



2023/2757

14.12.2023

**COMMISSION IMPLEMENTING REGULATION (EU) 2023/2757
of 13 December 2023**

imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of the 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(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) By Regulation (EC) No 1631/2005 ⁽²⁾, the Council imposed definitive anti-dumping duties on imports of trichloroisocyanuric acid ('TCCA') originating in the People's Republic of China ('the PRC' or 'China') and the United States of America ('USA'). The investigation that led to the imposition of the original measures will, hereinafter, be referred to as 'the original investigation'.
- (2) Following an interim review pursuant to Article 11(3) of the basic Regulation, the Council by Implementing Regulation (EU) No 855/2010 ⁽³⁾, lowered the individual duty applicable to one company from 14,1 % to 3,2 %.
- (3) Following an expiry review of the measures limited to imports of TCCA originating in the PRC ('first expiry review'), the Council re-imposed the definitive anti-dumping duties applicable to imports of TCCA originating in this country by Council Implementing Regulation (EU) No 1389/2011 ⁽⁴⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 1631/2005 of 3 October 2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of trichloroisocyanuric acid originating in the People's Republic of China and the United States of America (OJ L 261, 7.10.2005, p. 1).

⁽³⁾ Council Implementing Regulation (EU) No 855/2010 of 27 September 2010 amending Regulation (EC) No 1631/2005 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating, inter alia, in the People's Republic of China (OJ L 254, 29.9.2010, p. 1).

⁽⁴⁾ Council Implementing Regulation (EU) No 1389/2011 of 19 December 2011 imposing definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 346, 30.12.2011, p. 6).

- (4) On 28 August 2013 and 1 July 2014 respectively, the European Commission ('the Commission') initiated two new exporter reviews pursuant to Article 11(4) of the basic Regulation. By Implementing Regulation (EU) No 569/2014 ⁽⁵⁾, the Commission imposed an individual duty of 32,8 % on TCCA manufactured by one new Chinese exporting producer ⁽⁶⁾. The other Chinese exporting producer ⁽⁷⁾ formally withdrew its request in the course of the investigation and consequently the Commission terminated the investigation by Commission Implementing Regulation (EU) 2015/392 ⁽⁸⁾.
- (5) Following an expiry review, the Commission re-imposed the definitive anti-dumping measures on imports of TCCA originating in the PRC by Implementing Regulation (EU) 2017/2230 ⁽⁹⁾ (the 'previous expiry review').
- (6) The individual anti-dumping duties currently in force on imports of TCCA originating in the PRC range between 8,1 % and 32,8 %. The anti-dumping duties applicable to all other exporting producers amounts to 42,6 %.
- (7) The Commission initiated by Commission Implementing Regulation (EU) 2021/1209 ⁽¹⁰⁾, three 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The requests were lodged by Hebei Xingfei Chemical Co., Ltd (Hebei Xingfei), by Inner Mongolia Likang Bio-Tech Co., Ltd (Mongolia Likang), and by Shandong Lantian Disinfection Technology Co., Ltd (Shandong Lantian) ('the applicants'). On 13 April 2022, the investigation was terminated for all applicants by Commission Implementing Regulation (EU) 2022/619 ⁽¹¹⁾.

1.2. Initiation of an expiry review

- (8) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 5 December 2022, an expiry review with regard to imports to the Union of TCCA originating in the PRC, on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽¹²⁾ (the 'Notice of Initiation').

⁽⁵⁾ Commission Implementing Regulation (EU) No 569/2014 of 23 May 2014 amending Council Implementing Regulation (EU) No 1389/2011 imposing definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following a new exporter review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009 (OJ L 157, 27.5.2014, p. 80).

⁽⁶⁾ Liaocheng City Zhonglian Industry Co. Ltd

⁽⁷⁾ Juancheng Kangtai Chemical Co. Ltd

⁽⁸⁾ Commission Implementing Regulation (EU) 2015/392 of 9 March 2015 terminating a new exporter review of Council Implementing Regulation (EU) No 1389/2011 imposing definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China, re-imposing the duty with regard to imports from the exporter and terminating the registration of these imports (OJ L 65, 10.3.2015, p. 18).

⁽⁹⁾ Commission Implementing Regulation (EU) 2017/2230 of 4 December 2017 imposing a definitive antidumping duty on imports of trichloroisocyanuric acid 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 (OJ L 319, 5.12.2017, p. 10).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2021/1209 of 22 July 2021 initiating 'new exporter' reviews of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China for three Chinese exporting producers, repealing the duty with regard to imports from these exporting producers and making these imports subject to registration (OJ L 263, 23.7.2021, p. 1).

⁽¹¹⁾ Commission Implementing Regulation (EU) 2022/619 of 12 April 2022 terminating the 'new exporter' reviews of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China, for three Chinese exporting producers, imposing the duty with regard to these producers' imports and terminating the registration of these imports (OJ L 115, 13.4.2022, p. 66).

⁽¹²⁾ OJ C 462, 5.12.2022, p. 10.

1.3. Separate newcomer review

- (9) On 30 March 2023, by Commission Implementing Regulation (EU) 2023/712 ⁽¹³⁾, the Commission launched a ‘new exporter’ review of the definitive anti-dumping measures on imports of TCCA originating in the PRC imposed by Implementing Regulation (EU) 2017/2230 for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration. That newcomer review was requested by Hebei Xingfei and it is limited in scope to the examination of dumping as far as the applicant is concerned.

1.4. Request for an expiry review

- (10) Following the publication of a notice of impending expiry ⁽¹⁴⁾ the Commission received a request for review pursuant to Article 11(2) of the basic Regulation. The request for review was submitted on 5 September 2022 by ERCROS S.A and Electroquímica de Hernani S.A. (‘the applicants’) on behalf of the Union industry of trichloroisocyanuric acid, in the sense of Article 5(4) of the basic Regulation. The applicants are the only producers of TCCA in the Union. Their production during the review investigation period represented 100 % of the Union production of TCCA.
- (11) The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

1.5. Review investigation period and period considered

- (12) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 October 2021 to 30 September 2022 (‘review investigation period’ or ‘RIP’). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2019 to the end of the review investigation period (‘the period considered’).

1.6. Interested parties

- (13) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, other known Union producers, exporting producers, importers and users in the Union known to be concerned, as well as the Chinese authorities about the initiation of the expiry review and invited them to participate.
- (14) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.7. Comments on initiation

- (15) After initiation, Hebei Jiheng Chemical Co., Ltd (‘Hebei Jiheng’), Heze Huayi Chemical Co., Ltd (‘Heze Huayi’) and Puyang Cleanway Chemicals Co., Ltd (‘Puyang Cleanway’), which registered as interested parties in the proceeding, claimed that the review request failed to provide positive evidence to prove the likelihood of recurrence of dumping. The three interested parties claimed that the data used in the request for calculating the freight and insurance fees did not represent the actual costs incurred by Chinese exporters and producers, and that the applicant did not disclose enough data on the selected commercial invoices used to calculate the export price and this affected the exercise of their right of defence in the proceedings. Hence, the Chinese producers claimed that the review request did not provide a reasonable calculation of export price and its dumping margin. Interested parties also made a general claim that the use of data from a representative country for the calculation of the normal value is not warranted because the sector in China is not distorted.

⁽¹³⁾ Commission Implementing Regulation (EU) 2023/712 of 30 March 2023 initiating a ‘new exporter’ review of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid 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 93, 31.3.2023, p. 88).

⁽¹⁴⁾ OJ C 113, 9.3.2022, p. 24.

