



2023/2653

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COMMISSION IMPLEMENTING REGULATION (EU) 2023/2653

of 27 November 2023

amending Implementing Regulation (EU) 2023/1776 imposing a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China following a 'new exporter' review pursuant to Article 11(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

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 11(4) thereof,

Having regard to Commission Implementing Regulation (EU) 2023/1776 of 14 September 2023 imposing a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽²⁾,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) Following an investigation ('the original investigation'), the Council imposed, by Council Implementing Regulation (EU) No 457/2011 ⁽³⁾, a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China ('the PRC').
- (2) In July 2017, by Implementing Regulation (EU) 2017/1171 ⁽⁴⁾, the Commission re-imposed the definitive anti-dumping duty on imports of melamine originating in the PRC following an expiry review ('first expiry review').
- (3) On 15 September 2023, by Implementing Regulation (EU) 2023/1776, the Commission re-imposed the definitive anti-dumping duty on imports of melamine originating in the PRC following a second expiry review ('second expiry review').
- (4) The measures currently in force have the form of a fixed duty of 415 EUR/tonne on all imports from the PRC with the exception of three cooperating Chinese exporting producers whose exports are subject to a minimum import price of 1 153 EUR/tonne.

1.2. Request for a new exporter review

- (5) On 26 April 2022, the Commission received a request for a 'new exporter' review ('the request') pursuant to Article 11(4) of the basic Regulation. The request was lodged by Xinjiang Xinlianxin Energy Chemical Co., Ltd. ('the applicant' or 'Xinjiang XLX'), an exporting producer of melamine in the PRC.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 228, 15.9.2023, p. 199.

⁽³⁾ Council Implementing Regulation (EU) No 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China (OJ L 124, 13.5.2011, p. 2).

⁽⁴⁾ Commission Implementing Regulation (EU) 2017/1171 of 30 June 2017 imposing definitive anti-dumping duties on imports of melamine, originating in the People's Republic of China (OJ L 170, 1.7.2017, p. 62).

- (6) The request contained evidence that the applicant was a new exporting producer pursuant to Article 11(4) of the basic Regulation, namely: (1) it did not export the product under review to the Union during the investigation period on which the anti-dumping measures were based (1 January 2009 to 31 December 2009) ('original investigation period'); (2) it is not related to any of the exporting producers of the product under review which are subject to the anti-dumping duties in force; (3) it began exporting the product under review to the Union after the end of the original investigation period.
- (7) The Commission found that the request provided sufficient evidence to warrant the initiation of an investigation pursuant to Article 11(4) of the basic Regulation for the purpose of determining an individual margin of dumping for the applicant.

1.3. Initiation of the new exporter review

- (8) On 1 March 2023, by Implementing Regulation (EU) 2023/442 ⁽⁹⁾, the Commission initiated the review with the purpose of determining an individual margin of dumping for the applicant ('initiating Regulation').
- (9) The Commission invited interested parties to participate in the review investigation. All interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission or the Hearing Officer in trade proceedings or both within the time limits set in the initiating Regulation. No comments or requests for a hearing were received.

1.4. Product under review

- (10) The product under review is melamine currently falling under CN code 2933 61 00, originating in the PRC.
- (11) Melamine is a white crystalline powder produced predominantly from urea and is used mainly for producing laminates, resins, wood adhesives, moulding compounds and paper/textile treatments.

1.5. Review investigation period

- (12) The investigation covered the period from 1 January 2022 to 31 December 2022 ('review investigation period'). However, the Commission reserved the right to also examine if transactions may have occurred in a subsequent period, and to amend the review investigation period as appropriate in light of the findings of the investigation.

1.6. Investigation

- (13) The Commission requested the applicant to complete a questionnaire in order to obtain information it deemed necessary for its investigation. The applicant submitted the questionnaire reply on 13 April 2023.
- (14) The Commission carried out a verification visit at the premises of the applicant in June 2023. The Commission sought to verify all information it deemed necessary for the purpose of determining whether the applicant met the new exporter criteria and of determining an individual dumping margin.

1.7. Subsequent procedure

- (15) On 18 August 2023, the Commission disclosed the essential facts and considerations on the basis of which it intended to establish an individual dumping margin for the applicant. All parties were set a deadline within which they could make comments on the disclosure and request a hearing.

⁽⁹⁾ Commission Implementing Regulation (EU) 2023/442 of 28 February 2023 initiating a 'new exporter' review of Implementing Regulation (EU) 2017/1171 imposing a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration (OJ L 64, 1.3.2023, p. 12).

- (16) Comments were received from the applicant. The comments were considered by the Commission and taken into account, where appropriate. No party requested a hearing.
- (17) Following the comments on disclosure, the Commission disclosed revised findings on 7 October 2023 ('additional disclosure'). The interested parties were given an opportunity to comment on the additional disclosure and request a hearing.
- (18) Comments on the additional disclosure were received from the applicant. They were also considered by the Commission and taken into account, where appropriate. No party requested a hearing.

