within the responsibilities of an internal sales department to a distribution company. Domestic sales as well as export sales discussed in recital (368) are normally a responsibility of an internal sales department. Here, the Commission took note that Sinopec did not dispute sales expenses with regards to domestic (and part of export) sales and considered that 'it is only normal that these companies incurred selling expenses'.
- (370) The Commission noted that Sinopec did not contest either that Sinopec Central China, does not exclusively sell nor indeed export PVA produced by the group, but also trades PVA produced by other, unrelated, companies. The fact that it did not export this third-party PVA but sells it on the domestic market, does not negate the conclusion that in this it behaved more like a trader than an internal sales department.
- (371) Finally, concerning the purchases of Sinopec Central China from unrelated PVA producers, the Commission disagreed with the argument that only when purchases from unrelated parties are substantial that an adjustment can be made. Just because this was the case in *Musim Mas* ⁽⁹¹⁾, it does not mean that the proportion of purchases found in that case is the threshold under which companies form a single economic entity and over which single economic entity cannot exist. Indeed, none of the elements discussed above is, in itself, decisive. They should be considered as a whole within each individual case's context.
- (372) To conclude, the Commission recalled that the purpose of the analysis under Article 2(10)(i) of the basic Regulation is to determine the status of the related trading company in the light of the totality of the relevant facts. It is not required that all facts are found to be present for all companies within the group to allow the conclusion that a given company within that group has to be considered as an agent acting on a commission basis. Therefore, the argument that Sinopec Central China could be considered as such an agent in relation to one company of the group, but as an internal sales department of the other company of the same group is not convincing.
- (373) Indeed, when looking at the whole picture of the Sinopec group and the activities of Sinopec Central China therein, the Commission confirmed that the latter could not be considered as an internal sales department, but rather qualified as a trader within the meaning of Article 2(10)(i) of the basic Regulation.
- (374) For the reasons outlined above, this claim was rejected.

⁽⁹⁰⁾ See for instance Judgment of General Court of 25 June 2015 in Case T-26/12, *Musim Mas* para, ECLI:EU:T:2015:437, para. 43.

⁽⁹¹⁾ *Ibid.*

- (375) In their comments on additional final disclosure, Wan Wei group disagreed with the Commission's conclusion that an adjustment under Article 2(10)(i) of the basic Regulation is warranted for sales of Mengwei via Wan Wei. Wan Wei group complained about being given only 5 days to comment on the additional final disclosure, rather than the statutory minimum of 10 days, thereby hampering its rights of defence. Wan Wei then stated that Commission allegedly noted during the verification visit that Mengwei is merely a factory or production base of Wan Wei. The exporting producer then argued that Wan Wei controls Mengwei and thereby they form a single economic entity. According to the exporting producer, the Commission implicitly acknowledged this by assigning a single dumping margin to Wan Wei Group.
- (376) The exporting producer then argued that Mengwei's export sales to third countries were not substantial when compared to all its sales. The exporting producer argued that, it is only when such direct export sales are (very) substantial, that an adjustment under Article 2(10)(i) of the basic Regulation can be made. The exporting producer further argued that Mengwei's direct domestic sales are irrelevant when assessing whether Wan Wei acts as Mengwei's sales department. The exporting producer argued that, in any event, the existence of direct sales by the producing company does not preclude a finding of single economic entity. The exporting producer confirmed that Wan Wei buys PVA from unrelated producers but argued that these purchases constituted a small quantity when compared with the purchases from Mengwei. The exporting producer argued that the fact that the trader also purchases products from other companies does not mean that it cannot form a single economic entity with a producing company. Finally, the exporting producer argued that the distance between Wan Wei and Mengwei is immaterial.
- (377) The Commission disagreed with this claim. With regards to the procedural part of the claim, the Commission noted that Article 20(5) of the basic Regulation explicitly foresees a shorter period than 10 days for comments on additional final disclosure. Indeed, considering that the comments received concerned only one aspect of the findings in the investigation, the Commission considered that 5 days deadline is sufficient. Furthermore, if the sampled exporting producer considered this deadline to be insufficient, it could have requested an extension. Such extension was requested by another interested party and was granted by the Commission.
- (378) With regards to the substantive part of the claim, the Commission noted that, in its comments on the additional final disclosure, Wan Wei did not contest the facts underlying the Commission's assessment and did not offer additional facts. With regards to the fact that Mengwei is controlled by the Wan Wei, the Commission recalled that control of the trading company over the producer (or *vice versa*) is a necessary prerequisite for the existence of a single economic entity and triggers the analysis of whether the totality of the relevant facts pertaining to the related trader demonstrate the existence of a single economic entity. The purpose is to determine whether the functions carried out by the related trader are similar to those of an internal sales department, or not. This analysis needs to be conducted on the basis of the facts established in each case and, therefore, any comparison with other investigations where it was or not decided to perform an adjustment under Article 2(10)(i) of the basic Regulation is meaningless.
- (379) Based on the uncontested facts of the case and having considered the arguments put forward by Wan Wei in its reply to the additional final disclosure, the Commission considered that this is not the case here.
- (380) First, with regards to the claim that Wan Wei and Mengwei form a single entity since they are considered as a group, and thus receive one dumping margin, the Commission noted that this does not mean that they form a single economic entity. These are two different concepts. The Commission also noted that at no point of the investigation it agreed that Mengwei is merely a factory or production base of Wan Wei. Indeed, the intention to apply Article 2(10)(i) of the basic Regulation to sales of Mengwei through Wan Wei confirms that the Commission disagreed with this claim.
- (381) Second, the Commission agreed that the proportion of direct sales to third countries in total sales (export and domestic) of Mengwei was relatively low. This is because Mengwei had significant direct sales to the domestic market. Therefore, if Mengwei's direct export sales were compared to all its export sales (namely, without domestic sales), their proportion would be significantly higher.

- (382) Third, the Commission disagreed that the existence of direct sales by the producer on the domestic market is irrelevant. As established by the Court ⁽⁹²⁾, a single economic entity exists where a producer entrusts tasks normally falling within the responsibilities of an internal sales department to a distribution company. Direct domestic sales (as well as export sales discussed above) are normally a responsibility of an internal sales department. On this point the Commission also noted that Wan Wei Group did not dispute the Commission's argument based on the sales costs of Mengwei. These costs clearly prove that Mengwei has its own sales department and is not a mere factory or production base of Wan Wei, as claimed by the exporting producer. In any event, the Commission recalled that, as explained above, Mengwei had significant direct export sales, which as such is sufficient to show that they have a genuine sales department for export sales.
- (383) The Commission noted that Wan Wei Group did not contest either that Wan Wei does not exclusively sell or indeed export PVA produced by the group, but also trades PVA produced by other, unrelated, companies. This also supports that the conclusion that Wan Wei acted more like a trader than internal sales department of Mengwei.
- (384) Concerning the purchases of Wan Wei from unrelated PVA producers, the Commission disagreed with the argument that only when purchases from unrelated parties are substantial that an adjustment can be made. Just because this was the case in *Musim Mas* ⁽⁹³⁾, it does not mean that the proportion of purchases found in that case is the threshold under which companies form a single economic entity and over which single economic entity cannot exist. Indeed, none of the elements discussed above is, in itself, decisive. They should be considered as a whole within each individual case's context.
- (385) Indeed, when looking at the whole picture of the Wan Wei group and the activities of Wan Wei with regards to Mengwei's PVA, the Commission confirmed that, the former could not be considered as an internal sales department of the latter, but rather qualified as a trader within the meaning of Article 2(10)(i) of the basic Regulation.
- (386) For the reasons outlined above, this claim was rejected.
- (387) In their comments on final disclosure, three sampled exporting producers and a Union producer / user claimed that no adjustment should be made for non-refundable VAT. Notably these interested parties argued that the Commission has not explained why such an adjustment is necessary, particularly in light of the fact that the normal value is constructed by (partially) using data from a third country. Also these interested parties claimed that the Commission has not explained why, without VAT adjustment, there would be a difference between the export price and the constructed normal value affecting price comparability. In their view, as the normal price is based on construction, there is no refund of input VAT and thus no adjustment should be made for differences in VAT refund.
- (388) The Commission disagreed with this claim. The Commission made an adjustment under Article 2(10)(b) of the basic Regulation for the difference in indirect taxes between export sales from the PRC to the Union and the normal value where indirect taxes such as VAT have been excluded. The Commission does not need to demonstrate that the constructed normal value actually incur VAT that can be fully refunded upon sales on the domestic market, as this is irrelevant. The normal value that was constructed as stated in recitals (335) to (347) and (295) did not include VAT, as the undistorted values in the representative country are used for the calculation of the normal value in the exporting country net of their VAT. The actual situation concerning the VAT treatment of the sales in the domestic market and upon export occurs entirely in the PRC. The investigation concluded that in the IP in the PRC the exporting producers incur a VAT liability of 13 % or 16 % (13 % is applicable from April to June 2019 and 16 % is applicable for July 2018 to March 2019) at exportation while 5 %, 9 % or 10 % is refunded (5 % is applicable from July to August 2018, 9 % is applicable from September to October 2018 and 10 % is applicable from November 2018 to June 2019). Therefore, in line with Article 2(10)(b) of the basic Regulation, for the difference in the indirect taxation, in this case the VAT that is partially refunded with regard to export sales, the Commission duly adjusted the normal value. This claim was therefore rejected.

⁽⁹²⁾ See for instance Judgment of General Court of 25 June 2015 in Case T-26/12, *Musim Mas* para. ECLI:EU:T:2015:437, para. 43.

⁽⁹³⁾ *Ibid.*

- (389) In their comments on final disclosure, three importers reiterated their comments that the Commission should adjust export price to account for (i) Chinese exporting producers never appoint commercial agents or intermediaries but rather negotiate directly with Union importers; (ii) exporting producers of low quality PVA did not incur in R&D costs; (iii) Chinese exporting producers never allow payment delays, thus they do not incur in financial costs; (iv) Chinese exporting producer never grant post sales technical assistance.
- (390) The Commission disagreed with this claim. The Commission noted that it based the export price on prices actually paid, adjusted for all allowances legitimately claimed by the sampled exporting producers. The elements listed by the traders were not added to the constructed normal value so there was no issue of comparability. This claim was therefore rejected.

3.4. Dumping margin

- (391) 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.
- (392) On this basis, the definitive weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Shuangxin Group	115,6 %
Sinopec Group	17,3 %
Wan Wei Group	193,2 %

- (393) 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.
- (394) On this basis, the definitive dumping margin of the cooperating exporting producers outside the sample is 80,4 %.
- (395) For all other exporting producers in the country concerned, 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 export volume – as reported in Eurostat import statistics – from the country concerned to the Union.
- (396) The level of cooperation in this case is high, because the imports from the cooperating exporting producers constituted practically the totality of the exports to the Union during the investigation period. On this basis, the Commission decided to base the residual dumping margin at the level of the cooperating sampled company with the highest dumping margin.
- (397) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Shuangxin Group	115,6 %
Sinopec Group	17,3 %
Wan Wei Group	193,2 %
Other cooperating companies	80,4 %
All other companies	193,2 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (398) The like product was manufactured by four producers in the Union during the investigation period: Kuraray Europe GmbH; Sekisui Specialty Chemicals Europe S.L., Solutia Europe SPRL, Wacker Chemie AG. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (399) The total Union production during the investigation period was established at around [114 000 – 120 000] tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information from the complainant and from all known producers in the Union. As indicated in recital (30), two Union producers were selected in the sample representing more than 80 % of the total Union production of the like product.