- (16) The Commission considered that the three methods of calculating the export price provided by the applicant based on Comext, TARIC and selected export invoices to the EU, provide a reasonable basis for calculating the export price used in the assessment of the likelihood of recurrence of dumping. In addition, regarding the method based on selected invoices, the version open for inspection by interested parties of the request contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding. It is recalled that 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 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. The information provided under confidential cover falls under these categories. In any event, the applicant provided summaries of the contents of the confidential segments of the request and the relevant bracketing of numerical data. The rights of defence of the parties, therefore, were respected by providing a version open for inspection by interested parties of the request containing all the essential evidence. The claims relating to the use of data, including freight costs, were general and did not relate to the specific circumstances of the companies or the sector in question. Whereas the applicant relied on Drewry's World Container Index providing a reliable benchmark for calculating international freight costs, no evidence was provided showing that such freight costs was unreasonable. Moreover, in view of the large dumping margin calculated by the applicant (above 110 %), the specific cost of domestic freight in China was not considered a deficiency undermining the standard of sufficient evidence for initiation. Therefore, these claims of the interested parties were dismissed.
- (17) As regards the claims that Union industry has recovered from any alleged injury and that the allegations on the continuation and recurrence of injury are unfounded, it is recalled that a finding of material injury requires an examination, *inter alia*, of the relevant factors as described in Article 5(2)(d) of the basic Regulation. Indeed, the wording of Article 5(2) of the basic Regulation states that the request shall contain the information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Union market and the consequent impact of the imports on the Union industry, as demonstrated by relevant (not necessarily all) factors and indices having a bearing on the state of the Union industry, such as those listed in Articles 3(3) and 3(5). This is applicable *mutatis mutandis* to the likelihood analysis.
- (18) Equally, not all factors must show a deterioration in order for material injury (and hence, likelihood of continuation or recurrence thereof) to be established. Furthermore, the existence of other factors which may have an impact on the situation of the Union industry does not necessarily imply that the effect of dumped imports on this industry is not material (again, this is similarly applicable to the likelihood analysis). This is all the more true in the case of an expiry review where the focus lies on what would happen should measures be repealed. Moreover, in the case of expiry reviews, anti-dumping measures may have a certain positive effect (e.g., on ex-works unit value of Union-sales, stocks to a certain extent and contribution margins) even if injury continues overall.
- (19) On the allegations that the continuation of anti-dumping measures on the product under review is not in the interest of Union, the Commission recalled that there is no legal obligation to examine Union interest in expiry review requests. Article 11(2) of the Basic AD Regulation provides that '[a]n expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury'. In conclusion, it is the Commission services' view that the applicant provided enough evidence in the form of three export price calculations to point to a situation of likelihood of continuation or recurrence of dumping and injury emanating from imports from TCCA originating in the PRC, which merited the initiation of an investigation, according to the law.

1.8. Sampling

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

1.8.1. *Sampling of unrelated importers*

- (21) 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.
- (22) Three unrelated importers came forward and provided the requested information, Productos QP S.A., Fluidra Comercial Portugal and Chimigien SRL. In view of the low number of cooperating importers, the Commission decided that sampling was not necessary.

1.8.2. *Sampling of exporting producers in the People's Republic of China*

- (23) To decide whether sampling was necessary and if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide information specified in the Notice of Initiation.
- (24) 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 might be interested in participating in the investigation.
- (25) No exporting producer came forward and provided the requested information.

1.9. **Questionnaires, replies to the questionnaires**

- (26) 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'). No questionnaire reply was received.
- (27) The Commission sent questionnaires to the two known Union producers whose production during the review investigation period represented 100 % of the Union production of TCCA. On the day of initiation, the same questionnaires were made available online on DG Trade's website ⁽¹⁵⁾. Questionnaires were also made available to unrelated importers and users on the same DG Trade's website.
- (28) Questionnaire replies were received from the two Union producers. The exporting producers did not provide a questionnaire reply. Three unrelated importers and one user provided replied to the questionnaires.
- (29) Because there was no cooperation from the Chinese exporting producers or the GOC, the findings regarding dumping and injury were made on the basis of facts available pursuant to Article 18 of the basic Regulation. The Mission of the People's Republic of China to the European Union was informed accordingly. No comments were received.

1.10. **Verification visits**

- (30) The Commission sought and verified the information made available by the cooperating parties for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest.
- (31) Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:
 - (a) Union producers:
 - Ercros SA, Barcelona, Spain
 - Electroquímica de Hernani, Hernani, Spain.

⁽¹⁵⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2643>

(b) User:

— Inquide, Polinyà, Spain.

1.11. Subsequent procedure

- (32) On 26 October 2023, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.
- (33) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (34) The product under review is trichloroisocyanuric acid and preparations thereof, also referred to under the international non-proprietary name (INN) 'symclosene'.

2.2. Product concerned

- (35) The product concerned by the expiry review investigation is the product under review originating in the PRC currently falling under CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70 and 3808 94 20 20).

2.3. Like product

- (36) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics, as well as the same basic uses:
- the product concerned when exported to the Union;
 - the product under review produced and sold by the exporting producers on the domestic market of the PRC;
 - the product under review produced and sold in Mexico, which served as a representative country;
 - the product under review produced and sold by the exporting producers to the rest of the world; and
 - the product under review produced and sold in the Union by the Union industry.
- (37) The Commission concluded that these products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

- (38) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would likely lead to a continuation or recurrence of dumping from the PRC.
- (39) During the review investigation period, statistical data showed that imports of TCCA from the PRC into the Union were around 40 000 tonnes. The Commission concluded that these quantities were representative, as they represented between 60 and 70 % of the total imports of the product under review into the Union. The investigation, therefore, focused on the likelihood of continuation of dumping.

3.2. Non-cooperation from Chinese exporting producers and the GOC

- (40) As mentioned in recital 29, no exporter/producer from China cooperated in the expiry review investigation. Therefore, on 16 January 2023, the Commission informed the Chinese authorities that due to the absence of cooperation from exporting producers in the PRC, the Commission intended to apply Article 18 of the basic Regulation to its findings. The Commission invited the PRC to comment. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (41) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation of dumping were based on the facts available, in particular information in the request for review and statistical data from Eurostat, Global Trade Atlas ('GTA') ⁽¹⁶⁾, the USITC DataWeb database ⁽¹⁷⁾, the Comisión Federal de Electricidad ⁽¹⁸⁾, the Comisión Reguladora de Energía ⁽¹⁹⁾, the Instituto Nacional de Estadística y Geografía ⁽²⁰⁾, the website of Rot Química ⁽²¹⁾ and publicly available information from the official website of the Mexican company CYDSA ⁽²²⁾.
- (42) On 5 December 2022, the Commission sent to the GOC an antidumping questionnaire intended for the authorities of the PRC. That questionnaire was provided to the GOC to allow it to express its views on the evidence contained in the request on the basis of which it was claimed that significant distortions exist on the Chinese domestic market for the product under review which justify the application of Article 2(6a) of the basic Regulation. As highlighted in recital 26, the GOC did not provide any questionnaire reply nor did it address the evidence on the case file provided by the applicant, including the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' ('the Report').
- (43) On 16 January 2023, the Commission informed the authorities of the PRC about its intention to apply Article 18 of the basic Regulation and base its findings in respect of the mentioned distortions in the PRC on the facts available. The Commission did not receive any comment.
- (44) Consequently, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the existence of significant distortions set out below were based on facts available. In particular, the Commission relied on the information contained in the request for review and other sources of publicly available information such as databases and relevant websites.

3.3. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of TCCA originating in the PRC

- (45) Given the sufficient evidence available at the initiation of the investigation showing, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (46) In order to obtain the necessary information for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union* ⁽²³⁾. As stated in recital 26, no questionnaire reply was received from the GOC and no submission from interested parties on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.

⁽¹⁶⁾ <http://www.gtis.com/gta/secure/default.cfm>

⁽¹⁷⁾ <https://dataweb.usitc.gov/>

⁽¹⁸⁾ <https://www.cfe.mx/>

⁽¹⁹⁾ Índice de Referencia Nacional de Precios de Gas Natural al Mayoreo (IPGN) (cre.gob.mx)

⁽²⁰⁾ <https://www.inegi.org.mx/>

⁽²¹⁾ <https://rotquimica.com/>

⁽²²⁾ <https://cydsa.com/audited-financial-statements/?lang=en>

⁽²³⁾ Notice of Initiation, see footnote 12.

- (47) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available to the Commission, a possible representative country for the PRC in this case is Mexico, pursuant to Article 2(6a)(a) of the basic Regulation, for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.
- (48) On 10 March 2023, the Commission informed the interested parties by a Note on the relevant sources it intended to use for the determination of the normal value, that it selected Mexico as the representative country. It also informed the interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company CYDSA, a Mexican producer, producing the product in the same general category as the product under review. There was no publicly available information obtainable on SG&A and profit for the sole Mexican producer of TCCA, ROT Química. The Commission invited interested parties to comment. Comments were received from three Chinese interested parties and are addressed in section 3.4.3 below.

3.4. Normal value

- (49) 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'.
- (50) 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').
- (51) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.4.1. Existence of significant distortions

3.4.1.1. Introduction

- (52) Article 2(6a)(b) of the basic Regulation stipulates that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.