2. 'NEW EXPORTER' STATUS

- (19) Xinjiang XLX was established in 2011 by Henan Xinlianxin Chemicals Group Co., Ltd. ('Henan XLX') ⁽⁶⁾. It started producing melamine after acquiring the necessary production technology from the Italian company Eurotecnica for two production lines in 2016 and 2018 respectively ⁽⁷⁾. Therefore, the Commission concluded that the applicant did not produce and/or export the product under review to the Union during the original investigation period.
- (20) The investigation identified a significant number of companies related to the applicant ⁽⁸⁾. The ultimate owner of the applicant is China XLX Fertiliser Ltd. ('China XLX'). The China XLX group comprises more than 40 companies. China XLX has a controlling interest of more than 75 % in Henan Xinlianxin Chemical Group Co., Ltd. ('Henan XLX'), the direct mother company of the applicant. The applicant is a wholly owned subsidiary of Henan XLX. The investigation found that none of the companies in the China XLX group, except for the applicant, produced melamine. Consequently, the Commission concluded that the applicant was not related to any of the exporting producers of the product under review which are subject to the anti-dumping duties in force.
- (21) Finally, the investigation confirmed that the applicant exported the product under investigation to [1-4] independent customers in the Union in the review investigation period. Therefore, the Commission concluded that the applicant actually exported to the Union after the original investigation period.
- (22) Consequently, the Commission concluded that the applicant met the conditions to be considered a new exporter under Article 11(4) of the basic Regulation as (1) it did not export the product under review to the Union during the original investigation period; (2) it is not related to any of the exporting producers of the product under review which are subject to the anti-dumping duties in force; (3) it actually exported to the Union after the original investigation period.

3. DUMPING

3.1. Procedure for the determination of the normal value

- (23) In the framework of the second expiry review, the Commission made findings of the existence of significant distortions concerning the production and sales of melamine in the PRC pursuant to Article 2(6a)(b) of the basic Regulation. The expiry review and the present review concerned the same product and had an overlapping review investigation period ⁽⁹⁾. Therefore, the Commission found it appropriate to take the findings of significant distortions in the PRC into consideration for the determination of the normal value in the present new exporter review.
- (24) In order to obtain information necessary for the determination of the normal value under Article 2(6a) of the basic Regulation, the Commission relied on the selection of an appropriate representative country made in the second expiry review. Türkiye was found to meet the criteria set out in first indent of Article 2(6a) of the basic Regulation.

⁽⁶⁾ Available at <https://www.xlxchemicals.com/index/company> (last viewed 25 July 2023).

⁽⁷⁾ Eurotecnica, Reference list 2023, p. 3. Available at <https://www.eurotecnica.it/images/PDF/reflist.pdf> (last viewed 25 July 2023).

⁽⁸⁾ China XLX Fertiliser Ltd., Annual report 2022, p. 228–233. Available at <https://www.hnxx.com.cn/Uploads/PdfPic/2023-04-26/6449105b6c7b5.pdf> (last viewed 25 July 2023).

⁽⁹⁾ Review investigation period of the second expiry review covered the period from 1 July 2021 to 30 June 2022 and of the new exporter review the period from 1 January 2022 to 31 December 2022.

- (25) On 17 July 2023, the Commission issued a note on the sources for the determination of the normal value ('Note on sources') it intended to use for determining the normal value of the applicant.
- (26) In the Note on sources, the Commission informed interested parties that it intended to follow the analysis of the second expiry review and use Türkiye as a representative country. The note also listed the relevant sources the Commission intended to use for the determination of the normal value with Türkiye as the representative country.
- (27) It further informed interested parties that it would establish selling, general and administrative expenses and profit based on publicly available information for Turkish producers of products in the ammonia value chain, of which melamine is also a part.
- (28) Finally, by the Note on sources, the Commission invited interested parties to comment on the sources and the appropriateness of Türkiye as a representative country and to suggest other countries, provided they would submit sufficient information on the relevant criteria.
- (29) The Commission received comments from the applicant concerning the benchmarks the Commission intended to use. Those comments were addressed in Section 3.2.3 of this Regulation.

3.2. Normal value

- (30) 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'.
- (31) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').
- (32) As further explained Section 3.2.1 below, the Commission concluded in the present investigation that the application of Article 2(6a) of the basic Regulation was appropriate.
- (33) Consequently, in accordance with Article 2(6a) of the basic Regulation, the normal value was constructed based on the verified list and consumption quantity of inputs provided by the applicant and undistorted costs and profit from an appropriate representative country.