4.2. Determination of the relevant Union market

- (400) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.
- (401) PVA is used as an intermediate material for the production of paper and carton board; the production of PVB resins for the production of PVB-films; as a polymerisation aids for plastics; and for the production of emulsions and adhesives. The Commission found that a substantial part of the Union producers' production was intended for captive use. The Union industry is mostly vertically integrated and PVA is often simply transferred within the same company or groups of companies for further downstream processing.
- (402) The distinction between the captive and the free market is relevant for the injury analysis because the products intended for captive use are not exposed to direct competition from imports. By contrast, the production intended for the free market is in direct competition with imports of the product concerned.
- (403) The Commission obtained data for the entire PVA activity and determined whether the production was intended for captive use or for the free market in order to provide a picture of the Union industry as complete as possible.
- (404) The Commission examined certain economic indicators relating to the Union industry on the basis of data for the free market. These indicators are: sales volume and sales prices on the Union market; market share; growth; export volume and prices; profitability; return on investment; and cash flow. Where possible and justified, the findings of the examination were compared with the data for the captive market in order to provide a complete picture of the situation of the Union industry.
- (405) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry. These are: production; capacity, capacity utilisation; employment and productivity. They depend on the whole activity, whether the production is captive or sold on the free market.
- (406) After disclosure Cordial, Wacker and Wegochem argued that the General Disclosure Document did not include relevant information such as the production, production capacity, capacity utilization, sales volume and market share of the complainant.
- (407) In response to the companies' request, the Commission reassessed the information provided in ranges and/or indexed form for production, production capacity and employment. Since this information aggregates data of four companies, these were disclosed in actual figures to the company and made available to interested parties in the open file.
- (408) Concerning the confidential data from the complainant, the Commission must reject the request of the companies. The basic Regulation requires the Commission to assess the injury to the Union industry and not to particular producers. In this case the data requested concern macro-indicators and included all known Union producers. There is no reason to single out the data of one single producer, especially when such data is confidential under Article 19 of the basic Regulation.

- (409) After disclosure, Wacker and the China Chamber of Commerce of Metals, Minerals and Chemicals (CCCC) contested the Commission's approach to the captive and free market analysis. Wacker argued that the Commission should make a clear assessment of the macro and microeconomic indicators only for the complainant to avoid a distorted injury assessment.
- (410) The Commission disagreed with Wacker's claim. The Union industry is composed of four producers, of which two are active in the free market. Therefore, as explained above in recitals (402) to (405), while for certain economic indicators it was considered appropriate to refer only to the data for the free market other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry.
- (411) This claim was therefore rejected.

4.3. Union consumption

- (412) The Commission established the Union consumption on the basis of (a) captive consumption on the basis of the captive use of the Union production, (b) the sales on the Union market of all known producers in the Union and (c) the import into the Union from all third countries as reported by Eurostat, thereby also considering the data submitted by the cooperating exporting producers in the country concerned. On this basis the Union consumption developed as follows:

Table 1

Union consumption (in tonnes)

	2016	2017	2018	Investigation period
Total Union consumption	214 000 – 219 000	210 000 – 215 000	225 000 – 230 000	218 000 – 223 000
Index	100	98	106	102
Captive market	50 000 – 55 000	52 500 – 57 500	57 500 – 62 500	55 000 – 60 000
Index	100	105	116	109
Free market	162 000 – 167 000	155 000 – 160 000	165 000 – 170 000	162 000 – 167 000
Index	100	96	103	100

Source: Eurostat, complaint, verified questionnaire replies.

- (413) The captive consumption of own produced PVA increased by 9 % over the period considered. However the consumption on the free market, as well as the total consumption, remained relatively stable during the same period.
- (414) The total consumption went from roughly [214 000 – 219 000] tonnes in 2016 to around [218 000 – 223 000] tonnes in the IP, while the consumption on the free market remained stable around [162 000 – 167 000] tonnes in the same period.
- (415) The CCCC argued that the Commission had not properly analysed the captive market and the captive consumption. More specifically, the CCCC found that the Commission had not adequately informed parties about the part of the captive consumption and production in proportion to the total consumption and production, and how much production went to the free market. The party reiterated its claim after the second additional disclosure.
- (416) The Commission disagreed with this claim and clarified that the captive market consumption disclosed to interested parties corresponded to the captive production. Total production is mentioned in Table 4. Using the captive production figures in Table 1, the evolution of the free market production can be easily calculated. The Commission thus considered that parties were informed of all necessary parameters concerning the captive and the free market. In addition, the captive use of the Union industry was analysed extensively in section 5.2.4 'Captive use' and disclosed to all interested parties. However, for ease of reference, the Commission added an additional line item 'production volume on the free market' to the revised Table 4.

4.4. Imports from the country concerned

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

- (417) The Commission established the volume of imports on the basis of the Eurostat database. The market share of the imports was established by comparing import volumes with the Union free market consumption as reported in Table 1 above.
- (418) Imports into the Union from the country concerned developed as follows:

Table 2

Import volume (in tonnes) and market share

	2016	2017	2018	Investigation period
Volume of imports from the PRC in tonnes	35 285	44 216	54 326	53 930
Index	100	125	154	153
Market share	20 % – 25 %	25 % – 30 %	30 % – 35 %	30 % – 35 %
Index	100	131	149	153

Source: Eurostat.

- (419) Imports from the country concerned increased by 53 % during the period considered, from around 35 000 tonnes in 2016 to almost 54 000 tonnes in the IP. The market share of the Chinese imports increased thus from 20 % – 25 % in 2016 to 30 % – 35 % in the IP, on the free market.

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

- (420) The Commission established the trends for the prices of imports on the basis of the Eurostat data.
- (421) The average price of imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/ kg)

	2016	2017	2018	Investigation period
PRC	1,49	1,39	1,34	1,49
Index	100	94	90	100

Source: Eurostat.

- (422) Import prices from the country concerned remained relatively stable in the period considered, around 1,49 EUR/Kg. During the IP, on the basis of the Union average prices in Table 7, there was a price difference between the subject imports and the Union prices of [10 % – 40 %].
- (423) Price undercutting of the imports was established on the basis of data of the cooperating exporting producers in the country concerned and domestic sales data provided by the Union industry for the period of investigation. The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the cooperating Chinese producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

- (424) The price comparison was made on a type-by-type basis for transactions at the same level of trade, and after deduction of deferred discounts. When necessary, the import price of the product concerned imported from the PRC was duly adjusted when compared with the comparable product type sold by the Union industry.
- (425) As regards the differences in certain characteristics between the product concerned and the like product, as established above in recitals (73) to (77), the product types imported from the PRC compete with the product types produced and sold by the Union industry. However, as the ash content of the PVA produced and sold by the cooperating exporting producers was overall higher than the ash content of the PVA produced and sold by the Union industry, the Commission considered that an adjustment was warranted to ensure a fair comparison between the Chinese and EU product types on the basis of PCNs. The commission established the adjustment on the basis of the difference found for PVA imports with high and low ash content from third countries on the basis of information provided by users. The price difference was established at 10 %.
- (426) On this basis, an adjustment of 10 % was added to the CIF price of the PVA with high ash content sold by the cooperating exporting producers.
- (427) After disclosure Ahlstrom-Munksjö contested the 10 % adjustment because the Commission did not disclose the source of the data and therefore, interested parties did not have the possibility to assess the reliability of such data.
- (428) In this regard, the Commission clarified that, as explained above in recital (425), the adjustment was calculated on the basis of the price difference for PVA imports with high and low ash content from third countries for comparable PCNs collected and verified during the investigation from users (actual transactions).
- (429) Furthermore, as the methanol content and the packing have a negligible effect on the prices, as explained above in recital (81), the Commission concluded that for undercutting purposes it was appropriate to disregard these characteristics.
- (430) The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of between 28,8 % and 36,7 % by the imports from the country concerned on the Union market.
- (431) After disclosure several interested parties, namely Wacker, Ahlstrom-Munksjö, Sinopec Group, Wan Wei, Mengwei and Shuangxin contested the Commission's calculations.
- (432) Wacker and the Chinese exporting producers claimed that 18 % of the exports from the PRC were not sold by the Union industry since for this quantity no comparable PCNs were found. The parties referred to the judgement in Case T-500/17 *Hubei Xinyegang v the Commission* in support of their claim that the Commission's injury analysis was only based on a limited volume of the Union industry's sales and not the whole like product.
- (433) First, the Commission noted that this judgment is under appeal before the Court of Justice and therefore cannot be taken as authoritative. Second, the basic Regulation does not require the Commission to carry out the price analysis for each product type separately. Rather, the legal requirement is a determination at the level of the like product. While PCNs are used as the starting point for such assessment, it does not mean that different PCNs are not in competition. Thus, the fact that certain PCNs of the Union industry were not compared to imports does not mean that they do not suffer price pressure from the dumped imports. Indeed, the establishment of price undercutting and underselling by first calculating margins at the level of the PCN is only an intermediary and preparatory step of that required price comparison. That step is not legally mandated, but constitutes the standard practice of the Commission. Third, in cases where sampling is applied it is not surprising that there is not a perfect matching between the imports of the sampled exporting producers and the sales of sampled Union industry. This does not necessarily mean that there are no imports of certain types, but that these types were not exported to the Union by the sampled exporting producers during the investigation period. Finally, as explained above in recitals

(58) to (62), the Commission concluded that all PVA grades competed with each other, at least to a certain extent. Therefore, the 18 % of the exports of the sampled exporting producers not sold by the Union industry does not constitute a separate category of the product concerned but competes in full with the remaining grades for which a matching was found. Moreover, the PCNs not sold by the Union industry were product types suitable for application in the adhesives, polymerisation and paper sectors, and therefore equivalent and in direct competition with other product types produced and sold by the Union industry for use in the same applications, even if not used for the quantification of price undercutting.