- (53) As the list in Article 2(6a)(b) of the basic Regulation 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 provide the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (54) 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'.
- (55) Pursuant to this provision, the Commission issued a country report concerning the PRC ('the Report') ⁽²⁴⁾, collecting information about 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 added to the investigation file at the initiation stage and interested parties were invited to rebut, comment, or supplement the evidence contained in the investigation file at the time of initiation.
- (56) The request provided additional evidence on significant distortions in the TCCA sector within the meaning of Article 2(6a)(b), complementing the Report. More specifically, the request indicated that the Chinese trichloroisocyanuric acid industry was characterised by massive government intervention and that significant distortions exist with respect to all the elements of the cost of production of TCCA. In particular, the request referred to distortions concerning:

— **Raw material costs**

The request mentioned the GOC's strategy to promote key sectors, such as the one of chemicals, as well as the fact that sectors of organic and inorganics chemicals are characterized by oversupply and a strong encouragement by the State to control production and produce value-added products such as TCCA. Referring back to the Report, the request pointed out the oversupply of chlorine and caustic acid in China and the related GOC's market interventions. Furthermore, the request noted that the US Department of Commerce found extensive subsidisation of TCCA through provision of raw material that is itself subsidised. Although the DOC Memorandum is dated December 2012, the countervailing duty has been maintained since then on the basis of its findings. According to the applicants, the Chinese policy context also supports the inorganic chemicals' industry as an industrial sector that the GOC considers critical to China's overall economic prosperity and social stability. Accordingly, the Guidelines of the 14th FYP for the Petrochemical and Chemical Industry confirms the chloralkali sector as a focus of industrial policy of China aiming at developing cleaner technologies. The request also mentioned sub-central level measures affecting the sector, such as the example of the Yunnan province which is set to 'strictly control the new production capacity of urea, ammonium phosphate, calcium carbide, coke, yellow phosphorus, caustic soda, soda ash, polyvinyl chloride and other industries'. On this basis, the request concluded that the provision of raw material which is used to produce TCCA in China is, and will be, subject to massive State intervention at all governmental levels, and this substantially distorts the prices of TCCA in China.

— **Energy costs**

The request recalled the strategic importance of electricity for China and the corresponding significant state presence in the sector. The request referred also to previous investigations by the Commission and the US DOC which found electricity costs being subsidized or otherwise distorted in China.

⁽²⁴⁾ 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(483) final/2.

— **Labour costs**

The request referred back to the Report, as well as the Commission's recent investigations which concluded that a system of market-based wages cannot fully develop in the PRC. Correspondingly, the applicants pointed out that there are no reasons to believe that wages costs would not be equally distorted for TCCA.

— **Machinery costs**

The request explained the existing VAT and tariff exemptions on imported equipment, in conjunction with the fact that production of water treatment chemicals is identified as an encouraged or key industry in a number of GOC's policies, thereby making also the production of TCCA eligible for the aforementioned exemptions.

— **Financial costs**

In addition to recalling the Commission's observations in the Report and in its recent investigations, the requests pointed out that there is exhaustive documentation demonstrating that the GOC considers the chemical industry and in particular the chloralkali sector, the fine chemical sector and the water treatment sector as important sectors in China. In this respect, the request referred to (i) the national 14th FYP which sets as a focus of industrial policy the upgrading the chemical industry, (ii) the Guidelines of the 14th FYP for the Petrochemical and Chemical Industry, (iii) the Catalogue of Encouraged Industries for Foreign Investment (Edition 2020).

— **Other factors**

The request noted that further governmental measures in place provide an obvious governmental support and further distortion on the prices of the final industrial products, such as TCCA. Those measures include income tax deductions, government provision of land, as well as various grants, credits, tax rebates etc. from which TCCA producers benefit.

- (57) 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 applicants, 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, nor has the Commission received any comments from the Chinese exporting producers.
- (58) 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 Article 2(6a) point (b) 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 under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.

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

- (59) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of 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' ⁽²⁵⁾. 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 ⁽²⁶⁾.

⁽²⁵⁾ Report – Chapter 2, p. 6-7.

⁽²⁶⁾ Report – Chapter 2, p. 10.

- (60) 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' ⁽²⁷⁾. 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.
- (61) 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 ⁽²⁸⁾. 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.
- (62) 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. 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 3.4.1.5 below) ⁽²⁹⁾.
- (63) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.4.1.8 below) ⁽³⁰⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽³¹⁾.
- (64) 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 ⁽³²⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽³³⁾.

⁽²⁷⁾ Available at: Constitution of the People's Republic of China (npc.gov.cn) (accessed on 12 September 2023).

⁽²⁸⁾ Report – Chapter 2, p. 20-21.

⁽²⁹⁾ Report – Chapter 3, p. 41, 73-74.

⁽³⁰⁾ Report – Chapter 6, p. 120-121.

⁽³¹⁾ Report – Chapter 6, p. 122-135.

⁽³²⁾ Report – Chapter 7, p. 167-168.

⁽³³⁾ Report – Chapter 8, p. 169-170, 200-201.

- (65) 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 ⁽³⁴⁾.

3.4.1.3. 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

- (66) 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. In the sector of the product under review, the degree of state ownership remains significant, with a number of TCCA producer being fully or partially state-owned, such as: Sinopec Jiangnan Salt Chemical Hubei (ultimately 100 % owned by SASAC ⁽³⁵⁾), China Salt Changzhou Chemical (ultimately partially owned by Changzhou Municipality Investment Group and Jiangsu Province Bureau of Finances ⁽³⁶⁾) or Nanning Chemical Industry Co (whose controlling shareholder is the 100 % state-owned Nanning Chemical Industry Group ⁽³⁷⁾). Given that CCP interventions into operational decision making have become the norm also in private companies ⁽³⁸⁾, with CCP claiming leadership over virtually every aspect of the country's economy, the influence of the state by means of CCP structures within companies effectively results in economic operators being under control and policy supervision of the government, given how far the state and Party structures have grown together in the PRC.
- (67) Similar level of control and policy supervision can be observed at the level of the relevant industry associations, such as the China Petrochemical and Chemical Industry Federation ('CPCIF') the sectoral industry association. According to Art. 3 of CPCIF's Articles of Association, the organisation 'accepts the professional guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management' ⁽³⁹⁾. Also the China Chemical Enterprise Management Association ('CCEMA') which characterizes itself as organisation comprising 'more than 200 member units of the association are backbone enterprises in the chemical industry' ⁽⁴⁰⁾ states in Art. 2 of its Articles of Association that it 'abides by the Constitution, laws, regulations and national policies, practices the core values of socialism, promotes the spirit of patriotism, abides by social morality, and consciously strengthens the construction of integrity and self-discipline'. Moreover, according to Art. 3 of the Articles of Association, CCEMA 'establishes an organization of the Communist Party of China, carries out party activities, and provides necessary conditions for the activities of the party organization' and it – just like in the case of CPCIF – 'accepts the business guidance, supervision and management by the entities in charge of registration and management, by entities in charge of party building, as well as by the relevant administrative departments in charge of industry management' ⁽⁴¹⁾.
- (68) Consequently, even privately owned producers in the sector of the product under review are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance as also set out in section 3.4.1.5 below.

⁽³⁴⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

⁽³⁵⁾ See at: <http://en.sasac.gov.cn/>

⁽³⁶⁾ See at: <https://www.qixin.com/company/65f3af24-40d6-4b1b-9096-f8e2d897bd2e> (Accessed 12 September 2023)

⁽³⁷⁾ See at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNESH_STOCK/2022/2022-4/2022-04-13/7978674.PDF, p. 49 (accessed 12 September 2023)

⁽³⁸⁾ See for example Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law or General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era (see below for full reference).

⁽³⁹⁾ See at: <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (accessed on 12 September 2023).

⁽⁴⁰⁾ See at: <http://www.ccema.org.cn/wzsy> (accessed on 12 September 2023).

⁽⁴¹⁾ See at: <http://www.ccema.org.cn/xhzc> (accessed on 12 September 2023).

3.4.1.4. 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

- (69) Apart from exercising control over the economy by means of ownership of state-owned enterprises ('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 ⁽⁴²⁾, 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 ⁽⁴³⁾) 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 followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle ⁽⁴⁴⁾, including exercising pressure on private companies to put 'patriotism' first and to follow party discipline ⁽⁴⁵⁾. 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 ⁽⁴⁶⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under review and the suppliers of their inputs.
- (70) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era ('the Guidelines') ⁽⁴⁷⁾ was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.' The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities ⁽⁴⁸⁾.
- (71) The investigation confirmed that overlaps between managerial positions and CCP membership/Party functions are commonplace in the TCCA sector. To use the example of the abovementioned Sinopec Jiangnan Salt Chemical Hubei, as many as seven members of the company's management simultaneously hold CCP positions ⁽⁴⁹⁾.
- (72) The CCP interference into the business decisions is apparent also on the group level, as transpires from the available corporate filings. The 2022 annual report of the Sinopec Group points out that '[t]he company continuously improves the quality of party building work, boosting the spirit of the employees, strengthening discipline inspection and supervision work, helping the board of directors to effectively implement various decisions and arrangements, and promoting the high-quality development of the company' ⁽⁵⁰⁾, while Sinopec's website describes the role of the Party within the Group as follows: '[s]trengthen the leadership of the Party in the process of improving corporate governance, [...] promote the Party organization to decide upon the list of major issues regarding Party building and other aspects, and allow the Party organization to pre-research and discuss the list of

⁽⁴²⁾ Report – Chapter 5, p. 100-1.