3.2.1. Existence of significant distortions

- (34) The analysis set out in Section 3.2.2.1 of Implementing Regulation (EU) 2023/1776, which included an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the sector of the product under review, showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, were not the result of free market forces because they were 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, the Commission concluded that it was not appropriate to use domestic prices and costs to establish normal value in the second expiry review. For reasons explained in recital (23) above, the Commission considered those conclusions also relevant for the present new exporter review.
- (35) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.2. Representative country

- (36) In the second expiry review, the choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽¹⁰⁾;
 - Production of melamine in that country ⁽¹¹⁾;
 - Availability of relevant public data in the representative country.
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (37) As explained in recital (25), in the present review, the Commission issued a Note on sources that described the facts and evidence underlying the relevant criteria. In addition, it informed interested parties that in the present case as in the second expiry review ⁽¹²⁾, it intended to use Türkiye as an appropriate representative country.
- (38) Regarding production of melamine, in the second expiry review, seven countries (India, Iran, Japan, Qatar, Russia, Trinidad & Tobago, and the United States of America) where production took place were examined.
- (39) Regarding the level of economic development, only Russia qualified as a country at a level of development similar to the PRC in the review investigation period. However, given the fact that the main raw material for melamine is gas that is distorted in Russia, together with the sanctions in force, as well as the fact that Russia decided not to publish detailed import and export data as from April 2022, the Commission did not consider that Russia would constitute a suitable representative country.
- (40) In this respect, the second expiry review identified Türkiye as a country at a level of economic development similar to the PRC with production in the same general category of products, namely products in the ammonia value chain, of which melamine is also a part.
- (41) Regarding the availability of relevant public data in the representative country, data on important factors of production was readily available with regard to Türkiye. Furthermore, relevant data on SG&A and profit was publicly available for the same general category of products. The second expiry review identified three producers in the same general category of products, the companies Ege Gübre Sanayii A.Ş. ('Ege Gübre'), Tekfen Holding A.Ş. ('Tekfen') and Bağfaş Bandırma Gübre Fabrikaları A.Ş. ('Bağfaş'). All three companies were producers of nitrogen fertilisers ⁽¹³⁾.

3.2.3. Undistorted costs and benchmarks and sources used to establish them.

- (42) Considering all the verified information submitted by the applicant, and after analysing its comments on the Note on sources, the following factors of production, their sources and undistorted values have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

⁽¹⁰⁾ World Bank Open Data – Upper Middle Income. Available at <https://data.worldbank.org/income-level/upper-middle-income> (last viewed 3 July 2023).

⁽¹¹⁾ If there is no production of melamine in any country with a similar level of development, production of a product in the same general category and/or sector of melamine may be considered.

⁽¹²⁾ For full analysis of the representative country in the second expiry review, see Section 3.2.2.2 of Implementing Regulation (EU) 2023/1776.

⁽¹³⁾ The ultimate raw materials used in the production of melamine and nitrogen fertilisers are natural gas or coal. Natural gas or coal are used to make ammonia. Ammonia can be further processed into urea or nitric acid. Nitric acid is used to produce ammonium nitrate, which is a nitrogen fertiliser. It can be further mixed to make other types of nitrogen fertilisers, e.g. urea ammonium nitrate ('UAN'; ammonium nitrate mixed with urea) or calcium ammonium nitrate ('CAN'; ammonium nitrate mixed with calcium from limestone). Urea, with an addition of ammonia, can also be used to produce melamine. Nitrogen fertilisers, urea and melamine are often produced by the same vertically integrated companies.

Table 1

Factors of production of melamine

Factor of Production	Commodity Code in Türkiye/HS Code ⁽¹⁴⁾	Undistorted value (CNY)	Unit of measurement	Source of information
Raw materials				
Non-metallurgical bituminous coal	2701 12 90	1 339,49	tonne	Global Trade Atlas ('GTA') ⁽¹⁵⁾
Other coal	2701 19	798,24	tonne	GTA
Oxygen	2804 40	1,21	m ³	GTA
Energy/Utilities				
Electricity	n/a	0,55	kWh	International prices
Natural gas	n/a	2,83	m ³	International prices
Water (desalted)	n/a	8,78	tonne	Kocaeli City Water and Sewerage General Directorate
Water (raw)	n/a	6,60	tonne	Kocaeli City Water and Sewerage General Directorate
Labour				
Labour	n/a	37,03	hour	Turkish Statistical Institute

3.2.3.1. Raw materials

- (43) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in GTA to which import duties ⁽¹⁶⁾ and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members to the WTO ('non-WTO countries'), listed ⁽¹⁷⁾ in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽¹⁸⁾.
- (44) The Commission decided to exclude imports from the PRC into the representative country as it concluded in Section 3.2.1 of this Regulation that it was 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 imports from the PRC and non-WTO countries into the representative country, the volume of imports from other third countries remained representative with regard to non-metallurgical bituminous coal.