- (434) Therefore, this claim was rejected.
- (435) The same parties requested additional disclosure concerning the detailed undercutting and underselling margins calculations per PCN. In particular, they requested: (i) the PCNs sold by the Union industry; (ii) the average quantities and sales prices sold per PCN; and (iii) the detailed undercutting and underselling margins per PCN. The same parties, with reference to the *Jindal Court ruling* (Case T-301/16, *Jindal Saw Ltd and Jindal Saw Italia SpA v the Commission*) claimed that the comparison between export prices and Union industry sales prices had not been made at the same level of trade since the large majority of the imports from the PRC were sold via unrelated traders and unrelated importers while the Union industry sold directly to final customers, and that the Commission should therefore perform a level of trade adjustment.
- (436) In line with Article 19 of the basic Regulation, the Commission could not reveal the requested data per product type. A disclosure of such level of detail would make it possible to, either directly or with addition of market intelligence, reconstruct confidential sales or production data of individual Union producers.
- (437) With regard to the claims on an adjustment for the level of trade, the Commission analysed the price on the Union market for sales made to end-users in comparison with sales to distributors and found no consistent differences in prices for the different levels of trade. Moreover, no other information on file pointed to the need of applying any level of trade adjustment. Therefore, the Commission concluded that an adjustment for the different level of trade was not warranted in the present case.
- (438) Wacker also argued that the Commission assessed the price effects of the subject imports on the Union industry for the entire period considered (beyond the undercutting calculation for the investigation period), based on the average import prices without any adjustment for the customs duty, the post-importation costs and the ash content.
- (439) This claim had to be dismissed. According to the usual practice of the Commission, undercutting margins were only calculated for the investigation period. The price effects of the entire period considered were however taken into account in terms of the evolution of the trend in import prices. In order to assess such a trend on a comparable basis over the years, no adjustments were needed. Moreover, even when taking into account the average post-importation costs and custom duties for the whole period considered, Chinese prices were still significantly lower than the Union industry prices, thus confirming the significant undercutting found for the investigation period.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (440) 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.
- (441) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the complainant, cross-checked with the data provided by the other Union producers, users and importers and available official statistics (Eurostat). The macroeconomic data related to all Union producers.
- (442) The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. As regards the second sampled Union producer, Wacker, it must be noted that the data provided did not cover the microeconomic indicators as the company produced only for its captive use and therefore had no sales of the like product on the free market. Therefore the microeconomic data related to the sampled Union producer selling of the free market only, i.e. Kuraray Europe GmbH. Both sets of data were found to be representative of the economic situation of the Union industry.

- (443) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin.
- (444) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2016	2017	2018	Investigation period
Production volume (tonnes)	129 310	120 807	123 492	114 235
<i>Index</i>	100	93	95	88
Production capacity (tonnes)	145 684	145 684	145 684	145 684
<i>Index</i>	100	100	100	100
Capacity utilisation	89 %	83 %	85 %	78 %
<i>Index</i>	100	93	95	88
Production volume on the free market (tonnes)	75 000 – 80 000	62 500 – 67 500	600 000 – 65 000	55 000 – 60 000
<i>Index</i>	100	86	82	75

Source: Complaint, verified questionnaire replies.

- (446) During the period considered, the Union industry production volume decreased by 12 %. This decrease in production affected almost entirely the two sole Union producers that sell on the free market, as the production volume of the Union producers that produce only for captive consumption remained relatively stable.
- (447) The reported capacity stayed the same over the period considered. However, capacity utilisation decreased significantly due to the significant reduction of the production scale operated by the Union producers selling on the free market, in order to reduce production costs and losses. Indeed, each of the two producers had to mothball part of their production lines in the period 2017 – 2018 due to the pressure of the dumped imports.
- (448) Therefore the decrease in capacity utilisation rate must be accounted exclusively to the reduction of production operated by the two Union producers selling on the free market.
- (449) After the second additional disclosure, Solutia argued that the decrease in capacity utilisation operated by the Union industry did not follow the trend of imports from the PRC, as it increased from 2017 to 2018, when imports increased, and decreased in the IP when also the imports from the PRC decreased.

- (450) This argument had to be dismissed. First, from 2017 to 2018, the capacity utilisation rate of the Union industry increased by 2 percentage points while the consumption on the free market increased by 7 percentage points. Moreover, in the same period the imports from the PRC increased by 23 % in volume and gained additional 14 % of market share. Therefore, even with a growing demand the Union industry could not significantly increase its output as its prices were constantly undercut by growing dumped imports. Second, in the IP, while the Union industry decreased its capacity utilisation rate by 7 points and Union consumption on the free market decreased by 3 points, imports from the PRC remained stable (decreasing by 395 tonnes) and gained an additional 3 percentage points of market share.

4.5.2.2. Sales volume and market share

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

Table 5

Sales volume and market share

	2016	2017	2018	Investigation period
Total sales volume on the Union free market (tonnes)	60 000 – 65 000	55 000 – 60 000	45 000 – 50 000	40 000 – 45 000
Index	100	95	82	73
Market share	35 % – 40 %	35 % – 40 %	25 % – 30 %	25 % – 30 %
Index	100	99	79	73

Source: Complaint, verified questionnaire replies.

- (452) Despite the relatively stable consumption, the Union industry sales volume on the free market decreased by 27 % over the period considered.
- (453) As a consequence, this translated in a decrease of market share of the Union industry on the free market from [35 % – 40 %] in 2016 to [25 % – 30 %] during the IP, i.e. a decrease by 27 %.

4.5.2.3. Growth

- (454) The Union consumption (free market) remained stable during the period considered, while the sales volume of the Union industry on the Union free market decreased by 27 %. The Union industry thus lost market share, contrary to the market share of the imports from the country concerned which increased significantly during the same period.

4.5.2.4. Employment and productivity

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

Table 6

Employment and productivity

	2016	2017	2018	Investigation period
Number of employees (FTE)	370	313	324	327
Index	100	85	88	88
Productivity (unit/employee)	350	386	382	349
Index	100	110	109	100

Source: Complaint, verified questionnaire replies.

- (456) The level of the Union industry employment decreased over the period considered, due to the reduction in production operated by the Union producers selling on the free market. This resulted in a reduction of workforce by 12 %, without taking into consideration any indirect employment.
- (457) As the production volume decreased as well, the productivity of the Union industry remained relatively stable over the period considered. This shows that the union industry was willing to adapt to the changing market conditions in order to remain competitive.

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

- (458) 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.
- (459) This is the second anti-dumping investigation regarding the product concerned. The previous investigation was terminated in 2008 with no imposition of measures and no data was available to assess the effects of possible past dumping.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

- (460) 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 7

Sales prices in the Union

	2016	2017	2018	Investigation period
Average unit sales price on the free market (EUR/ KG)	1,50 – 2,50	1,50 – 2,50	1,75 – 2,75	1,75 – 2,75
<i>Index</i>	100	100	111	114
Unit cost of production (EUR/KG)	1,50 – 2,50	1,50 – 2,50	2,00 – 3,00	2,00 – 3,00
<i>Index</i>	100	104	119	124

Source: Verified questionnaire replies.

- (461) The table above shows the evolution of the unit sales price of the Union industry on the Union free market as compared to the corresponding unit cost of production. Sales prices have been on average lower than the unit cost of production since the beginning of the period considered.
- (462) The unit cost of production of the Union industry increased by 24 % over the period considered. The increase in cost was driven mainly by higher costs for the principal raw material, VAM. Over the same period sales prices increased by 14 %, but this was not sufficient to offset the increase in the raw material prices due to the significant price pressure operated by the Chinese imports.

4.5.3.2. Labour costs

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

Table 8

Average labour costs per employee

	2016	2017	2018	Investigation period
Average labour costs per employee (Index)	100	109	104	109

Source: Verified questionnaire replies.

- (464) During the period considered the average labour cost per employee went up by almost 9 %. This increasing trend was found in both sampled Union producers.

4.5.3.3. Inventories

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

Table 9

Inventories

	2016	2017	2018	Investigation period
Closing stocks (tonnes)	15 000 – 25 000	5 000 – 15 000	5 000 – 15 000	5 000 – 15 000
Index	100	64	59	60

Source: Verified questionnaire replies.

- (466) Over the period considered the level of closing stocks decreased significantly, by 40 %. The decrease is due to a specific decision of the sampled Union producer selling on the free market. As the company faced losses on sales due to the pressure of dumped imports, it saw no economic justification for building up stocks when demand for its product had decreased.

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

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

Table 10

Profitability, cash flow, investments and return on investments

	2016	2017	2018	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 0,5 % – 5,0 %	– 5 % – 10 %	– 0,5 % – 5,0 %	– 10 % – 15 %
Index	100	– 279	– 199	– 548
Cash flow (KEUR)	500 – 5 500	15 000 – 20 000	5 000 – 10 000	– 500 – – 5 500
Index	100	922	535	– 80

	2016	2017	2018	Investigation period
Investments (KEUR)	20 000 – 30 000	10 000 – 20 000	5 000 – 15 000	5 000 – 15 000
<i>Index</i>	100	49	26	28
Return on investments	– 0,5 % – 5,0 %	– 2,5 % – 7,5 %	– 0,5 % – 5,0 %	– 7,5 % – 12,5 %
<i>Index</i>	100	– 209	– 132	– 368

Source: Verified questionnaire replies.

- (468) The Commission established the profitability of the sampled Union producer active in the open market by expressing the pre-tax net profit of the sales of the like product to unrelated customers on the free market in the Union as a percentage of the turnover of those sales.
- (469) Profitability developed negatively over the period considered: losses were incurred during all the four years, from [– 0,5 % – 5 %] in 2016 to [– 10,0 % – 15 %] during the IP. This trend was affected mainly the price pressure exerted by the Chinese imports, which did not allow the sampled EU producer to increase prices in response to cost increases.
- (470) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow varied a lot during the period considered, mainly due to non-cash expenses such as depreciation, and deteriorated during the investigation period.
- (471) The return on investments is the profit in percentage of the net book value of investments. It remained negative overall over the period considered following a decreasing trend similar to the profitability one. Over the same period, the Union industry reduced the level of its investments by 72 %. The ability of the Union industry to raise capital has been severely affected by the losses incurred over the period considered, as can be seen from the decrease in investments.

4.5.4. Conclusion on injury

- (472) All main injury indicators showed a negative trend during the period considered. The production volume of the Union industry decreased by around 12 % and its sales volume on the free market decreased by 27 %. Considering the relatively stable consumption, this translated into a decrease of market share on the free market from [35 % – 40 %] in 2016 to [25 % – 30 %] during the investigation period, i.e. a decrease by 10 percentage points.
- (473) While the sales price increased by 14 % over the period considered, this was not enough to offset the increase in the unit cost of production, despite the effort of the Union industry to improve efficiency by increasing the productivity per employee. In response to the pressure of dumped imports, the Union industry decreased production volumes, which in turn increased the cost per unit. This coupled with the increase in raw material prices, which the Union industry was not able to pass on, caused the depression and suppression of Union industry prices, and hence a decrease in profitability.
- (474) As a result of the above trends, the profitability of the Union industry went from [– 0,5 % – 5 %] in 2016 to [– 10,0 % – 15 %] in the IP.
- (475) As regards the captive market, the Commission analysed and considered its figures when appropriate, as explained above in section 4.2.
- (476) However, in this particular case the captive consumption represented around one quarter of total Union consumption and consisted, almost exclusively, of captive transfers within the same company or group of companies. Such internal transfers are not representative of actual market transactions because of the nature of intra-group transactions. Moreover, those transfers do not enter the free market because the product is fully used by the integrated producers for further processing. As a result, the captive market is not exposed to direct competition from imports from the country concerned.
- (477) Therefore, the Commission concluded that the performance of the Union industry could meaningfully be examined by referring mainly to the activity in the free market, as detailed above in recitals (404) and (405).