⁽⁴³⁾ Report – Chapter 2, p. 26

⁽⁴⁴⁾ See for example: Blanchette, J. – Xi's Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, vol. 100, no. 4, July/August 2021, pp. 10-19.

⁽⁴⁵⁾ Report – Chapter 2, p. 31-2.

⁽⁴⁶⁾ Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 12 September 2023).

⁽⁴⁷⁾ Available at: www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 12 September 2023).

⁽⁴⁸⁾ Chinese Communist Party asserts greater control over private enterprise, available at: <https://on.ft.com/3mYxP4j> (accessed on 22 March 2023).

⁽⁴⁹⁾ See at: http://jscc.sinopec.com/jscc/about_us/teammanagement/ (accessed on 12 September 2023).

⁽⁵⁰⁾ See at: <http://www.sinopec.com/listco/Resource/Pdf/2023032507.pdf>, p. 26 (accessed on 12 September 2023).

major business and management issues simultaneously covered by the internal control management, to be embedded in the [...] list of decision-making matters, to develop a headquarter decision-making and information system fostering the establishment of a list of decision competences, the inclusion of this list in the decision making process and the informatization of this process. Take the pre-research and discussion of major business management issues as an important aspect of the Party group's full performance of leadership duties [...]’⁽⁵¹⁾.

- (73) The State's presence and intervention in the financial markets (see also 3.4.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market⁽⁵²⁾. Thus, the State presence in firms, in the water treatment chemical and other industries (such as the financial and input industries) allow the GOC to interfere with respect to prices and costs.

3.4.1.5. 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

- (74) 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⁽⁵³⁾.
- (75) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product under review. The 14th FYP on raw materials⁽⁵⁴⁾ directly addresses the sector of the product under review by stating that '[p]roduction capacity increase in urea, ammonium phosphate, calcium carbide, caustic soda and yellow phosphorus sectors will be strictly controlled. New projects shall follow the principle of replacing the same amount of existing production capacity or replacing more production capacity'⁽⁵⁵⁾. Moreover, according to the 2019 Guiding Catalogue for Industry Structural Adjustment⁽⁵⁶⁾, caustic soda, one of the main raw materials for manufacturing the product under review is listed among the restricted industries: '[n]ewly built soda ash (except for underground circulating soda and trona-based production), caustic soda (except ion membrane caustic soda plant for comprehensive utilization of waste salt), and sulfuric acid production with an annual output of less than 300 000 tons'⁽⁵⁷⁾.
- (76) On the provincial level, the Shandong 14th FYP on the development of chemical industry⁽⁵⁸⁾ call on the local authorities to 'give full play to the production capacity advantages of caustic soda co-production of chlorine and hydrogen, accelerate the vertical extension and horizontal coupling expansion of the salt chemical industry, and improve the deep processing of chlor-alkali, soda ash and bromine, [...] guide the traditional chlor-alkali downstream industry to extend towards fine chemicals, and ensure the layout of sub-chloride Chlorine downstream deep processing projects'⁽⁵⁹⁾. Section III.2.3 of the Plan focuses on the salt chemical industry and foresees the following government action: 'Promote the replacement of chlor-alkali production capacity reduction and strictly control production capacity. [...] Encourage the comprehensive utilization of waste hydrochloric acid to produce chlorine and hydrogen'⁽⁶⁰⁾.

⁽⁵¹⁾ See at: <http://www.sinopecgroup.com/group/gywm/ddjs.shtml> http://jscc.sinopec.com/jscc/about_us/teammanagement/ (accessed on 12 September 2023).

⁽⁵²⁾ Report – Chapters 14.1 to 14.3.

⁽⁵³⁾ Report – Chapter 4, p. 41-42, 83.

⁽⁵⁴⁾ 14th FYP on raw materials. Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (accessed on 12 September 2023).

⁽⁵⁵⁾ Ibid., Section IV.1.

⁽⁵⁶⁾ See at: https://www.gov.cn/xinwen/2019-11/06/content_5449193.htm (accessed on 6 September 2023).

⁽⁵⁷⁾ Ibid., Article 4.

⁽⁵⁸⁾ See at: <https://huanbao.bjx.com.cn/news/20211201/1191133.shtml> (accessed on 12 September 2023).

⁽⁵⁹⁾ Ibid., Section III.1.3.

⁽⁶⁰⁾ Ibid., Section III.2.3.

- (77) Similarly, according to the Jiangsu 14th FYP on the high-end development of chemical industry ⁽⁶¹⁾: '[b]ased on the industrial foundation and advantages, the benefits of industrial concentration, land utilization rate and factor input and output shall be significantly improved, through adjustment and optimization [...] and the extension of the industry chain towards high end products will achieve high-quality development of the province's chlor-alkali industry' ⁽⁶²⁾. Furthermore, the government authorities are set to shape the sector's industrial layout as follows: '[i]n accordance with the national industrial policy requirements of strictly controlling the new production capacity in industries with overcapacities, and implementing equivalent or reduced replacement for advanced technological transformation and upgrading projects that meet the policy requirements, the total amount of production capacity of products such as caustic soda shall be controlled, and the overall scale shall remain at the current level. Through mergers and reorganizations, through elimination of obsolete equipment, through capacity replacement and horizontal alliances, implement government-guided and corporate voluntary operations based on investment attraction, and market orientation for capacity replacement index transactions, and guide production capacity, resources and markets towards powerful companies and integrate them. In the chlor-alkali industry, form leading backbone enterprises, optimize the industrial structure and resource allocation, and increase the concentration level' ⁽⁶³⁾.
- (78) Another example of public policies influencing free market forces provides the Jiangxi 14th FYP on High-Quality Development of Petrochemical Industry ⁽⁶⁴⁾ which set specific output targets for the sector: '[t]otal target. By 2025, strive to achieve an industrial scale of around RMB 500 billion. Among them: RMB 150 billion in the petrochemical industry, RMB 100 billion in the fine chemical industry, RMB 80 billion yuan in the chemical new material industry, and 80 billion yuan for the chlor-alkali chemical industry' ⁽⁶⁵⁾ and outlines further industrial policy objectives: 'Give full play to the advantages of Jiangxi's rock salt resources, improve the quality of Jiangxi's chlor-alkali products, expand the share of chlorine- and hydrogen-consuming products in the chlor-alkali downstream industry, optimize the product structure of the chlor-alkali industry, and transform resource advantages into market competitive advantages' ⁽⁶⁶⁾.
- (79) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector of the product under review, as well as the upstream inputs.
- (80) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the water treatment chemical industry. Such measures impede market forces from operating freely.

3.4.1.6. 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

- (81) 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 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 ⁽⁶⁷⁾.

⁽⁶¹⁾ See at: http://gxt.jiangsu.gov.cn/art/2021/9/3/art_6197_10099378.html (accessed on 12 September 2023).

⁽⁶²⁾ Ibid., Section 5.2.6.1.

⁽⁶³⁾ Ibid., Section 5.2.6.1.1.

⁽⁶⁴⁾ See at: <https://huanbao.bjx.com.cn/news/20211115/1187880.shtml> (accessed on 12 September 2023).

⁽⁶⁵⁾ Ibid., Section II.3.

⁽⁶⁶⁾ Ibid., Section III.4.

⁽⁶⁷⁾ Report – Chapter 6, p. 138-149.

- (82) 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 ⁽⁶⁸⁾. All land is owned by the State (collectively owned rural land and State-owned urban land) and its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁶⁹⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁷⁰⁾.
- (83) Much like other sectors in the Chinese economy, the producers of the product under review are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, based on the evidence available, appear to be fully applicable also in the water treatment chemicals sector. The present investigation revealed nothing that would call those findings into question.
- (84) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product under review.

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

- (85) 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, in particular those on freedom of association and on collective bargaining ⁽⁷¹⁾. 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 ⁽⁷²⁾. 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 ⁽⁷³⁾. Those findings lead to the distortion of wage costs in the PRC.
- (86) No evidence was submitted to the effect that the water treatment chemical industry would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

3.4.1.8. 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

- (87) Access to capital for corporate actors in the PRC is subject to various distortions. Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁷⁴⁾, 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

⁽⁶⁸⁾ Report – Chapter 9, p. 216.

⁽⁶⁹⁾ Report – Chapter 9, p. 213-215.

⁽⁷⁰⁾ Report – Chapter 9, p. 209-211.

⁽⁷¹⁾ Report – Chapter 13, p. 332-337.

⁽⁷²⁾ Report – Chapter 13, p. 336.

⁽⁷³⁾ Report – Chapter 13, p. 337-341.

⁽⁷⁴⁾ Report – Chapter 6, p. 114-117.

large State-owned financial institutions are ultimately appointed by the CCP⁽⁷⁵⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the GOC. 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⁽⁷⁶⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁽⁷⁷⁾.