⁽¹⁴⁾ For 'other coal' and oxygen, the commodity code was based on the Nomenclature established under the International Convention on the Harmonized Commodity Description and Coding System.

⁽¹⁵⁾ Available at <https://connect.ihsmarkit.com/gta/home> (last viewed 27 July 2023).

⁽¹⁶⁾ International Trade Centre, Market Access Map. Available at <https://www.macmap.org/en/query/customs-duties> (last viewed 5 April 2023).

⁽¹⁷⁾ Azerbaijan, Belarus, North Korea, Turkmenistan, Uzbekistan.

⁽¹⁸⁾ 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.

- (45) The Commission nevertheless found that Türkiye imported rather limited quantities of 'other coal' and oxygen in the review investigation period. Therefore, the Commission considered it appropriate to base the undistorted cost of those raw materials on international prices or benchmarks pursuant to Article 2(6a)(a) second indent of the basic Regulation.
- (46) In this respect, for 'other coal', the Commission used the average export price of Indonesia to all countries, excluding the PRC and non-WTO countries, in the review investigation period. Indonesia was the top exporter of 'other coal' in 2022, representing 92 % of total exports in that period. With regard to oxygen, the Commission relied on the weighted average export price of South Africa, Serbia and Türkiye to all countries, excluding the PRC and non-WTO countries, in the review investigation period. South Africa, Serbia and Türkiye were major exporters of oxygen in 2022, representing 35 % of total exports in that period. The Commission decided not to use exports of the Union and Switzerland, other top exporters of oxygen, as the sources of undistorted cost because of their higher level of economic development.
- (47) The Commission examined whether non-metallurgical bituminous coal, for which Turkish import statistics were used as the source of undistorted cost, was subject in Türkiye to export restrictions that could potentially distort the domestic prices and therefore also the import prices ⁽¹⁹⁾. The Commission found that Türkiye did not apply any export restrictions on exports of non-metallurgical bituminous coal in the review investigation period.
- (48) The Commission further examined whether the import prices might have been distorted by imports from the PRC and non-WTO countries. The Commission found that less than 0,1 % of imports of non-metallurgical bituminous coal originated in the PRC and non-WTO countries in the review investigation period.
- (49) In its comments on the Note on sources, the applicant argued that the Commission should not use one of the benchmarks for coal as it did not correspond to the type of coal used by the company in the production of melamine.
- (50) The Commission disagreed. The applicant provided information on all purchases of coal in the review investigation period including its specifications, in particular its calorific value and ash content. That information was verified on spot and sufficiently supported by evidence submitted by the applicant. The Commission found that in terms of calorific value, the applicant indeed used two different types of coal. Therefore, the applicant's claim was rejected.
- (51) Following disclosure, the applicant reiterated that the feed coal used in melamine production was different from coal classified under HS code 2701 12. The party maintained that for coal to be classified under that code, it has to meet both criteria – having a calorific value equal to or higher than 5 833 kcal/kg and a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14 %.
- (52) The Commission rejected the claim. As explained in recital (50), the applicant reported the calorific value and ash content (but not the volatile matter content) for all purchases of coal in the review investigation period. Sample laboratory results collected as evidence during the on-spot verification, however, showed that purchased coal with a calorific value of more than 5 833 kcal/kg had also a volatile matter content exceeding 14 %.
- (53) In addition, following a claim, which contained sensitive, company specific information and was therefore in detail addressed in an additional specific disclosure, the Commission found that the company mixed coal with varying calorific value before using it as either feed or fuel coal. Although, the weighted average calorific value of feed coal was above 5 833 kcal/kg and of fuel coal below that threshold, to reflect the mixing of different types of coal in the undistorted value of feed coal and fuel coal, the Commission recalculated the benchmark. The Commission assigned the applicable undistorted cost of either non-metallurgical bituminous coal or 'other coal' specifically to each purchase transaction based on its individual calorific value.

⁽¹⁹⁾ Global Trade Alert. Available at https://www.globaltradealert.org/data_extraction (last viewed 29 June 2023).