- (478) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (479) After disclosure, Wacker argued that the production capacity reduction of the Union industry had to be accounted to the second Union producer selling on the free market (i.e. Sekisui). According to Wacker, the reduction was a company business decision pre-investigation period, and not caused by the imports from the PRC. Wacker argued that the company deliberately decided to retract from the Union market and therefore the negative indicators like production, sales and employment should not be used as an evidence of injury.
- (480) The Commission disagreed with this interpretation. First, the evidence collected during the investigation indicates that the decrease in production and sales was caused by the price pressure of the imports from the PRC. There is no evidence that this conclusion would not be correct. Second, as explained above in recital (447), none of the two Union producers selling on the free market reduced, irreversibly, their production capacity. The producers just reduced their production output by not operating all their production lines. This reduction of the capacity utilisation took place during the period considered, and thus was taken into account as part of the assessment of the trends over the same period. Furthermore, the argument that the Union industry could not sell what it did not produce is erroneous. It is not economically viable to produce something that will not be possible to sell at a fair market price.
- (481) Wacker also argued that the decreased production and sales of Sekisui benefited the complainant, which increased its sales by 6 % between 2016 and 2017. However, the Commission noted that in the same period the Union industry decreased its total sales by 5 % while the Chinese exporting producers increased their sales on the Union market by 25 % and gained 7 percentage points of market share. The argument was therefore dismissed.
- (482) Furthermore, Wacker claimed that the Commission did not consider the export sales of the Union industry in its assessment as, in its opinion, the export statistics shows that PVA export sales by the Union producers represented a high portion of the EU industry's free markets sales. The argument was repeated by CCCMC after the second additional disclosure.
- (483) This argument had to be dismissed. The information collected during the investigation showed that the export sales of the sampled Union producer selling on the free market remained relatively stable over the period considered and, more importantly, that they overall represented a negligible quantity when compared to the total sales of the Union producer on the Union free market.
- (484) Equally, Wacker and another party, Wegochem, claimed that the Commission did not analyse the importation and resales of the Union industry. The parties claimed that, in their opinion, the Union industry itself was responsible for a large share of the import volume from third countries.
- (485) First, the Commission noted that there were several producers in third countries other than the complainant and Sekisui. Second, the investigation revealed that the complainant's resales were limited and represented [0,5 % – 2 %] of the total sales of the Union producer on the Union free market during the period considered. Furthermore, these resales decreased by 50 % over the period considered. The claim was therefore rejected.
- (486) The same two parties further argued that some of the data reported in the General Disclosure document, namely the cash flow and the stock, were not consistent with the open version of the questionnaire reply of the complainant.
- (487) In this respect, the Commission clarified that certain data were amended and corrected by the Commission after the verification according to its usual practice. This explains the differences pointed out by those parties.

5. CAUSATION

- (488) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from other third countries, the development of raw material costs, self-inflicted injury and the incorrect representation of data operated by one Union producer.

5.1. Effects of the dumped imports

- (489) Volume of imports from the country concerned and their market share both increased by 53 % over the period considered. This increase exceeded substantially the evolution of consumption in the free market over the same period, which decreased by [0,5 % – 2 %]. At the same time, the Union industry lost 27 % of sales volume and market share. Furthermore, the prices of imports from the country concerned, even if relatively stable over the period considered, undercut the Union industry prices by between 28,8 % and 36,7 % and by 30,0 % on average. Consequently, the profitability of the Union industry was constantly declining and reached [– 10,0 % – 15 %] losses during the investigation period.
- (490) The analysis of the injury indicators in recitals (398) to (478) shows that the economic situation of the Union industry worsened during the period considered and this coincided with a significant increase of dumped imports from the country concerned, which were found to undercut the Union industry prices during the investigation period and causing significant price suppression, as the Union industry was not able to increase its prices in line with the increase of cost of production.
- (491) Moreover the information collected during the investigation showed that the different product type sold by the Chinese exporting producers compete in full with the product types sold by the Union industry, as explained above in section 2.3.
- (492) After disclosure, Ahlstrom-Munksjö, Cordial and Wacker argued that there was no coincidence in time between the increase in imports from the PRC and the worsening situation of the Union industry. In their opinion, the fact that the complainant's profitability decreased significantly between 2016 and 2017 while its sales volume slightly increased could not be attributed to the dumped imports. They also pointed out that in the investigation period the Union industry lost 11 % of its sales volume while the Chinese prices increased.
- (493) Firstly, as explained above in recital (13), the Union industry initially tried to follow the Chinese dumped prices in order not to lose market share, which explains the trends pointed out by the company in 2016 and 2017. During this period prices of the Union industry did not increase although cost of production continued to increase. Secondly, at the same time, the Union industry lost 5 percentage points of sales volume while imports from the PRC increased 25 percentage points and their sales price decreased by 6 %. Furthermore, even if it is true that during the investigation period the import price from the PRC increased, they remained on average 29 % lower than the Union industry prices, while volumes remained constant. Finally, the Union industry cost of production increased by 5 points while its prices increased only by 3 percentage point. Thus, contrary to that claim, the negative trends observed for the Union industry do coincide with the increase in volumes and market share of imports from the PRC during the period considered.
- (494) The argument was therefore rejected.
- (495) Wacker also argued that the profitability of the complainant had a different trend than the one reported in its annual report for 2017.
- (496) The annual report refers to the global activity of the complainant out of which PVA is only a part. Therefore, no conclusion can be drawn as regards a single business segment from the aggregated figures. The Commission has collected, verified and drawn its conclusions on the basis of specific data. Thus, this argument was dismissed.

5.2. Effects of other factors

5.2.1. Imports from third countries

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

Table 11

Imports from third countries

Country		2016	2017	2018	Investigation period
Taiwan	Volume (tonnes)	20 965	19 796	23 602	22 674
	Index	100	94	113	108

Country		2016	2017	2018	Investigation period
	Market share	12 % – 15 %	12 % – 15 %	13 % – 16 %	13 % – 16 %
	<i>Index</i>	100	98	109	108
	Average price (EUR/KG)	1,57	1,56	1,56	1,71
	<i>Index</i>	100	99	99	109
USA	Volume (tonnes)	23 700	15 643	23 379	23 427
	<i>Index</i>	100	66	99	99
	Market share	12 % – 15 %	9 % – 12 %	12 % – 15 %	12 % – 15 %
	<i>Index</i>	100	69	96	99
	Average price (EUR/KG)	1,75	2,03	1,84	1,90
	<i>Index</i>	100	116	105	108
Japan	Volume (tonnes)	14 980	15 410	14 655	14 522
	<i>Index</i>	100	103	98	97
	Market share	8 % – 11 %	9 % – 12 %	7 % – 10 %	8 % – 11 %
	<i>Index</i>	100	107	94	97
	Average price (EUR/KG)	2,33	2,50	2,65	2,82
	<i>Index</i>	100	107	114	121
Other third countries	Volume (tonnes)	7 419	3 885	2 813	4 033
	<i>Index</i>	100	52	38	54
	Market share	3 % – 5 %	2 % – 4 %	1 % – 3 %	2 % – 4 %
	<i>Index</i>	100	55	37	55
	Average price (EUR/KG)	2,29	1,98	2,14	2,23
	<i>Index</i>	100	86	93	97
Total of all third countries except the country concerned	Volume (tonnes)	67 064	54 734	64 448	64 656
	<i>Index</i>	100	82	96	96
	Market share	38 % – 43 %	30 % – 35 %	36 % – 41 %	37 % – 42 %
	<i>Index</i>	100	85	93	96
	Average price (EUR/KG)	1,88	1,98	1,93	2,06
	<i>Index</i>	100	106	103	109

Source: Eurostat, complaint, verified questionnaire replies.

- (498) Imports from other third countries originated mainly from Taiwan, USA and Japan. Some of the Japanese and American exporters are related to the Union industry, while the Taiwanese exporter is related to one of the Chinese exporting producers.
- (499) Contrary to arguments raised by some interested parties, and reiterated after disclosure by Wacker and Solutia, imports from other third countries, even if significant in terms of market share, decreased by 4 % over the period considered and the loss of market share of the Union industry benefitted exclusively the Chinese exporting producers. Import prices from these third countries, although being on average 11 % cheaper than the prices of the Union industry, increased by 9 % over the same period. In particular, import prices from the largest exporter other than the PRC i.e. Taiwan, increased by 9 %, import prices from USA increased by 8 % while import prices from Japan grew by 21 %.
- (500) Therefore, imports from other third countries were not the source of injury described in recitals (440) to (478) above.
- (501) After disclosure Wacker, the second sampled Union producer, argued that the commission did not correctly estimate the imports from Japan and Taiwan. According to the company, the Commission did not take into account the quantities imported under the inward processing regime from both countries and that, in its view, parts of the imports from Japan were in fact copolymer PVA, hence outside of the scope of the product concerned.
- (502) The argument of the inward processing had to be dismissed. The inward processing regime refers to goods that are imported in order to be used in the customs territory of the Union in one or more processing operations and are not therefore released for sales on the Union free market.
- (503) As regards the imports of copolymer PVA from Japan, the Commission confirmed that in fact the TARIC code 3905 30 00 10 covers exclusively imports of certain copolymer for use as protective coating of wafers during the manufacturing of semiconductors ⁽⁹⁴⁾.
- (504) After further checks, the quantities imported under the TARIC code 3905 30 00 10 into the EU were removed from the imports not only from Japan but from all sources, including the PRC. The imports volumes, consumption and market shares were revised accordingly.
- (505) Wacker also argued that the Commission only focused on the average import prices from USA. In Wacker views certain imports are concentrated in a few Member States at a much lower prices than the average import prices considered by the Commission and this could therefore have had an impact of the complainant's sales.
- (506) The argument had to be rejected as Wacker claim and data do not contradict the assessment carried out by the Commission. A similar variety of price pattern could be observed for the union industry sales as well as the sales prices also reflect the product types requested by the user industry active in each Member state. Contrary to Wacker argument, the fact that the different PVA grades are largely interchangeable does not imply that all the PVA grade should have the same price. Moreover, even if true that in the investigation period the import price from USA to Belgium was 4 % cheaper than the average import price, imports to Germany in the same period were 13 % more expensive than the average price.
- (507) Ahlstrom-Munksjö also argued, after disclosure, that the complainant sold from its USA plants PVA at lower prices than the grades produced in the EU.
- (508) However the information provided referred to different grades of PVA, therefore no comparison is possible. Moreover, the grade imported from the USA is a copolymer, hence outside the scope of the product concerned. In addition it must be noted that from the information provided it is evident that the major price increase operated by the complainant in the EU occurred exactly in the month when it mothballed one of its production lines. Hence confirming that the company had to increase prices overall to compensate for the lost production and the increased fixed costs.
- (509) Therefore, the argument was dismissed.