- (88) 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⁽⁷⁸⁾, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (89) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues⁽⁷⁹⁾. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries'⁽⁸⁰⁾.
- (90) 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⁽⁸¹⁾.
- (91) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁽⁸²⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.

⁽⁷⁵⁾ Report – Chapter 6, p. 119.

⁽⁷⁶⁾ Report – Chapter 6, p. 120.

⁽⁷⁷⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁷⁸⁾ See: Commission Implementing Regulation (EU) 2021/328, of 24 February 2021 imposing a definitive countervailing duty on imports of continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 65, 25.2.2021, p. 1), recitals 71 to 75 and: Commission Implementing Regulation (EU) 2021/2287, of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344), recitals 151 to 188.

⁽⁷⁹⁾ See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022), available at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 22 March 2023). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.'

⁽⁸⁰⁾ See CBIRC's Notice on the Commercial banks performance evaluation method, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (accessed on 22 March 2023).

⁽⁸¹⁾ 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

⁽⁸²⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (92) 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 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.
- (93) Thirdly, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ⁽⁸³⁾. Official media in the PRC have recently reported that the CCP called for 'guiding the loan market interest rate downwards' ⁽⁸⁴⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (94) 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, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g., via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (95) In essence, despite the 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.
- (96) No evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.4.1.9. Systemic nature of the distortions described

- (97) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.4.1.2 to 3.4.1.5 as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.4.1.6 to 3.4.1.8 and in Part II of the Report.
- (98) The Commission recalls that, in order to produce the product under review, certain inputs are needed. When the producers of TCCA 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.
- (99) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. 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 that in itself was 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.

⁽⁸³⁾ See OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris, p. 29, available at: https://doi.org/10.1787/eco_surveys-chn-2019-en (accessed on 12 September 2023).

⁽⁸⁴⁾ See: http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm (accessed on 12 September 2023).

3.4.1.10. Comments received concerning the existence of significant distortions

- (100) Upon disclosure, Hebei Jiheng, Heze Huayi and Puyang Cleanway submitted a number of comments concerning the existence of significant distortions.
- (101) First, Hebei Jiheng, Heze Huayi and Puyang Cleanway claimed that that the Report is no longer up to date, in particular given the substantial economic developments both in the EU and in China since its publication, including provision of subsidies to EU industries to promote their adherence to new EU industrial policy objectives or intervention in corporate investment and decision-making.
- (102) The argument concerning the Report being allegedly outdated cannot be accepted. The Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the Chinese authorities, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. Even though the Report was made publicly available in December 2017, the Report's findings remain largely valid and they were in any event complemented by additional evidence collected in the present investigation as laid out in particular in recitals 66 to 67, 69 to 72 or 75 to 78. Moreover, any interested party had ample opportunity to rebut, supplement or comment on the Report and the evidence on which it is based, and no parties have submitted arguments or evidence rebutting the sources and information included in the Report. As to the arguments concerning EU industrial policies and subsidies, the Commission noted that pursuant to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, such as in the EU, do not bear any relevance whatsoever in the context of the present investigation proceeding. Therefore, also this argument was rejected.
- (103) Second, Hebei Jiheng, Heze Huayi and Puyang Cleanway argued that the Commission wrongly interpreted the nature of China's socialist market economy doctrine, failing also to conduct a comprehensive analysis concerning the structure of the Chinese economy, as well as the relationship between the free market and the CCP leadership. Hebei Jiheng, Heze Huayi and Puyang Cleanway backed their argument by claiming that the May 2020 Opinion of the CCP Central Committee and the State Council on Accelerating the Improvement of the Socialist Market Economy System in the New Era reiterated, inter alia, that the reform of the socialist market economy should show great respect for the general rule of market economy, minimize governmental direct allocation of market resources as well as direct intervention in microeconomic activities, fully leverage the decisive role of the market in resource allocation and enhance government's role in effectively addressing the market failure.
- (104) This argument had to be declined. The concept of socialist market economy permeates the entire legislative and economic structure of the PRC and effectively confers on the CCP leadership in all material economic questions, including control of the financial system and capital resources, designating sectors of the economy as a function of their strategic importance, controlling personnel issues including all essential appointments, coordinating economic policies through a formal network of Party entities/committees across state authorities and the economy etc. Out-of-context quotes from selected policy documents cannot alter the conclusion that the Party/State fully dominates the country's economy, as is apparent not only from the evidence shown in sections 3.4.1.2 to 3.4.1.9 above, but also from the very policy documents which refer to respect for market forces while subordinating them to the strategic objectives of the CCP ⁽⁸⁵⁾.
- (105) Third, Hebei Jiheng, Heze Huayi and Puyang Cleanway contested the Commission's finding that the Chinese economy is subject to an overall administrative control by means of an industrial planning system. The exporting producers submitted that the plans are just guidelines and have no binding effects on Chinese companies. The Commission also, in the view of the exporting producers, failed to notice the underlying basic principles emphasize the significance of market-oriented nature of the plans. Moreover, according to the exporting producers, the 14th FYP highlights that the basic market rules should be respected while the government should give full play to the decisive role in allocation of resources and strengthen the main position of enterprises in decision-making. Therefore, the Commission should conduct a comprehensive analysis of the context of 14th FYP as well as other industrial plans instead of citing a single and isolated statements to draw biased conclusions.

⁽⁸⁵⁾ See for instance Chapters 2-3, 8-9, 58-60 of the 14th FYP.

- (106) In response to the argument on the nature of the Chinese planning documents, the Commission points out that the Chinese economy is indeed covered by a complex web of FYPs, driving decisions by public authorities at all levels. Contrary to the argument put forward by the exporting producers, the Commission considers FYPs binding documents. This transpires from the applicable legislation referred to in section 4.3 of the Report, as well from the planning documents themselves. The 14th FYP, for example, contains a dedicated section on improving the planning implementation mechanism stating that: ‘As regards the binding indicators, major engineering projects, and tasks in public services, environmental protection, safety, and other fields set out in this Plan, it is necessary to clarify the responsibilities parties and schedule requirements, to allocate public resources, guide and control social resources, and ensure completion as scheduled. As regards the expected indicators and tasks in the fields of industrial development and structural adjustment set out in this Plan, it is necessary to mainly rely on the role of market players to achieve them. Governments at all levels must create a favourable policy environment, institutional environment, and legal environment’ ⁽⁸⁶⁾.
- (107) Fourth, Hebei Jiheng, Heze Huayi and Puyang Cleanway argued that not all the producers of TCCA are state-owned enterprises and that even if there are some companies owned or invested by the State, this does not prove government intervention in the operations of those companies. The exporting producers further added, referring to Article 11 of the Chinese Company Law, that connections between the CCP and the companies concerned do not necessarily serve as an indication for the government’s control over the operations of a company.
- (108) The Commission recalled that pursuant to Article 2(6a)(b) of the basic Regulation, the fact that the market in question is 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 is one of the elements the impact of which is to be taken into account when assessing the existence of significant distortions. At the same time, even if there is no predominance of SOEs in a given sector, state ownership is only one of the indicators of significant distortions. Government intervention may well take other forms – in line with the indicators listed in Article 2(6a)(b) of the basic Regulation – which have been described in sections 3.4.1.2 and 3.4.1.4 to 3.4.1.9. While the relevance of Article 11 of the Chinese Company Law is not entirely clear in the present context, the Commission pointed out that even Article 1 of the said Company Law refers to the objective of safeguarding the social and economic order and promoting the development of the socialist market economy. Therefore, this argument is rejected.
- (109) Fifth, Hebei Jiheng, Heze Huayi and Puyang Cleanway alleged that the Commissions provided insufficient evidence to justify any findings of inadequate implementation of corporate, property and bankruptcy laws in China. In particular, the exporting producers claimed that China has conducted a regular supervision on the implementation of the Bankruptcy Law, including the trial of bankruptcy cases and suggestions on amendments, therefore not failing to properly apply and enforce law. Moreover, the three exporting producers claim that no instances have been named that prove biased access to capital and investment. Moreover, Hebei Jiheng, Heze Huayi and Puyang Cleanway disputed the Commission’s conclusion with respect to significant distortions concerning wages. The exporting producers observed in this respect that the PRC has ratified a number of ILO conventions and argued that the Commission failed to conduct a sector-specific analysis proving that workers in the TCCA sector are put at a vulnerable employment position and receive distorted wages
- (110) These arguments could not be accepted. As for the implementation of the bankruptcy laws, the Commission pointed out that even if China may have undertaken certain reforms of the insolvency proceedings, available information suggests persisting state intervention and other issues pointing to inadequate application of the bankruptcy laws. While the comparatively low number of insolvency cases is in itself indicative of the market forces not being allowed to eliminate the non-viable economic operators, the ongoing state intervention is particularly well exemplified by various interpretative actions of the Supreme People’s Court which emphasize economic continuity and social stability as priorities which the lower-level courts should take into account in the context of bankruptcy proceedings. As to wage distortions, in addition to the other factors described in section 3.4.1.7 above, the Commission emphasized that is not the fact that China ratified certain fundamental ILO conventions which is relevant in the present context. Instead, the fact that a number of fundamental ILO conventions remain not ratified by China points to wages being distorted.