- (54) For a number of factors of production, the actual costs incurred by the applicant represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables. The value of consumables as incurred by the applicant was expressed as a share of its actual cost of direct materials. To determine an undistorted value of consumables, that percentage was applied to undistorted cost of direct materials.
- (55) Following disclosure, the applicant recalled that it considered oxygen a consumable and reported it as such in its questionnaire reply. The applicant maintained that oxygen should be treated as a consumable, in particular since the Commission did not specifically verify its consumption quantity during the on-spot verification, neither did it instruct the company to treat oxygen as a raw material. The applicant reiterated this claim in its comments on additional disclosure.
- (56) The Commission clarified that the reported value of consumables was substantial in terms of their share on total raw material cost. Therefore, following the on-spot verification, the Commission further analysed the collected information and decided to treat oxygen as an individual raw material. This reduced the value of consumables to a non-significant share on total raw material cost. Moreover, the consumption quantity of oxygen was included in the cost tables submitted by the company and verified on spot. Therefore, the Commission considered the reported consumption quantity of oxygen sufficiently reliable. Consequently, the claim was rejected.
- (57) With regard to transport cost mentioned in recital (43), the Commission expressed the transport cost incurred by the applicant for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

3.2.3.2. Water

- (58) In the Note on sources, the Commission informed the interested parties that it intended to use prices in Türkiye applicable to industrial users as charged by the Kocaeli City Water and Sewerage General Directorate ⁽²⁰⁾, which is responsible for water supply, sewage collection and treatment in the Kocaeli province. The applicable prices were publicly available on the website of the respective authority.
- (59) The Turkish authority distinguished two types of industrial users: (1) regular industrial users, to which it applied tariffs for water and sewage; and (2) industrial users located in Organised Industrial Districts with a common water treatment facility. Industrial users located in such districts were not charged the sewage tariff.
- (60) Since the applicant used a production technology that did not produce wastewater, the Commission used tariffs applicable to the supply of water (excluding sewage tariff) as undistorted cost of raw water. To determine the undistorted cost of desalted water, which the applicant produced itself by processing raw water, the Commission relied on the ratio between the cost of raw and desalted water as reported by the applicant. The Commission considered that, in the context of this investigation, that ratio could be reasonably used as an indication to estimate the undistorted costs of desalted water.

3.2.3.3. Electricity and natural gas

- (61) In the second expiry review, the Commission found that the prices of electricity and natural gas in Türkiye increased in the first half of 2022 at a rate that outpaced the inflation rate in the country ⁽²¹⁾. In addition, the information on prices of electricity and natural gas in the second half of 2022 were not published by the Turkish Statistical Institute. Therefore, considering the partially different review investigation periods of the second expiry review and

⁽²⁰⁾ Available at <https://www.isu.gov.tr/sufiyatlari/> (last viewed 30 January 2023).

⁽²¹⁾ See recital (171) of Implementing Regulation (EU) 2023/1776.

this new exporter review and given the absence of data for the second half of 2022, the Commission based the undistorted cost of electricity and natural gas on a basket of countries at a level of economic development similar to the PRC typically used as representative countries in other investigations which also produced products in the ammonia value chain, in particular the nitrogen fertilisers.

- (62) The Commission identified Brazil and Malaysia as the top two producers of nitrogen fertilisers based on the statistics recorded by the Food and Agriculture Organization of the United Nations ('FAO') ⁽²²⁾.
- (63) In Brazil, the electricity prices were publicly available on the website of the electricity company CEMIG ⁽²³⁾. The Commission used tariffs applicable to customers in the 'medium/high voltage' category. The final electricity price consisted of charge for electricity power (kW) and charge for consumption (kWh). In Malaysia, the electricity prices were publicly available on the website of the electricity utility company TNB ⁽²⁴⁾. The Commission used tariffs applicable to customers in the 'medium voltage' category. The final electricity price consisted of charge for electricity power (kW) and charge for consumption (kWh). The benchmark was determined as a simple average of the electricity prices established in Brazil and Malaysia.
- (64) In Brazil, the historical prices of natural gas were publicly available on the website of the natural gas distributor GASMIG ⁽²⁵⁾. Any revisions of the prices in the review investigation period were publicly available on the LegisWeb ⁽²⁶⁾. The Commission used natural gas tariffs applicable to industrial users and selected a consumption band in line with the applicant's consumption of natural gas. In Malaysia, the historical price of natural gas was publicly available in the statistics published by the Energy Commission ⁽²⁷⁾. The most recent information available covered year 2019. Therefore, the Commission updated the tariffs applicable to industrial customers using the energy price inflation rate ⁽²⁸⁾. The benchmark was determined as a simple average of the natural gas prices established in Brazil and Malaysia.

3.2.3.4. Labour

- (65) The Commission relied on the information on labour cost in the relevant industrial sector publicly available from the Turkish Statistical Institute ⁽²⁹⁾. The Commission used the most recent hourly labour cost ⁽³⁰⁾ recorded in Division 20 – Manufacture of chemicals and chemical products of the Statistical classification of economic activities in the European Community (NACE Rev. 2) ⁽³¹⁾. Since the most recent data only covered year 2020, the Commission adjusted the labour cost using the labour cost index applicable to manufacturing in each quarter of 2022 ⁽³²⁾ published by the Turkish Statistical Institute.