5.2.2. Increase of raw material cost

- (510) One user argued that the increase of the principal raw material (VAM) cost caused the injury. It argued that the complainant, not being integrated upstream, has to purchase VAM on the market and is therefore less cost efficient than the Chinese exporting producers or the other Union producers that produce VAM for their own consumption.

⁽⁹⁴⁾ Viscous preparation, essentially consisting of poly(vinyl alcohol) (CAS RN 9002-89-5).

- (511) Contrary to this argument, the information collected during the investigation confirmed that the complainant purchases VAM at a cost in line with prevailing prices as observed from other sources. In this regard the increase in VAM prices also had influence on other producers worldwide as demonstrated by the price evolution of the Chinese and third country exporting producers.
- (512) In addition, as explained above in recital (462), due to the significant price pressure operated by the Chinese imports, the Union industry was not able to increase its prices in line with the increase of raw materials costs. This, coupled with the significant loss in sales volume caused the depression of the Union industry prices, and hence profitability.
- (513) This claim was therefore rejected.
- (514) After disclosure Wacker argued that the VAM prices decreased in the first quarter of 2019, and therefore the complainant should have decreased its production cost in the investigation period accordingly. In addition CCCMC argued also that the commission failed to analyse the VAM price evolution of the four year period of the IIP.
- (515) These arguments had to be rejected. Wacker argues that the VAM price decreased in the first quarter of 2019 but did not mention that the same price increased again in the second quarter by 3 % and it was 12 % higher in the fourth quarter of 2019. Therefore a quarter by quarter variation is not meaningful as companies take into account the projected price development when accounting for the cost of production (and the sales price) for the year to come. As regards CCCMC claim, the information collected during the investigation showed that the average market price of VAM in the Union increased by 20 % over the period considered.

5.2.3. *Self-inflicted injury*

- (516) Two other users argued that the injury suffered by the Union industry was self-inflicted as one of the sampled Union producers disproportionately increased the selling, general and administrative (SG&A) expenses over the period considered.
- (517) The investigation revealed that the increase of SG&A in the PVA business was mainly driven by the decrease in sales. Since the vast majority of SG&A are fixed costs, the decrease in sales, and the consequent drop in production quantity increased the share of these costs over the unit cost of production. As mentioned in recital (473), the decrease in sales was a consequence of the pressure of the dumped imports in the Union market. Therefore, the increase of SG&A was closely linked to the dumped imports and cannot be considered self-inflicted injury.
- (518) After disclosure Ahlstrom-Munksjö, Wacker and Wegochem reiterated their claim that the complainant did not significantly reduced production during the period considered and therefore the fixed cost should not have increased.
- (519) As explained in recital (447), both the Union producers selling on the free market had to mothball one production line during the period considered as a direct consequence of the dumped imports. Therefore, the reduced capacity utilization rate affected the fixed costs of both producers.
- (520) Ahlstrom-Munksjö and Wacker also claimed that the planned six-week maintenance shutdown of the complainant's plant contributed to inflate its cost of production. In addition Wacker argued that the complainant's cost of production was disproportionately high.
- (521) As regards the plant shutdown, the investigation revealed that it did not significantly affected the complainant cost of production as it was a routine operation planned well in advance. Moreover, the cost of production of the complainant increased by 4 percentage points in 2017 (the year of the shutdown) but increased by 15 percentage points in 2018, when dumped imports further increased reaching a market share of [30 % –35 %].
- (522) As regards that the cost, because Wacker produces PVA for its captive consumption only, it has no selling and administrative expenses (and therefore lower cost overall). Moreover, the information collected during the investigation showed that the complainant cost of production was in line with the average cost of production of the PVA industry.

- (523) These arguments are therefore rejected.
- (524) After disclosure Wegochem argued that, in its view, the complainant's low profitability was due to excessive depreciation costs.
- (525) The Commission confirms that the depreciation costs by the complainant were verified and revised to only include the cost pertaining exclusively to the product concerned. Therefore, this claim was rejected.
- (526) Another user argued, and reiterated the argument after disclosure, that the loss in market share suffered by the Union industry was due to their own business decisions, as the sharp increase of prices operated between 2017 and the IP forced certain users of the product concerned to shift to the cheaper Chinese suppliers in order to remain competitive.
- (527) Even if there was a coincidence in time between the price increase and the sales decline, this is a direct consequence of the dumped imports from the country concerned. PVA has several applications and is produced in different grades. As explained above in recital (60), some of these grades have a broad range of application and, generally, a lower price, while other more specialised grades designed for applications with narrow specifications (such as pharmaceutical products or the PVB-film production) are on average more expensive.
- (528) The Union industry has the ability to supply all the different segments of the downstream industry. However, the imports of PVA from China, at prices undercutting the Union prices by 29,9 % on average forced the Union industry to reduce its production level and concentrate its sales on grades with somewhat higher selling prices on average. The investigation showed, however, that an increasing price pressure also to these grades, which has been deteriorating the situation of the Union industry even further.
- (529) This argument is therefore rejected.
- (530) One of the sampled unrelated importers claimed that the complainant itself was dumping on the Union market, and the injury would be therefore self-inflicted, providing evidence of a sale of PVA at a very low price to the Union market, produced by the related company of the complainant based in Singapore. The argument was repeated after disclosure.
- (531) The investigation revealed that the allegedly dumped sale from Singapore was actually the sale of a batch of off-spec PVA. This particular type of PVA is usually the result of errors in the production process hence it was sold at a very low price on the market as it did not fit in the general product specifications.
- (532) The argument is therefore rejected.
- (533) Another user claimed that the declining sales volumes of the Union industry were not caused by the dumped PVA imports from the country concerned but it was provoked by the complainant's refusal to supply its products to certain users and therefore the material injury was self-inflicted by these anti-competitive practices.
- (534) As explained also above in section 2.2, the Union industry is capable and willing to supply all the different grades of PVA. No specific evidence of refusal to supply was provided by the user. On the contrary, as explained above in recital (13) the information collected during the investigation clearly showed that the industry was capable and willing to supply any user of the product concerned.
- (535) The user reiterated the argument after disclosure but did not provide any conclusive evidence of the alleged refusal to supply as the documents provided referred only to a disagreement about prices between two parties.
- (536) The argument was therefore dismissed.

5.2.4. *Captive use*

- (537) One user argued that the macroeconomic data provided by the Union producer that was removed from the sample could be misleading, as the decrease in sales of PVA reported could have been a deliberate business decision in order to increase the captive consumption of PVA and therefore the sales in the downstream segments.

- (538) As explained in recital (441), the Commission evaluated the microeconomic and macroeconomic indicators on the basis of data contained in the verified questionnaire replies and in the complaint, cross-checked with the data provided by the Union producers, users and importers and available official statistics (Eurostat).
- (539) Given the high level of cooperation, the Commission was able to obtain a thorough picture of the PVA captive and free markets, together with a very detailed picture of the different downstream segments and their consumption of PVA.
- (540) In any event, as regards the decrease in sales of PVA of the above mentioned Union producer, the information collected during the investigation showed a parallel decrease in the production of PVA of the same magnitude, over the period considered. Therefore the Commission found that the decrease in sales was not caused by any increase of captive consumption.
- (541) This argument is therefore rejected.
- (542) Two users argued that the complainant's decision to concentrate on captive consumption for PVB-film production was the cause of the injury suffered by the Union industry.
- (543) However, the investigation revealed that the captive consumption of the complainant increased during the period considered at a significantly smaller pace than the decrease in sales quantity. Moreover, the complainant's captive consumption of PVA has remained stable over the last two years and therefore would not explain the deteriorating situation in recent years and in particular during the investigation period. At the same time, the industry has still at least 30 000 tonnes of spare production capacity that cannot be absorbed by the PVB-film production lines.
- (544) The claim is therefore rejected.
- (545) Ahlstrom-Munksjö, Solutia, Wacker and Wegochem repeated after disclosure that the complainant's captive consumption increased significantly over the period considered (i.e. by 25 %). Therefore, the Commission statement that its captive consumption increased during the period considered at a significantly smaller pace than the decrease in sales quantity was wrong.
- (546) The Commission confirms its statement was correct and clarifies that, even if in percentage terms the captive consumption of the complainant increased during the period considered, the sales decrease in absolute quantities exceeded significantly the increase of tonnes of PVA used for the captive consumption by the complainant.
- (547) The argument was therefore dismissed.

5.3. Conclusion on causation

- (548) There was a clear coincidence in time between the substantial increase of imports from the country concerned and the deterioration of the situation of the Union industry.
- (549) The Commission has also investigated other factors of injury and has not found any other factor which contributed to the material injury suffered by the Union industry.
- (550) On the basis of the above, the Commission concluded that the material injury to the Union industry was caused by the dumped imports from the country concerned and that no other factors, considered individually or collectively, contributed to the material injury suffered by the Union industry.

6. UNION INTEREST

- (551) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

6.1. Interest of the Union industry

- (552) The investigation has shown that the Union industry is suffering material injury because of the effects of dumped imports from the country concerned that undercut Union industry's prices causing significant loss of market share and leading to losses during the period considered, as elaborated in recitals (440) to (550) above.

- (553) The Union industry will benefit from measures, which would likely prevent a further surge of imports from the PRC at very low prices. Without measures, Chinese producers will continue to dump PVA on the Union market preventing the Union industry from selling PVA at an adequate profit and thus causing further material injury to the Union industry.