⁽⁸⁶⁾ See Chapter 65 of the 14th FYP.

- (111) Sixth, Hebei Jiheng, Heze Huayi and Puyang Cleanway submitted that the Commission's investigation methodology and reasoning needs to meet the standards set by the principles and practices crystallized in WTO. The exporting producers argued that Commission needs to bear greater burden of proof when relating the determination of distortive market, in particular when it comes to explaining how governmental powers or mandate translate into actual and demonstrable distortions of cost of production.
- (112) The arguments raised by exporting producers could not be accepted. The Commission considers that the methodology pursuant to Article 2(6a) of the basic Regulation is fully consistent with the European Union's WTO obligations and the exporting producers did not substantiate which principles and practices have allegedly not been met by the Commission. In any event, sections 3.4.1.2 to 3.4.1.9 contain a detailed explanation how various types of distortions – whether cross-cutting and therefore affecting the entire Chinese economy or present specifically in the TCCA sector – affect the functioning of the market and therefore also the costs of production of the product under review.

3.4.1.11. Conclusion

- (113) The analysis set out in sections 3.3.2.1 to 3.3.2.9, 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 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, 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.
- (114) 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 Mexico, an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as described in the following section.

3.4.2. Representative country

3.4.2.1. General remarks

- (115) 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 People's Republic of China. For this purpose, the Commission gives preference to countries with a gross national income similar to China, on the basis of the database of the World Bank ⁽⁸⁷⁾;
 - production of the product under review in that country ⁽⁸⁸⁾;
 - availability of relevant public data;
 - where there is more than one such country, preference shall be given, where appropriate, to countries with an adequate level of social and environmental protection.
- (116) As explained in recital 48, the Commission issued a Note on the sources for the determination of the normal value (the 'FOP note'), on 10 March 2023. This note described the facts and evidence underlying the relevant criteria, as well as informed the interested parties of the Commission's intention to consider Mexico as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

⁽⁸⁷⁾ <https://data.worldbank.org/income-level/upper-middle-income>

⁽⁸⁸⁾ If there is no production of the product under review in any country with a similar level of economic development, production of a product in the same general category and/or sector of the product under review may be considered.

- (117) The Commission analysed two additional possible representative countries: South Africa and Türkiye. In order to identify TCCA producers in these countries, the Commission contacted the European Union delegations of Mexico, South Africa and Türkiye. The Commission could not identify any TCCA producers in South Africa and Türkiye, and could not establish that these countries are actual producers of the product under review. Mexico was identified as the only country where the product under review was being produced for the whole review investigation period. The only confirmed TCCA producer in Mexico was ROT Química. However, no financial information for the aforementioned company was publicly available. Hence, the Commission researched and selected a company producing water treatment chemicals, a product in the same general category as the product under review. The Commission identified CYDSA as a profitable chemical manufacturer, and relied on its published, audited accounts for the year 2021 in order to calculate SG&A and profit.
- (118) Hebei Jiheng, Heze Huayi and Puyang Cleanway, the three Chinese interested parties, submitted that Türkiye should be the appropriate representative country. First, one Turkish TCCA producer with publicly available data was identified. Second, the interested parties submitted that the import data of raw materials of Türkiye was more representative than Mexico. Third, Türkiye has a similar level of economic development as China, and adequate level of social and environmental protection. The Chinese interested parties reiterated this claim after disclosure, adding that Mexico did not meet the criterion of production of the product under review, and the Commission was therefore unable to construct SG&A and profit that would precisely reflect the cost of production in the country of origin.
- (119) The Commission considered the interested parties' comments. Upon further research it was found that the Turkish company identified by the three interested parties did not produce TCCA for the full review investigation period. Therefore, the claim that Türkiye was an appropriate representative country was dismissed. Regarding the claim concerning the construction of SG&A and profit, as explained in recital 117, the Commission considered two other possible representative countries. Finally, Mexico was identified as the only country where the product under review was produced during the full investigation period. However, as no financial information was readily available for the company producing TCCA, the Commission considered whether there was production of a product in the same general category and/or sector as the product under review in Mexico. The identified Mexican company (CYDSA) produced water treatment chemicals and was identified as an appropriate source for SG&A and profit. Therefore, the claim was rejected.
- (120) In line with the criteria listed under Article 2(6a) of the basic Regulation, the Commission identified Mexico as a country with similar level of economic development as the PRC. Mexico is classified by the World Bank as 'upper-middle income' country on a gross national income basis. Furthermore, Mexico was identified as the only country where the product under review was confirmed to be produced during the full RIP.
- (121) Finally, having established that Mexico was an appropriate representative country, and based on all 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 the first indent of Article 2(6a)(a) of the basic Regulation.

3.4.2.2. Conclusion

- (122) In the absence of cooperation and given that Mexico met the criteria laid down in the first indent of Article 2(6a)(a) of the basic Regulation, the Commission selected Mexico as the appropriate representative country.

3.4.3. Sources used to establish undistorted costs

- (123) In the Note on relevant sources for the determination of the normal value, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review, as given by the applicant in the request for the expiry review. The Commission also stated that, in order to construct the

normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA and the USITC DataWeb database to establish the undistorted cost of the factors of production, notably raw materials. In addition, the Commission stated that it would use information from the Mexican Instituto Nacional de Estadística y Geografía ⁽⁸⁹⁾ for establishing undistorted costs of labour in the industrial manufacturing sector, and public tariffs from electricity from the Comisión Federal de Electricidad ⁽⁹⁰⁾ and from the Comisión Reguladora de Energía ⁽⁹¹⁾ for natural gas.

- (124) Finally, the Commission stated that only one producer of TCCA was identified in Mexico, ROT Química. However, as no financial information was available for the aforementioned company, to establish SG&A costs and profit, at a reasonable level, the Commission identified a product in the same general category as the product under review, namely water treatment chemicals. The Commission identified CYDSA as a profitable manufacturer of the product in the same general category and relied on its published, audited accounts for the year 2021 in order to calculate SG&A and profit. Comments were received from the interested parties on a number of points in the above-mentioned FOP note, as described below.
- (125) The interested parties argued that the import prices of chlorine and cyanuric acid of Mexico from the United States were not representative, as they are affected by factors such as distance, demand and supply, and quantity and quality of the goods. Hence, the parties argued that prices from the United States should not be treated as proxy for the import price from the rest of the world and for China. This claim was reiterated after disclosure.
- (126) The Commission considered that in the case at hand, the use of export prices of chlorine and cyanuric acid from the United States to Mexico was appropriate in the absence of undistorted data coming from the GTA database. The interested parties' claim was generic and unsubstantiated. Therefore, the Commission rejected it.
- (127) The three Chinese interested parties submitted that the calculation of the normal value was not correct. First, they argued that the import data at 6-digit level include a wide range of product types that could be quite different from cyanuric acid and chlorine used for the manufacture of TCCA. Second, the parties argued that ocean freight and insurance fees should be deducted from the import price of the main factors of production (cyanuric acid, caustic soda and chlorine). For caustic soda, the Commission used CIF prices as this is a widely traded material. For cyanuric acid and chlorine, export prices from the United States were used. In the case of chlorine and cyanuric acid the Commission relied on FOB prices. Normally, transport costs should also be added to these prices. However, considering the absence of cooperation as well as the nature of an expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for transport were unnecessary. Such adjustments would only result in increasing the normal value and hence the dumping margin.
- (128) The Commission noted that the extractions from the USITC DataWeb database were done at the 6-digit level, which is the highest possible extraction level. In order to verify the accuracy of the price range of the products considered, the Commission compared them with import prices for the same products for other possible representative countries (i.e., Brazil, South Africa and Türkiye, with a gross national income similar to the PRC, on the basis of the database of the World Bank). It was furthermore confirmed that prices obtained from USITC DataWeb were within the range obtained from the GTA database.