⁽²²⁾ The Commission analysed production quantity of nitrogen fertilisers in 2021, i.e. in the most recent period available. Russia was disregarded for reasons explained in Section 3.2.2 of this Regulation, and Belarus because it is a non-WTO country. Available at <https://www.fao.org/faostat/en/#data/RFN> (last viewed 14 July 2023).

⁽²³⁾ Available at <https://www.cemig.com.br/atendimento/valores-de-tarifas-e-servicos/> (last viewed 13 July 2023).

⁽²⁴⁾ Available at <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1> (last viewed 13 July 2023).

⁽²⁵⁾ Available at <https://gasmig.com.br/historico-de-tarifas/> (last viewed 13 July 2023).

⁽²⁶⁾ Available at <https://www.legisweb.com.br> (last viewed 13 July 2023).

⁽²⁷⁾ Available at <https://www.st.gov.my/en/web/consumer/details/6/1> (last viewed 13 July 2023).

⁽²⁸⁾ Available at <https://www.worldbank.org/en/research/brief/inflation-database> (last viewed 30 June 2023).

⁽²⁹⁾ Available at <https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucret-108&dil=2> (last viewed 30 June 2023).

⁽³⁰⁾ Table *Monthly average labour cost and components by economic activity, 2020* available at <https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucret-108&dil=2> (last viewed 30 June 2023).

⁽³¹⁾ Statistical classification of economic activities in the European Community available at <https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF> (last viewed 30 June 2023).

⁽³²⁾ Table *Labour Cost Indices (2015 = 100)* available at <https://data.tuik.gov.tr/Bulten/Index?p=Labour-Input-Indices-Quarter-I-January-March,-2023-49451> (last viewed 30 June 2023).

3.2.3.5. Manufacturing overheads, SG&A, and profit

- (66) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overheads needs to be established to cover costs not included in the factors of production referred to above.
- (67) The manufacturing overheads incurred by the applicant were expressed as a share of the costs of manufacturing actually incurred by the company. This percentage was applied to the undistorted costs of manufacturing.
- (68) As explained in recitals (37) to (41), there were no producers of melamine in Türkiye. Therefore, the financial information of three Turkish producers in the same general category of products was examined to establish the undistorted SG&A and profit. As in the second expiry review, this refers to producers of products in the ammonia value chain, of which melamine is also a part, namely nitrogen fertilisers in the present investigation.
- (69) The Commission examined the financial information covering the review investigation period published by the companies Ege Gübre ⁽³³⁾, Tekfen ⁽³⁴⁾, and Bağfaş ⁽³⁵⁾ on their websites or via an online public disclosure platform. Where available, the Commission relied on data reported for a segment closest to melamine. Income and expenses from investment activities were disregarded.
- (70) All three companies had financial information available for the review investigation period and all respective financial statements were audited. Tekfen and Bağfaş were profitable in the review investigation period (including the relevant segment where available). Although Ege Gübre was profitable at company level, the segment relevant for melamine was lossmaking. Therefore, the Commission calculated a weighted average SG&A and profit based on financial information of Tekfen and Bağfaş to determine the undistorted SG&A and profit in the representative country.
- (71) The applicable weighted average SG&A and profit were established as a percentage of the cost of goods sold at 11,2 % and 12,7 % respectively.

3.2.4. Calculation of the normal value

- (72) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (73) Since melamine is a commodity without further product types, the normal value was constructed for one product (type) only.
- (74) The Commission established the undistorted cost of manufacturing. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the applicant. These consumption quantities were verified during the on-spot verification. The Commission multiplied the consumption quantities by the undistorted costs per unit observed in the representative country, as described in Section 3.2.3. To the undistorted cost of individual factors of production, the Commission added the consumables as described in recital (54).
- (75) The Commission then added manufacturing overheads to the undistorted costs of manufacturing to arrive at undistorted cost of production as explained in recital (67).
- (76) Further, the Commission added undistorted SG&A and profit at the level of 11,2 % and 12,7 % respectively to the undistorted cost of production.

⁽³³⁾ Available at <http://www.egegubre.com.tr/mali.html> (last viewed 30 June 2023).

⁽³⁴⁾ Available at <https://www.tekfen.com.tr/en/financial-statements-4-22> (last viewed 30 June 2023).

⁽³⁵⁾ Available at <https://www.kap.org.tr/Bildirim/1123000> (last viewed 30 June 2023).