6.2. Interest of unrelated importers

- (554) Six unrelated importers were willing to cooperate. Three were sampled and provided questionnaire replies. All the three importers opposed the imposition of measures, claiming it will be detrimental to their business and against the interest of users of PVA in the Union.
- (555) For the sampled unrelated importers, the weight represented by the product concerned compared to the total turnover of these importers varies, ranging from 10 % to 40 %. The jobs allocated to the product concerned were estimated at around 20 employees.
- (556) All the three importers were profitable and the profit margin appeared to be adequate to absorb at least part of the duties. Furthermore, the Commission noted that imports from other third countries still hold the largest market share in the Union. Therefore, the imposition of measures would not have a considerable negative price effect on importers, but some of them would need to switch sources, which would entail additional costs for these importers.
- (557) One importer claimed that the imposition of measures would harm the importers as the final Union users will cease to purchase PVA originating in the PRC and will start sourcing alternative non-PVA based products, or blends of PVA and other products produced outside the Union.
- (558) In this regard, first of all, it must be noted that the impact of PVA on the users costs varies from segment to segment, as explained below in section 6.3.
- (559) Moreover the investigation revealed that the possibility of replacing PVA with alternative products, even if possible in theory, would be very complicated and the increase of PVA cost would not likely be the decisive factor. Some of the alternative products are already significantly more expensive than PVA and not environmentally friendly, as they are not biodegradable like PVA.
- (560) As far as the blends of products are concerned, the investigation revealed that transport costs play a more important role than the raw material costs. These blends are usually made of PVA and other additives dissolved in water. The water percentage (and weight) makes therefore the transport more expensive. The sourcing of these PVA-based blends from producers located outside the Union is therefore not likely to increase significantly because of anti-dumping duties on the product concerned.
- (561) Therefore this claim was rejected.
- (562) Two importers claimed that the Union production of PVA was insufficient to meet the demand and therefore the EU market for PVA was highly import reliant, as demonstrated also by the tariff-free quota for imports of PVA of 15 000 tonnes/year established as of 2014 by the Council of the European Union⁽⁹⁵⁾.
- (563) In this respect, the biggest suppliers of the EU market were still PVA producers located in third countries (namely Taiwan, USA and Japan), which already accounted for [37 % – 42 %] of the Union consumption on the free market. Moreover, the investigation has shown that several users sourced PVA from different suppliers located in the PRC, from the Union industry and from producers located in third countries at the same time. Finally it must be noted that the Union industry has still about 30 000 tonnes of spare capacity that can supply the Union market.
- (564) Hence, since the PVA demand is strong, the imposition of measures would not contribute to the risk of a shortage of supply, given the level of the proposed duties and the alternative sources available. This claim was therefore rejected.
- (565) One importer claimed that the imposition of measures would harm the small and medium-sized enterprises (SME) in the Union, especially in the context of the actual COVID-19 crisis. It argued that the anti-dumping duties on PVA originating in the country concerned would create additional disruption in a sector already severely affected by the above-mentioned crisis.

⁽⁹⁵⁾ Council Regulations 1340/2014; 713/2014; 2015/2448; 2016/2389; 2018/2070.

- (566) In this respect, the Commission noted that the impact of the proposed anti-dumping measures on the users' costs varied from segment to segment, and had been thoroughly assessed as explained below in section 6.3.
- (567) Furthermore, given the high level of cooperation, the Commission was able to obtain a thorough picture of the PVA captive and free markets, together with a very detailed picture of the different downstream segments.
- (568) Finally, the Commission analysed the economic situation of both the Union industry and users also in light of the importance of the supply stability as, without the Union industry, the Union would lose about [50 % – 60 %] of its supply capacity ⁽⁹⁶⁾ of a critical material, such as PVA.
- (569) The claim was therefore rejected.

6.3. Interest of users

- (570) As explained above in recital (55), PVA is used as an additive, precursor or agent by mainly four Union user industries in: (i) production of PVB resins for the production of PVB-films; (ii) the production of polymerisation application and emulsions; (iii) production of paper and carton board; and (iv) production of adhesives.
- (571) PVB producers were the biggest users of PVA, accounting for around 40 % of the PVA consumption in the Union. Polymerisation accounted for around 20 % while paper chemicals and adhesive production accounted, respectively, for 16 % and 14 % of the total consumption of PVA.
- (572) Upon initiation, 49 known users in the Union were contacted and invited to cooperate. One PVB producer: Solutia; three paper and carton board producers: Ahlstrom-Munksjö, Papierfabrik August Koehler and Paul & Co; three producers in the polymerisation and emulsions segment: Wacker, FAR Polymers and Celanese; and one adhesive producer: Cordial, came forward. All of them opposed potential measures on the imports of PVA originating in the country concerned, except for Celanese, who took a neutral stance.

6.3.1. PVB-film producers

- (573) As regards the main application of PVA, (PVB film), it has to be noted that the complainant itself is in direct competition with the users of the product concerned in the PVB sector, as part of its PVA production is used captively for the production of PVB film.
- (574) PVB resin is produced by acetalisation of PVA (reaction of PVA with Butyraldehyde) and it is then mixed with plasticizer and extruded to produce PVB film. PVA represents up to 27 % of the cost of manufacturing of PVB. PVB film is mainly used as a layer between two glass sheets in the automotive sector (windshields) or in the building sector (security glass).
- (575) Solutia was the biggest PVB-film producer in the Union. Together with the complainant and the other Union producer selling on the free market, they represented almost the totality of PVB-film production in the Union. The user also produced PVA for its own internal consumption. The company accounted for almost 1/5 of the total Union consumption of PVA (captive and free market).
- (576) The user claimed that anti-dumping measures on PVA would have widespread negative consequences in the PVB-film sector. Since the complainant was, at the same time, an important PVB-film producer as well as a PVA producer and supplier, any anti-dumping measure would affect not only the cost of production of the downstream product, but would also affect competition with PVB producers such as the user. This claim was repeated after disclosure by Solutia and Wegochem. Moreover, the user claimed that the new plant for production of water-soluble PVB film that the complainant is planning to open in Poland will increase even further the complainant's captive consumption of PVA and will sharpen the lack of Union capacity in terms of PVA supply. These arguments were reiterated by Solutia after the second additional disclosure.
- (577) Firstly, whilst the majority of Union producers of PVA and PVB-film were vertically integrated, it must be noted that each of them decided to concentrate its production capacity on the upstream or downstream segment for its own business strategy. In this respect, the user itself was a PVA producer and a PVB-film producer exactly like the other two Union producers. Moreover the production of water-soluble films is mainly based on PVA copolymers, which are outside the scope of the product concerned and are sourced from production plants in third countries, and cannot therefore affect the complainant's supply capacity of standard (homopolymer) PVA.

⁽⁹⁶⁾ Total free market and captive consumption.

- (578) Secondly, the investigation has shown that the user had a multi-sourcing strategy producing PVA for its own consumption and extensively using alternative sources of supply of PVA from the Union industry, the exporting producers in the PRC and the producers in third countries. Moreover, as explained recital (563), the Union industry has still 30 000 tonnes of spare capacity to supply the Union market and the level of anti-dumping duties will not prevent Solutia to continue sourcing PVA from the PRC, as explained in recital (588).
- (579) Finally, the investigation revealed that the impact of the proposed anti-dumping duties on the user's cost of production and profitability, given the share of imports from the country concerned in its total PVA consumption and the share of PVA in its cost of production, would be limited even with the measures in force.
- (580) As regards the alleged risk of anti-competitive behaviour by the Union industry the Commission notes that no evidences were provided supporting this statement and moreover the union industry has constantly supplied large quantities of PVA to the PVB industry. In addition the investigation revealed also that the PVB industry source PVA via supply contracts that shield it from price fluctuation and supply shortage. Finally, it must be noted that the trade defence instruments allows the Commission to review the proposed measures in the interest of the users in case of conclusive evidence of anti-competitive practices.
- (581) Given the above, these claims were rejected.
- (582) Solutia also requested an exemption from the proposed anti-dumping duties under the end-use regime for the production of PVB film. The company claimed that the proposed measures would have a very heavy financial impact for the profitability of PVB film production, that few suppliers could meet the specifications and that the product is not interchangeable.
- (583) The Commission assessed the company's request on the basis of all the information collected during the investigation and the comments received after disclosure.
- (584) Contrary to the argument of Solutia, the investigation established, as explained above, that the impact of the proposed anti-dumping duties on the user's cost of production and profitability would be limited.
- (585) Moreover, Solutia had a multi-sourcing strategy, producing PVA for its own consumption, as well as extensively using multiple sources of supply of PVA from the Union industry, the exporting producers in the PRC and the producers in third countries. Even if it is true that the qualification of a new PVA source is a difficult and lengthy process, there are three other producers worldwide capable of supplying 'Low-Ash NMWD PVA'. Moreover, the Commission notes that the level of the anti-dumping duties would not prevent any supplier from the PRC to continue to export PVA at a fair price. Finally, PVB film is the main downstream application for PVA, and Solutia is one of the market leaders in this segment. As a result, granting such an exemption under end use control would risk to seriously undermine the effect of the measures. The request was therefore rejected.
- (586) After the second additional disclosure, Solutia claimed that the Commission did not explain the data and the reasoning used to qualify the impact on its profitability as 'negligible'. Moreover the company argued that it needed to have access to all PVA suppliers at reasonable prices to maintain security of supplies and a reasonable profitability and therefore, the Commission failed to justify how the level of the anti-dumping duties would not prevent Solutia's supplier from the PRC to continue to export.
- (587) The Commission clarified that the impact on the profitability of Solutia was calculated as follows: first, the Commission established the share of the cost of PVA sourced from the PRC in the total cost of production of the company, as verified on spot. The Commission then increased the company's PVA cost by the proposed duty, applied on the quantity of PVA it sourced from the PRC. The Commission found that the impact of the duties on Solutia were indeed meaningful in absolute figures, but limited when put in proportion to the total cost structure of the company. Furthermore, the Commission did not take into account certain assumptions made by the company concerning the future evolution of PVA prices as the facts suggested that these assumptions were not appropriate and Solutia provided no underlying evidence to the contrary. For confidentiality reasons, further details and the figures used in the Commission's calculation were provided in a separate document to the company only.

(588) Therefore, in the Commission's view, given the limited impact on Solutia's profitability, the anti-dumping duties would not prevent the company to continue sourcing PVA from the PRC, hence the company will maintain access to all its PVA suppliers. In addition, contrary to the claims of the company that the measures would affect also their competitive position vis-à-vis other PVB producers, the limited impact on Solutia's cost structure and profitability also indicates that there would be a limited impact on their competitiveness.

(589) The argument was therefore rejected.

(590) Solutia also claimed that the fact that PVB film is the main downstream application for PVA, and Solutia is one of the market leaders in this segment are mere assumptions not supported by facts.

(591) Contrary to this argument, the information collected during the investigation showed that PVB film production accounts for at least [30 % – 40 %] of the total PVA consumption in the Union and therefore it is, by far, the largest within the different downstream applications of PVA. Moreover, the Commission noted that, based on the data provided by the company itself in its questionnaire reply, out of four PVB film producers active in the Union market, Solutia had a significant market share and therefore it can be reasonably considered as one of the market leaders.

6.3.2. Polymerisation application and emulsions producers

(592) PVA is also used in polymerization applications as it facilitates the precise control of the grain formation and the resulting structure in emulsions and paints to regulate the viscosity of the final product.

(593) Two users, FAR Polymer and Celanese, and the second sampled Union producer of PVA which produced PVA only for its captive consumption, Wacker, came forward and cooperated in the proceeding. FAR Polymer and Wacker opposed the potential measures claiming that the imposition of anti-dumping measures would not be in the interest of the Union.

(594) In addition, Wacker argued that the Union PVA production was insufficient to meet the demand for this product and therefore the EU market for PVA was highly import reliant. In its opinion, imports from the country concerned have filled the market gap which cannot be filled by other countries.

(595) Moreover, the company claimed that, with the anti-dumping duties in force, the Chinese exporting producers would be prevented to access the market. Therefore, the two Union producers selling on the free market (which are related to exporting producers in USA, Japan and Singapore) would dominate the Union market and would be able to impose higher prices which will be detrimental for the Union users.

(596) Both users reiterated their arguments after disclosure.