⁽⁸⁹⁾ inegi.org.mx

⁽⁹⁰⁾ <https://app.cfe.mx/Aplicaciones/CCFE/Tarifas/TarifasCREIndustria/Tarifas/GranDemandaMTH.aspx>

⁽⁹¹⁾ Índice de Referencia Nacional de Precios de Gas Natural al Mayoreo (IPGN) (cre.gob.mx)

3.4.4. Undistorted costs and benchmarks

3.4.5. Factors of production ('FOP')

- (129) Considering all the information based on the request and subsequent information collected during the procedure and after analysing the comments from the interested parties, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of trichloroisocyanuric acid

Factor of Production	Commodity Code	Applicable unit cost	Unit of measurement	Source of information
Raw materials				
Caustic soda	2815 12 00	522,81 EUR/tonne	tonnes	GTA ⁽⁹²⁾
Chlorine	2801 10 00	1 416,87 EUR/tonne	tonnes	USITC ⁽⁹³⁾
Cyanuric acid	2933 69 80	8 475,21 EUR/tonne	tonnes	USITC
Labour				
Labour Cost in manufacturing industries	N/A	4,89 EUR/hour	hours worked	Instituto Nacional de Estadística y Geografía ⁽⁹⁴⁾
Energy				
Electricity	N/A	0,05986 EUR/kWh	kWh	Comisión Federal de Electricidad ⁽⁹⁵⁾
Natural gas	N/A	0,020 EUR/kWh	kWh	Comisión Reguladora de Energía ⁽⁹⁶⁾

3.4.5.1. Raw materials

- (130) In order to establish the undistorted price of caustic soda in Mexico, the Commission used as a basis the weighted average duty paid price to the representative country as reported in the GTA. 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 ⁽⁹⁷⁾. In order to establish the undistorted price of chlorine and cyanuric acid in Mexico, the Commission used as a basis the weighted average export price of these products from the United States to Mexico in the RIP.

⁽⁹²⁾ <http://www.gtis.com/gta/secure/default.cfm>

⁽⁹³⁾ <https://dataweb.usitc.gov/>

⁽⁹⁴⁾ inegi.org.mx

⁽⁹⁵⁾ <https://app.cfe.mx/Aplicaciones/CCFE/Tarifas/TarifasCREIndustria/Tarifas/GranDemandaMTH.aspx>

⁽⁹⁶⁾ Índice de Referencia Nacional de Precios de Gas Natural al Mayoreo (IPGN) (cre.gob.mx)

⁽⁹⁷⁾ 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.

- (131) The Commission decided to exclude imports from the PRC into the representative country, as it concluded in the above recital 130 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. For caustic soda, the Commission relied on undistorted prices extracted from GTA. In Mexico, more than 98 % of imports of cyanuric acid during the RIP came from China, and their price was considered distorted. The remaining 1,92 % of imports from the Rest of the World recorded in GTA, excluding non-WTO member countries, led to extremely high prices. Therefore, the Commission extracted the prices of cyanuric acid imports to Mexico in the RIP from US export statistics, using the USITC DataWeb database, providing U.S. merchandise trade and tariff data ⁽⁹⁸⁾. Concerning chlorine, there was no data recorded in the GTA on imports to Mexico during the RIP. The Commission, therefore, used the information based on export prices to Mexico from the United States in the RIP, using the USITC DataWeb database.

3.4.5.2. Labour

- (132) For labour, cost statistics from the Instituto Nacional de Estadística y Geografía were used to determine wages in Mexico. The Commission used the average hourly cost of employees in the industrial manufacturing sector in Mexico for the RIP. On this basis, an hourly rate was calculated at 4,89 EUR/hour.

3.4.5.3. Electricity

- (133) The price of electricity in Mexico is published by the Comisión Federal de Electricidad. The Commission used the 2021 and 2022 data of the industrial electricity prices and established a price at the level of 0,05986 EUR/kWh (covering the review investigation period).

3.4.5.4. Natural gas

- (134) To establish the benchmark for gas cost the Commission used the price of gas published by the Comisión Reguladora de Energía. The price used is the average gas unit price for industrial users in Mexico established at the level of 0,020 EUR/kWh (covering the review investigation period).

3.4.5.5. Manufacturing overhead costs, SG&A, and profit

- (135) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (136) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the applicant, the Commission established the ratio of manufacturing overheads to the total manufacturing cost, including labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.
- (137) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the most recent available financial data from the company CYDSA ⁽⁹⁹⁾ (financial year 2021).

⁽⁹⁸⁾ <https://dataweb.usitc.gov/>

⁽⁹⁹⁾ <https://cydsa.com/audited-financial-statements/?lang=en>. To this date (6 October 2023), the link is not accessible anymore. However, European Union Delegations in third countries confirmed that they are able to access it. The Commission has saved screenshots of CYDSA financials to establish the undistorted SG&A and profit.

3.4.6. Calculation of the normal value

- (138) 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.
- (139) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicants in the review request on the usage of each factor (materials and labour) for the production of the product under review.
- (140) Once the undistorted manufacturing cost including labour was established, the Commission added the manufacturing overheads and packaging. SG&A and profit was added to the total cost of manufacturing as noted in recitals 136 and 137. Manufacturing overheads were determined based on data provided by the applicants. Labour costs were determined based on information taken from the Instituto Nacional de Estadística y Geografía. SG&A and profit were determined based on the values reported in the financial statement of the company CYDSA for the year 2021 as reported in the company's audited accounts. The Commission added the following items to the undistorted costs of manufacturing:
- manufacturing overheads (depreciation and packaging), accounting for 8,5 % for bulk and 25,9 % for tablets of the manufacturing cost,
 - SG&A, other costs (operating income, interest expenses, interest income and foreign exchange loss) accounting for 35 % of COGS, and
 - profits, accounting for 12 % of COGS.
- (141) On that basis, in accordance with Article 2(6a)(a) of the basic Regulation, and in absence of cooperation, the Commission constructed the normal value on the level of the product under review, on an ex-works basis. The normal value established on this basis amounted to 8 367,76 EUR/tonne for TCCA tablets and 9 709,68 EUR/tonne for bulk.

3.5. Export price

- (142) Export prices from China were established based on Comext database import values into the Union, adjusted to ex-works level. For that purpose, freight, other charges and insurance costs were deducted based on information provided by the applicant in the request.

3.6. Comparison

- (143) The Commission compared the normal value and the export prices on an ex-works basis.

3.7. Dumping margin

- (144) The comparison showed a significant countrywide dumping margin for Chinese exports for TCCA in bulk and in tablets in the range of 240 to 275 %.

3.8. Likelihood of continuation of dumping

- (145) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be allowed to lapse. The following additional elements were analysed: the production capacity and spare capacity in the PRC, the relation between export prices to third countries and the price level in the Union, and the attractiveness of the Union market. As explained in recital 25, no Chinese exporter producer cooperated in the investigation and the Commission had to resort to available information to determine whether there was a likelihood of continuation of dumping. The Chinese exports into the Union according to Eurostat, were more than 42 000 tonnes, representing more than 60 % of total imports into the Union in the RIP. The Commission found that these volumes provided a sufficiently reliable basis for a continuation of dumping analysis.

3.8.1. *Production capacity and spare capacity in the PRC*

- (146) In the previous expiry review the Commission concluded that the production capacity in the PRC was 278 000 tonnes per year. At the time, the spare capacity of TCCA in the PRC was about 130 000 tonnes. There was no indication that production capacity in China decreased in the meantime. In fact, according to the review request Chinese production capacity in 2022 was at least 755 000 tonnes per year based on a calculation of US producers submitted to the US International Trade Commission, dated 2 November 2021, and provided by the applicant as an annex. Chinese export statistics showed that total exports from China were 225 334,50 tonnes per year. Only a fraction of the difference between capacity and exports, amounting to around 530 000 tonnes per year, can be absorbed by the domestic market as domestic consumption was estimated at 20 000 tonnes per year in the PRC in the last review ⁽¹⁰⁰⁾. The rest is available for export to third countries, especially to the Union since the United States' market is now closed and well supplied (recital 151).

3.8.2. *Export prices to third countries*

- (147) Statistics ⁽¹⁰¹⁾ show that the Union market, the second largest TCCA market after the United States, is attractive to Chinese exports in terms of prices. In 2023, the price level of Chinese exports to the Union was significantly higher compared to the Chinese average export prices to other destinations, USA, UK, Saudi Arabia, etc.

3.8.3. *Attractiveness of the Union market*

- (148) The Commission examined whether it was likely that PRC exporting producers would continue their export sales at dumped prices on the Union market should measures be allowed to lapse. Therefore, the Commission analysed the export and pricing behaviour of the Chinese exporting producers.
- (149) The attractiveness of the Union market was demonstrated by the fact that despite the anti-dumping measures in force, Chinese export volumes to the Union continued to increase during the period considered. The PRC exported more than 42 000 tonnes of TCCA to the Union in the review investigation period, compared to over 26 000 tonnes in 2018, the time of the last expiry review.
- (150) In addition, export prices of Chinese exporting producers to the Union market were lower than the sales prices of the Union industry and the sales prices of other exporting countries on the Union market. As a result, Chinese exporting producers were able to increase their share of the Union market. There was a continuing incentive for Chinese producers to flood the Union market with dumped TCCA, pricing out Union producers and other exporters from this market because, albeit lower than Union industry prices, Chinese exports entered the Union at significantly higher prices compared to the Chinese average export price to other destinations.
- (151) The resumption of production of TCCA in the USA by KIK/BIO LAB ('BioLab') following the reopening of its production facility after a fire that took place at the end of August 2020, and the decision of the USA on 22 February 2023, to maintain the anti-dumping duties on TCCA from the PRC, will divert to the Union part of the Chinese TCCA currently sold in the USA (110 000 tonnes of total Chinese exports to the USA per year).
- (152) Based on the above, the Commission concluded that the Union market constituted an attractive market for Chinese exporting producers of TCCA both in terms of its prices and its size [60 000-70 000] tonnes in the RIP).