- (77) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.3. Export price

- (78) The applicant exported to the Union either directly to independent customers in the Union or through a related trader located in the PRC.
- (79) The export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.4. Comparison and dumping margins

- (80) The Commission compared the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and export price of the applicant on an ex-works basis as established above.
- (81) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, handling, loading and ancillary cost under Article 2(10)(e) of the basic Regulation, packing under Article 2(10)(f) of the basic Regulation, and bank charges under Article 2(10)(k) of the basic Regulation.
- (82) The Commission found that the related trader mentioned in recital (78) performed functions similar to those of an agent working on a commission basis and received for such functions a mark-up. For confidentiality reasons, the details of the Commission's analysis were disclosed to the applicant in a specific disclosure. The applicant made no comments.
- (83) Consequently, where the sales to the Union were carried out through the related trader, the Commission also adjusted the export price for SG&A actually incurred by the related trader and for independent profit under Article 2(10)(i) of the basic Regulation.
- (84) With regard to the independent profit, the Commission considered that, in the context of this investigation, the profit of an independent importer could be reasonably used as an indication to estimate the appropriate level of the adjustment. Since no importers cooperated with the present investigation, the Commission based the independent profit on information from previous investigations. In the first expiry review, a cooperating importer achieved a profit margin of [2–4] % (exact figure could not be disclosed for confidentiality reasons) ⁽³⁶⁾. The anti-dumping investigation of imports of urea ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America established a profit of an independent importer at the level of 4 % ⁽³⁷⁾. Consequently, considering the information in the two above mentioned investigations, the Commission found it appropriate to deduct an adjustment for independent profit of 4 %.
- (85) The Commission compared the weighted average constructed normal value of the product under review with the weighted average export price of the product under review, in accordance with Article 2(11) and (12) of the basic Regulation.
- (86) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was 12,0 %.

4. ANTI-DUMPING MEASURES

- (87) As established in recital (86), the individual dumping margin determined for the applicant amounted to 12,0 %.

⁽³⁶⁾ Recital (156) of Implementing Regulation (EU) 2017/1171.

⁽³⁷⁾ Recital (56) of Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 258, 9.10.2019, p. 21).

- (88) In the original investigation, the definitive measures imposed on imports from the cooperating exporting producers were based on their individual dumping margins, which were lower than the individual injury margins for all three companies. The individual dumping margins established in the original investigation ranged from 44,9 % to 49,0 % ⁽³⁸⁾.
- (89) On the other hand, the residual duty applicable to all other companies was based on the residual injury margin, which was lower than the residual dumping margin. The residual injury margin was established at the level of 65,2 % ⁽³⁹⁾.
- (90) Since the individual dumping margin for the applicant was established at a level that is lower than the residual injury margin of the original investigation, the individual anti-dumping duty applicable to the imports of the product under review produced by the applicant shall be based on the level of its individual dumping margin.
- (91) In the original investigation, the individual anti-dumping measures applicable to imports of melamine produced by the cooperating exporting producers took the form of a minimum import price ('MIP') eliminating the established dumping. That MIP was based on the normal value increased to a CIF Union border price level ⁽⁴⁰⁾.
- (92) In its comments on disclosure, the applicant pointed out that according to Article 9.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('WTO ADA'), 'anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury'. Therefore, the applicant argued that it should enjoy the same treatment as the three exporting producers cooperating in the original investigation and thus be subject to the same MIP.
- (93) The applicant maintained that the MIP calculated individually for the applicant did not reflect the appropriate amount since in the original investigation, the Commission considered the normal value, the export price, and the injury margin to determine the MIP for the cooperating companies while in the present review, it only considered the normal value.
- (94) Furthermore, the applicant submitted that the MIP was not set on a non-discriminatory basis. The applicant drew a parallel to the treatment of new exporters in cases where sampling of exporting producers was applied. In such case the new exporter will be subject to the duty rate applicable to non-sampled cooperating companies. Therefore, the applicant claimed that it should also be made subject to the MIP applicable to the three exporting producers cooperating in the original investigation.
- (95) Finally, the applicant argued that the imposition of a higher MIP would not be in the Union's interest.
- (96) In its comments on additional disclosure, the applicant reiterated arguments summarised in recitals (92) to (95).
- (97) The Commission recalled that as in the original investigation, the normal value, export price, and injury margin were all taken into consideration for the determination of the anti-dumping duty applicable to Xinjiang XLX. The normal value and the export price of the company were used to determine the dumping margin. The injury margin found in the initial investigation was taken into account to determine whether the individual anti-dumping duty applicable for the applicant should be based on the dumping or the injury margin under the provisions of the so-called lesser duty rule. Finally, the normal value was used as the basis for setting the level of the MIP, as it was also done in the context of the original investigation.

⁽³⁸⁾ Recital (132) of Commission Regulation (EU) No 1035/2010 of 15 November 2010 imposing a provisional anti-dumping duty on imports of melamine originating in the People's Republic of China (OJ L 298, 16.11.2010, p. 10).

⁽³⁹⁾ Idem.

⁽⁴⁰⁾ Recitals (78) and (79) of Implementing Regulation (EU) No 457/2011.