(597) As regards the first point, the investigation has shown that the impact on the user's profitability will be negligible, even with anti-dumping duties in force, as the share of PVA in the cost of production of the users operating in this segment represents [3 % – 7 %] of the total cost.

(598) As far as the supply stability is concerned, as explained above in recital (563), the Union industry has at least 30 000 tonnes of spare capacity. Moreover, the biggest suppliers of the EU market were PVA producers located in third countries (namely Taiwan, USA and Japan), which already accounted for [37 % – 42 %] of the Union consumption. Finally, it must be noted that the sampled Union producer had a multi sourcing strategy and therefore do not source its PVA consumption exclusively from the producers located in the PRC.

(599) With regards to the last point it must be noted that:

(600) Firstly, as described in recital (497) and (498), the biggest exporter to the Union market (after the PRC) was Taiwan, with a market share of [13 % – 16 %], whose producers are not related to the Union industry.

(601) Secondly, significant quantities were imported also from USA and Japan ([12 % – 15 %] and [8 % – 11 %] market share, respectively) where there are at least three producers not related to the Union industry. Moreover, imports from other third countries, even if decreasing during the period considered, still held the largest market share on the Union free market (around [37 % – 42 %]) and their prices were on average 11 % cheaper than the prices of the Union industry.

- (602) Thirdly, as explained in recital (598), Wacker already sourced its PVA consumption from several different sources.
- (603) Finally, it is noted that anti-dumping measures aim to re-establish a fair competition and a level playing field in the Union market but do not aim to prevent imports from the country concerned. In this specific case, the investigation established that anti-dumping duties would not prevent the users of PVA to continue to source at a fair price from the PRC, as supported by the findings outlined in recital (597), namely that duties would have a minimal impact on the cost and profitability of the users in the polymerisation and emulsion segment.
- (604) Given the above, these claims were rejected.
- (605) Wacker requested to be granted an exemption from the proposed anti-dumping duties under the end-use regime under Article 254 of the Union Customs Code. In its request, Wacker argued that it needed the alternative of an additional qualified supplier to avoid facing a situation of supply refusal from the Union industry. Moreover, the imposition of duties, in Wacker's opinion, will negatively affect PVA market prices.
- (606) The Commission assessed the company's request on the basis of the all information collected during the investigation and the comments received after disclosure.
- (607) First, as explained above, Wacker already sourced a significant part of its purchases from the Union industry, and did not provide any evidence of any refusal of supply by the Union producers. In addition, the investigation revealed that after the Covid-19 pandemic started the complainant provided additional volume of PVA at short notice to different users in the Union. Second, as regards the alleged risk of anti-competitive behaviour by the Union industry the Commission noted that no evidences was provided supporting this statement. Moreover, in the Commission's view, the possible alternative sources of supply from third countries significantly limited this risk. Finally, polymerisation and emulsions are one of the main downstream application for PVA, and Wacker is one of the market leaders in this segment. As a result, granting such an exemption under end use control would risk to seriously undermine the effect of the measures. Therefore the request was rejected.

6.3.3. Paper and carton board producers

- (608) PVA is used to improve the strength, absorbance and appearance of paper and carton board products, in coated paper and in barrier coatings for release base paper. The paper segment accounted for about 16 % of the Union consumption of PVA.
- (609) Three users in this sector, Ahlstrom-Munksjö, August Koehler and Paul & Co. and two user association, CEPI and Assocarta, came forward during the proceeding and after disclosure, opposing the possible measures arguing the interest of the Union users of the product concerned in this segment.
- (610) The parties argued, and reiterated their claims after disclosure, that anti-dumping duties on an important input product such as PVA would undermine the Union paper industry's efforts at controlling costs, and thus their ability to compete. They claimed that, given the level of competition in the paper market especially from companies from the Asia-Pacific region, the Union paper producers would be in a disadvantaged position compared to non-EU producers, which would have access to cheaper PVA in a highly competitive market. These claims were repeated after the second additional disclosure.
- (611) Contrary to the arguments of the users, the investigation revealed that the impact of the PVA on the cost of production for the paper industry was negligible [1 % – 2 %]. Therefore, the imposition of anti-dumping duties would have a minimal impact on their cost and would not significantly affect their profitability.
- (612) Consequently, this claim was rejected.

6.3.4. Adhesives producers

- (613) PVA is used in the adhesive industry as a main component for the production of glues. This segment represented almost 14 % of the total Union consumption of PVA.
- (614) One producer in the adhesive segment came forward opposing the measure. The company claimed that anti-dumping measures on PVA would severely affect its profitability, as the company would not be able to pass this increase in prices to its customers. This argument was repeated by Cordial and Wegochem after disclosure.

- (615) As regards the adhesive sector, PVA constituted [40 % – 50 %] ⁽⁹⁷⁾ of the cost of the final product. In this situation, it appeared that the company would not be able to absorb the impact of the proposed anti-dumping duties.
- (616) After disclosure, Kuraray and Sekisui submitted that Cordial could not be considered, in their view, as a representative player for the specific segment of adhesives applications. In their opinion Cordial's products consist of a high PVA content mixes that only represents a minor part of the adhesives application segment.
- (617) The two Union producers argued that PVA represents around 2 % to 5 % of the cost of production of the major adhesives application of packaging adhesives and only in some specialized sectors the impact of PVA could go up to 10 % – 20 %. Therefore the 80 % cost impact of PVA to Cordial's business cannot be presumed to be representative of the adhesives segment.
- (618) After disclosure, Cordial also requested to be granted an exemption from the proposed anti-dumping duties under the end-use procedure set out in Article 254 of the Union Customs Code. This request was based on the peculiarity of its products, the limited number of PVA grades it imports specifically developed in cooperation with its single supplier, the impossibility to absorb the proposed duties given its cost structure and profitability levels, and the inexistence of any other viable alternatives that would enable the company to remain in the market.
- (619) The Commission reassessed the situation of producers of adhesives and the company's request in light of the comments received from all interested parties, in particularly Cordial, the Union industry, Cordial's customers and other adhesives users.
- (620) Based on all the information made available to the Commission after disclosure by several interested parties, the Commission agreed with the Union industry submission that the situation of Cordial could not be extrapolated to the whole adhesive sector, where PVA constitutes on average only 2 % to 5 % of the cost of production of the major adhesives application (packaging adhesives).
- (621) Given the small weight PVA normally represents in the cost of adhesives products, the investigation revealed, that switching suppliers, even when considering the need for a certification process, was feasible for users in the adhesive segment as the impact of measures on their total cost would not be significant.
- (622) On the other hand, when looking at the particular situation of Cordial, the same conclusion cannot be reached. The investigation showed that a major part of its production concerned dry-blend adhesives produced and sold in powder form, a niche product in comparison with the commonly produced liquid adhesives manufactured on the basis of PVA or PVAc. Its clients have structured their production process in order to benefit from Cordial's tailor-made adhesives and to gain a consistent saving in transport costs as explained in recital (626). Switching to liquid adhesives would mean to restructure their complete production process.
- (623) Because of this innovative product, Cordial's cost structure is different from the average in the adhesives industry. PVA constituted at least [40 – 50 %] of the cost in case of Cordial. Differences are among others due to the fact that the proportion of PVA used per tonne of dry-blend adhesives is higher than in liquid adhesives. Given the peculiarity of the product developed by Cordial, it would be virtually impossible for the company to switch to non-PVA based products, as it would require a complete re-formulation of its glue composition.
- (624) In terms of alternative sources of supply, switching to the Union industry or other sources after the imposition of the measures would not be an option for the company. In fact, the company has already tried to establish new partnerships but, due to its small size, it was not able to establish a long-term relationship with alternative suppliers (a long term relationship would be required in order for suppliers to adapt to Cordial's product requirements). The company submitted evidence that it has indeed tried in the past to purchase PVA from a Taiwanese producer, but could not conclude any deal, as this producer sells exclusively via a trader in the EU and was not willing to adapt its products to Cordial's requirements. All these elements combined with the need for a certification process makes it unviable for the company to switch to other suppliers.

⁽⁹⁷⁾ This figure has been revised following the disclosure.

- (625) Finally, the company operates on a highly competitive market with very small profit margins. In this situation, the evidence indicates that the company would not be able to absorb the impact of the proposed anti-dumping duties and would most likely go bankrupt.
- (626) After disclosure, several downstream users of Cordial's products in the paper and carton board industry also came forward opposing the measures. They claimed that the share of Cordial's adhesives in their cost of production was significant (around [10 % – 25 %]). Therefore, any negative impact of the measures on their supplier of dry-blend adhesives would also negatively affect them. In addition, they would have to restructure their production equipment to fit the use of a completely different product. Finally, switching from dry to liquid adhesives would also mean a significant increase in transport costs (1 tonne of dry adhesive equals 5 to 8 tonnes of liquid adhesives).
- (627) The Commission also examined the effect of any possible exemption of duties under an end-use procedure on the effectiveness of the measures. In this respect, the Commission noted that the adhesives market segment represented 17 % of the Union consumption, and that the only producer of dry-blend adhesives that came forward only represented 4 % of this segment. Thus, the Commission concluded that granting such an exemption would not have a negative impact on the effectiveness of the measures.
- (628) Given the above, the Commission decided to exceptionally place the imports of PVA used for the manufacturing of dry-blend adhesives, produced and sold in powder form for the carton board industry, under the end-use procedure referred to in Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽⁹⁸⁾. This end-use procedure will be strictly limited to dry-blend adhesives and under no circumstances will cover any other products (for example, liquid adhesives) produced by adhesive producers.
- (629) After the second additional disclosure, Cordial requested the Commission to subject companies wishing to avail themselves of the end-use exemption to a system of ex ante authorization by the Commission to ensure that they engage in genuine manufacturing of dry-blend adhesives.
- (630) In this regards, the Commission clarified that the end-use exemption as described in recital (628) is not company-specific, but applies to all dry-blend adhesives producers in a non-discriminatory manner. Moreover, the monitoring and application of the procedure referred to in Article 254 of Regulation (EU) No 952/2013 is to be carried out by the Member States' custom authorities. That procedure establishes requirements and checks that ensure that exemptions are limited to the end-use as established. Thus, it is not appropriate nor necessary that the Commission take any additional actions.
- (631) The request was therefore rejected.
- (632) After the second additional disclosure, the complainant argued against the legal basis and the effectiveness of the end-use exclusion as applied to Cordial. In its view, the company was not exclusively engaged in the production of dry-blend adhesives, as it also produced liquid adhesives and traded PVA imported from the PRC without applying any transformation process.
- (633) These arguments had to be dismissed. The Commission has assessed the impact of measures on all parties concerned and concluded that overall it is not against the interest of the Union to apply measures in this case. However, as explained in recitals (622) to (625), the investigation revealed that, unlike other users of PVA, a very limited set of users producing dry-blend adhesives would not be able to absorb measures. For this reason, the Commission decided to have recourse to the procedure foreseen in Article 254 of Regulation (EU) No 952/2013, which is completely in order with its level of discretion. Moreover, the end-use procedure will be strictly limited to the manufacturing of dry-blend adhesives and will not cover any other products, whether produced or traded by adhesive producers. Therefore, any purchase of Chinese PVA for any other production or trading activities of Cordial (or any other dry-blend adhesives) will in any case not benefit from the duty exemption. The Commission recalls that the end-use exemption is a burdensome procedure for users who want to benefit from it and that they will be under strict customs control, which ensures compliance.