- (98) In addition, Article 11(4) of the basic Regulations specifically lays down that an individual margin of dumping shall be determined for new exporters. Therefore, the Commission considered that the arguments of the applicant with regard to the treatment of new exporters in investigations where sampling of exporting producers was carried out are not relevant. This treatment is not based on Article 11(4) of the basic Regulation but on specific provisions included in the relevant Regulations imposing the duties in question. These are different legal basis governed by different rules.
- (99) Finally, the Union interest is not being considered individually in a review pursuant to Article 11(4) of the basic Regulation. In the present case, it was analysed in the original investigation and the results of its analysis were reflected in the selection of the form of the measures.
- (100) Consequently, based on the reasons explained in recitals (97) to (99), the applicant's claims described in recitals (92) to (95), were rejected.
- (101) Following disclosure and repeatedly following additional disclosure, the applicant also argued that for the purpose of establishing the MIP, the ocean freight used to adjust the normal value to CIF Union border level should be revised. According to the applicant, the ocean freight was unreasonably high in the review investigation period, in fact four to five times higher than under normal circumstances. In this respect, the applicant referred to the ICIS report on melamine of 23 August 2023 ⁽⁴¹⁾ and the China export container freight rate index ⁽⁴²⁾ published by the Ministry of Transport of the People's Republic of China.
- (102) The Commission rejected the claim. For the purpose of determining the applicable MIP, Commission first established the normal value for the applicant based on the consumption quantity of the factors of production as reported by the company. Second, the adjustment of the normal value in order to establish a CIF Union border level was based entirely on the actual transport costs incurred by the applicant, reported in its response to the questionnaire and verified on-spot. Furthermore, in the original investigation that adjustment was also based on actual transport costs reported by the investigated companies during the entire investigation period. Consequently, the Commission found it appropriate to follow the same approach in the present new exporter review in accordance with Article 11(9) of the basic Regulation.
- (103) In this respect, the MIP applicable to the imports of the product under review produced by the applicant established as the normal value adjusted to a CIF Union border level shall be 1 346 EUR/tonne net product weight.
- (104) Consequently, Implementing Regulation (EU) 2023/1776 shall be amended accordingly.
- (105) Where imports of the product under review produced by the applicant were undertaken at a CIF Union border price lower than the MIP established in recital (103), the duty equal to the difference between the MIP and the CIF Union border price shall be collected on imports registered in accordance with Article 3 of the initiating Regulation. The customs authorities shall discontinue the registration of imports of the product under review produced by the applicant.
- (106) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that an individual anti-dumping duty apply with regard to the applicant. All parties were also granted a period to make representations subsequent to this disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The submissions and comments were duly taken into consideration.

⁽⁴¹⁾ The report was submitted as Annex 1 to the applicant's comment on disclosure. The report contained information on freight rates for a 20-foot dry cargo container on the route North China to North Europe in a period of January 2020 to August 2023 supplied by Xeneta. Limited historical information available at <https://xsi.xeneta.com/> (last viewed 8 September 2023).

⁽⁴²⁾ Available at <https://www.mot.gov.cn/yunjiazhishu/> (last viewed 8 September 2023).

(107) This review does not affect the date on which the measures imposed by Implementing Regulation (EU) 2023/1776 will expire pursuant to Article 11(2) of the basic Regulation.

(108) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 delivered a positive opinion,

HAS ADOPTED THIS REGULATION:

Article 1

Paragraph 2 of Article 1 of Implementing Regulation (EU) 2023/1776 is replaced by the following:

‘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	Minimum import price (EUR/tonne net product weight)	Duty (EUR/tonne net product weight)	TARIC additional code
Sichuan Golden-Elephant Sincerity Chemical Co., Ltd	1 153		A 986
Shandong Holitech Chemical Industry Co., Ltd	1 153		A 987
Henan Junhua Development Company Ltd	1 153		A 988
Xinjiang Xinlianxin Energy Chemical Co., Ltd.	1 346		8 99B
All other companies	—	415	A 999'

Article 2

1. The duty imposed by Article 1 to imports of melamine, currently falling under CN code 2933 61 00, originating in the PRC, produced for export to the Union by Xinjiang Xinlianxin Energy Chemical Co., Ltd. shall be collected on imports registered in accordance with Article 3 of Implementing Regulation (EU) 2023/442. The amount of the anti-dumping duty to be collected on registered imports shall be the difference between the minimum import price and the net, free-at-Union-frontier price, before duty, in all cases where the latter is less than the minimum import price. No duty shall be collected on those registered imports where the net free-at-Union-frontier price, before duty, is equal to or higher than the corresponding minimum import price.

2. Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 3 of Implementing Regulation (EU) 2023/442, which is hereby repealed.

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, 27 November 2023.

For the Commission
The President
Ursula VON DER LEYEN