⁽⁹⁸⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (634) Two importers, Gamma Chimica and Carbochem, and one user, Far Polymers, argued after the second additional disclosure that the conditions on the basis of which the Commission granted the end-use exemption to dry-blend producers also applied to them. Therefore, the companies asked the Commission to extend the end-use procedure to them. In their view, similar to Cordial, they all sell PVA and PVA blends in powder or liquid form and their customers have structured their production process in order to use the blended PVA supplied by them.
- (635) The Commission disagreed that these companies were in the same situation as producers of dry-blend adhesives.
- (636) The information collected during the investigation showed that the largest part of PVA imported by Gamma Chimica and Carbochem was simply repacked and sold to end users. A minor quantity was mixed with additives or dissolved in water according to customers' requests. However, none of these processes consists in an actual transformation of the product concerned. Therefore, even for these sales, the companies were still considered importers, trading goods produced by other companies. The end-use procedure applies only to the final users and not to intermediaries. Thus, the end-use exemption would not even be an option available to these two importers. In addition, contrary to the companies' claims, the investigation revealed that there were no issues securing alternative sources of supply because, as confirmed by the companies during the investigation, their PVA purchases were not dependent on technical constraints. Finally, as explained in recital (555) and (556), the PVA share in the importers' turnover ranged from 10 % to 40 % and their profitability levels were found sufficient to absorb at least part of the duties.
- (637) Far Polymers is active in the emulsions and polymerisation sector. As mentioned in recital (597), the share of PVA in the cost of production of the users operating in this segment represented [3 % – 7 %] of the total cost. Far Polymers claimed that the share of PVA used per tonne of finished product was [10 % – 15 %]. However, the percentages mentioned by Far Polymers in support of its claim referred to the quantity of product used and not to its share in the cost of production. Therefore, the conclusions of section 6.3.2 for the emulsions and polymerisation sector remain valid for Far Polymers.
- (638) The Commission concluded that none of these companies were in a situation similar to the one of dry-blend adhesive producers. Therefore, these claims were rejected.

6.4. Additional comments after Disclosure

- (639) After disclosure several parties, Ahlstrom-Munksjö, Carbochem, Cordial, Solutia, Wacker and Wegochem repeated the argument that the Union market is highly import reliant and that the Union industry does not have enough capacity. They argued that both KEG and Sekisui invested in two downstream plants, in the Netherlands and in Poland, which will increase their captive consumption and hence will decrease their capacity to supply the free market. They also argued that the third countries are not a viable alternative source as they don't have enough spare capacity. Solutia reiterated this argument after the second additional disclosure.
- (640) Contrary to these arguments the investigation confirmed that the Union industry has sufficient capacity to supply the Union free market as it has still 30 000 tonnes of spare capacity available. Moreover, as explained above in recital (447) the Union industry did not reduce permanently its production capacity as it just mothballed two production lines that can be reactivated at short notice.
- (641) As regards the plant in the Netherlands, the Commission noted that there was no information on when it will become operative. Moreover, information collected during the investigation suggested that it will source at least part of the PVA grades from outside the Union. Concerning the plant in Poland, information received after disclosure confirmed that it will use mostly copolymers, which are outside the scope of the product concerned, and that these will be sourced from KEG plants outside the Union.
- (642) The argument concerning the lack of supply capacity of the third countries had to be rejected as well as the information collected during the investigation confirmed that the Taiwanese producer has still significant spare production capacity available.

- (643) Furthermore, a downstream user of the PVB and polymerisation sectors, Saint Gobain, came forward opposing the proposed measures. Saint Gobain sources PVB film for its automotive and building glass production and purchases PVA-based redispersible powder (RPD) and liquid dispersions polymer (LDP) for its gypsum and mortar production. RDP and LDP are products of PVA users active in the emulsions and polymerisation sector.
- (644) Saint Gobain argued that the adoption of the proposed antidumping duties on PVA from the PRC would have a significant impact on its activities. Being a user of PVA-based products the duties would negatively affect its purchase prices and hence its cost of production and, in the company's view, it was unlikely that any of the increased costs could be passed on to the customers.
- (645) The Commission disagreed with this argument. As explained above in recitals (579) and (597), the impact of the duties on the costs and profitability of the users in the PVB and in the polymerisation sectors will be minor, hence its effect on a further downstream sector will be negligible. These claim were therefore rejected.

6.5. Conclusion on Union interest

- (646) The imposition of measures is clearly in the interest of the Union PVA industry selling on the free market. Without measures, Chinese producers will continue to dump PVA on the Union market preventing the Union industry to regain its profitability.
- (647) The argument, put forward by some of the users, that the Union is highly import reliant for its supply stability should be considered taking into account that, without the Union industry, the Union would lose about [50 % – 60 %] of its supply capacity⁽⁹⁹⁾ of PVA.
- (648) With regard to the users in the PVB and polymerization segments, it is important to point out that they sourced only a limited part of their PVA consumption from China, and that the impact of any measures on their profitability will be minor. The competitiveness of the paper and the adhesives industry in general will also not be affected, as PVA represented a minor part of their production cost. 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 definitive measures on imports of PVA originating in the country concerned.

7. DEFINITIVE ANTI-DUMPING MEASURES

- (649) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, definitive anti-dumping measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

7.1. Injury elimination level (Injury margin)

- (650) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (651) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.
- (652) The basic profit margin of the Union industry realised before the increase of dumped imports (2015) was added to the level of investments, R&D and innovation ('IRI') under normal conditions of competition, expressed as a percentage on turnover. Since this amounted to less than 6 %, the target profit was set at 6 % which is the minimum target profit margin to be applied in accordance with Article 7(2)(c).
- (653) As no claims were made pursuant to Article 7(2)((d) concerning current or future costs which result from multi-lateral environmental agreements and protocols thereunder or from the listed ILO Conventions, no further costs were added to the non-injurious prices thus established.

⁽⁹⁹⁾ Total free market and captive consumption.

- (654) The Commission then determined the injury elimination 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 free market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. The resulting average underselling margin was 57,9 %.
- (655) After final disclosure, Wacker argued that the non-injurious price of the Union industry established by the Commission per PCN should be corrected to exclude the cost of the PVA grades not sold by the Chinese companies, and contested the 6 % target profit used by the Commission in the calculation. Concerning Wacker's first claim, the Commission clarifies that it only used the cost of production of the Union industry PCNs for which it found a comparable exported PCN.
- (656) As regards the target profit level, as mentioned in recital (652) above, this level was established in line with the provision of Article 7(2)(c) of the basic Regulation. These claims were thus rejected.
- (657) The injury elimination level for 'other cooperating companies' and for 'all other companies' was defined in the same manner as the dumping margin for these companies (see recitals (393) and (396)).

7.2. Definitive measures

- (658) Definitive anti-dumping measures should be imposed on imports of certain polyvinyl alcohols originating in the People's Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (659) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Definitive anti-dumping duty
Shuangxin Group	115,6 %	72,9 %	72,9 %
Sinopec Group	17,3 %	57,6 %	17,3 %
Wan Wei Group	193,2 %	55,7 %	55,7 %
Other cooperating companies	80,4 %	57,9 %	57,9 %
All other companies	193,2 %	72,9 %	72,9 %

- (660) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected 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 PRC 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 companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (661) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission⁽¹⁰⁰⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it.

⁽¹⁰⁰⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

- (662) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.
- (663) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁽¹⁰¹⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

7.3. Special monitoring clause

- (664) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) hereof. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (665) 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 the Member States should carry out their usual checks and should, 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.
- (666) 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.

8. DISCLOSURE

- (667) On 3 July 2020, interested parties were informed of the essential facts and considerations based on which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of PVA originating in the PRC.
- (668) Interested parties were also granted a period within which they could make representations subsequent to this disclosure. 17 parties submitted comments on disclosure. Upon request, hearings were held with Kuraray, Sekisui, Wacker, Cordial, Solutia, Ahlstrom-Munksjö, Sinopec and Wegochem..
- (669) Following the comments received in response to the disclosure, interested parties were informed on 24 July and on 6 August 2020 of additional facts and considerations which had not been part of the final disclosure of 3 July 2020. Additional comments were received from the Union industry, the Chinese exporting producers, and several users.
- (670) Upon request, hearings were held with Kuraray, Sekisui, Wacker, Cordial, Solutia, Ahlstrom-Munksjö, Sinopec and Wegochem.
- (671) The comments submitted by interested parties were duly considered, and, where appropriate, the findings have been modified accordingly.
- (672) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion and a simple majority of its component members opposed the draft Commission implementing Regulation. The Commission then resubmitted the draft Commission implementing Regulation to the Appeal Committee in accordance with Article 5(5) of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁰²⁾.

⁽¹⁰¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulation (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1)

⁽¹⁰²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(673) In accordance with Article 6(3) of Regulation (EU) No 182/2011, the appeal committee did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of polyvinyl alcohol, whether or not containing unhydrolysed acetate groups, in the form of homopolymer resins with a viscosity (measured in 4 % aqueous solution at 20 °C) of 3 mPa·s or more but not more than 61 mPa·s and a degree of hydrolysis of 80,0 mol % or more but not more than 99,9 mol %, both measured according to the ISO 15023-2 method, originating in the People's Republic of China, currently falling under CN code ex 3905 30 00 (TARIC code 3905 30 00 91).

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

Company	Definitive anti-dumping duty (%)	TARIC additional code
Shuangxin Group	72,9 %	C552
Sinopec Group	17,3 %	C553
Wan Wei Group	55,7 %	C554
Other cooperating companies listed in Annex I	57,9 %	See Annex I
All other companies	72,9 %	C999

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

4. Products described in paragraph 1 shall be exempted from the definitive anti-dumping duty if they are imported for the manufacturing of dry-blend adhesives, produced and sold in powder form for the carton board industry. Such products shall be placed under the end-use procedure referred to in Article 254 of Regulation (EU) No 952/2013 in order to demonstrate that they are imported exclusively for the above-mentioned use.

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

Article 2

Where a new exporting producer from the People's Republic of China provides sufficient evidence to the Commission, the Annex may be amended by adding that new exporting producer to the list of cooperating companies not included in the sample and thus subject to the appropriate weighted average anti-dumping duty rate, namely 57,9 %. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period of investigation (1 July 2018–30 June 2019);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the goods described in Article 1(1) originating in the People's Republic of China or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation

Article 3

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

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

Done at Brussels, 25 September 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

Chinese cooperating exporting producers not sampled

Name	TARIC additional code
Chang Chun Chemical (Jiangsu) Co., Ltd.	C555