3.8.4. *Conclusion on the likelihood of continuation of dumping*

- (153) The investigation showed that the imports from the PRC continued to enter the Union market in high volumes (compared to the size of the market) at dumped prices during the RIP.

⁽¹⁰⁰⁾ OJ L 319, 5.12.2017, p. 10.

⁽¹⁰¹⁾ Customs statistics from the General Administration of Customs of the PRC- from 海关统计数据查询平台 (customs.gov.cn), <http://stats.customs.gov.cn/indexEn>

- (154) In addition, the spare capacity in the PRC was significant in comparison with the Union consumption (recital 146) during the RIP. Moreover, the attractiveness of the Union market in terms of size and prices pointed to the likelihood that Chinese exports would be directed towards the Union market, should the measures lapse, and spare capacity would also be used to increase production and exports to the Union.
- (155) Consequently, the Commission concluded that there was a likelihood that the expiry of the anti-dumping measures would result in a significant increase of dumped imports of the product under review from the PRC to the Union due to the large spare capacity in the PRC, the relatively abundant supply in the largest market for Chinese TCCA, the USA, and the high price level of the Union market compared to other export destinations.
- (156) In the light of the above, the Commission concluded that the expiry of the anti-dumping measures would likely to lead to a continuation of dumping.

4. INJURY

4.1. Preliminary remark

- (157) As there are only two producers in the Union, for confidentiality reasons, the data pertaining to the Union consumption, market shares, Union prices and the undercutting margin calculations, is not presented in precise figures in order to preserve confidentiality pursuant to Article 19 of the basic Regulation. Instead, the Commission provided ranges and indexed ranges in order to nonetheless warrant the rights of the defence of interested parties to understand the underlying data and methodology employed by the Commission.

4.2. Definition of the Union industry and Union production

- (158) The like product was manufactured by two producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (159) The total Union production during the review investigation period was established at [30 000-40 000] tonnes, based on the data provided by the two sole Union producers who represented 100 % of the total Union production of the like product.

4.3. Union consumption

- (160) The Commission established the Union consumption on the basis of the sales volume of the Union industry on the Union market and import data from Eurostat.
- (161) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2019	2020	2021	Review Investigation period
Union consumption	[50 000-60 000]	[55 000-65 000]	[65 000-75 000]	[60 000-70 000]
Index	100	[105-110]	[120-130]	[110-120]

Source: Verified questionnaire replies provided by the Union industry and Eurostat data.

- (162) Over the period considered, the Union consumption increased by [10-20]% to reach the amount of [60 000-70 000] tonnes in the RIP. In 2020, consumption increased by [5-10]%, followed by a further sharp increase of [15-20]% in 2021 before dropping by [10-15]% in the RIP.

- (163) A more detailed analysis shows that consumption increased in 2020 and 2021 as many swimming pools were built. Sustained demand and global logistic issues (like closure of the Suez Canal, lack of available containers) led to stockpiling and an artificial increase in consumption in 2021. This trend came to a halt in the RIP as demand for TCCA normalized.

4.4. Imports from the country concerned

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

- (164) The Commission established the volume of imports on the basis of Eurostat data. The market share of imports from the country concerned was established on the basis of the verified questionnaire replies provided by the Union industry and Eurostat data. Eurostat data were previously checked with the available information.
- (165) Imports into the Union from the country concerned developed as follows for the exporters currently subject to duties:

Table 3

Import volume (tonnes) and market share

	2019	2020	2021	Review Investigation period
Volume of imports from the country concerned (tonnes)	22 680	27 727	44 546	39 826
<i>Index</i>	100	122	196	176
Market share (%)	[25-45]	[35-55]	[50-70]	[50-70]
<i>Index</i>	100	111	152	152

Source: Verified questionnaire replies provided by the Union industry and Eurostat data.

- (166) Over the period considered, the Chinese import volume increased overall by 76 %. It increased first by 22 % between 2019 and 2020, then by 61 % in 2021 and finally decreased by 11 % in the RIP, reflecting the decrease in consumption in the Union market in that year, as shown in Table 2 above.
- (167) The market share of Chinese imports increased by [10-30] percentage points between 2019 and 2020. It increased further by [15-35] percentage points in 2021. In the RIP, the market share of Chinese imports stayed at the level of 2021 despite a drop in consumption. Overall, the market share held by the Chinese exporters increased by ca. [25-45] percentage points throughout the period considered, reaching a significant [50-70]% market share in the RIP.

4.4.2. Prices of the imports from the country concerned

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

Table 4

Import prices (EUR/tonne)

	2019	2020	2021	Review Investigation period
China	1 681	1 307	1 499	2 559
<i>Index</i>	100	78	89	152

Source: Eurostat Comext.

- (169) Over the period considered, Chinese import prices increased significantly by 52 %. The prices first decreased by 22 % between 2019 and 2020 and then increased, first by 15 % in 2021 and by another 71 % in the RIP.
- (170) This price increase is exceptional as it is linked to a cascade of events starting with a fire at a major US TCCA producer that stopped its operations in August 2020 ⁽¹⁰²⁾ (see below Section 5.2.2), thereby creating a shortage of supply on the US market in the medium term. In this context and in view of the much lower prices applicable on the Union market in comparison to the US market, the Union industry progressively re-allocated part of its production volume to the US market to the detriment of its supply on the Union market, thereby also creating a progressive shortage on the Union market. In this context, Chinese exporting producers took advantage of the shortage prevailing in the Union and sold TCCA at higher prices than the Union industry during the RIP.
- (171) These exceptional circumstances are not of a lasting nature, as the US producer resumed its operations after the RIP. In this normalized context, we could observe a significant decline in Chinese export prices into the Union. Indeed, between the end of the RIP (September 2022) and May 2023, the average Chinese export price into the Union declined from 2 559 EUR/tonne to 1 501 EUR/tonne, in line with pre-RIP average import prices (see Section 6.4).

4.4.3. Price undercutting

- (172) The Commission determined the price undercutting during the RIP by comparing:
- (a) the weighted average sales prices of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (b) the weighted average import price established on a cost, insurance, freight (CIF) basis, including the anti-dumping duty, with appropriate adjustments for customs duties and post-importation costs.
- (173) This comparison showed no price undercutting by Chinese imports on the Union market during the RIP whether anti-dumping duties were taken into account or not.
- (174) The information on file shows that the Union industry sold a significant part of its production, based on long-term contracts, at prices that could only be increased to reflect significant costs increases pertaining to certain raw materials (mainly caustic soda & cyanuric acid) and transport ('price setting mechanism'). In the RIP, the Union industry could also integrate significant increases in the cost of electricity in the price setting mechanism. The long-term contracts are the result of current and past dumping practices, and import prices undercutting the Union prices. The Union producers had to engage in such contracts to capture significant sales volumes at the expense of full flexibility in terms of price.
- (175) Chinese imports were often made on spot or short-term basis whereby their prices were able to reflect unexpected market circumstances such as shortage of supply and increased prices.
- (176) These differences in price setting and contractual terms explain the absence of undercutting in the RIP.

4.5. Imports from third countries other than the PRC

- (177) Imports of TCCA from third countries other than the PRC accounted for [5-7]% market share in 2019 and originated mainly from Japan.

⁽¹⁰²⁾ Chemical Fire Raises Concerns about Trichlor Supply| Pool & Spa News (poolspanews.com)

- (178) The aggregated volume of imports into the Union as well as the market share and price trends for imports of TCCA from other third countries developed as follows:

Table 5

Imports from third countries

	2019	2020	2021	Review Investigation period
Volume (in tonnes)	3 772	411	214	806
<i>Index</i>	100	11	6	21
Market share (%)	[5-7]	[0-2]	[0-2]	[1-3]
<i>Index</i>	100	10	4	18
Average price (EUR/tonne)	1 701	1 790	3 211	3 798
<i>Index</i>	100	105	189	223

Source: Eurostat data.

- (179) The total volume of imports into the Union from countries other than the PRC decreased in the period considered and remained at a very low level, as is reflected in their total market share (between [1-3]%). The average prices of these imports were higher than the average prices of the Union industry.

4.6. Economic situation of the Union industry

4.6.1. General remarks

- (180) In accordance with Article 3(5) of the basic Regulation, the assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (181) For the injury determination, the Commission did not make a distinction between macroeconomic and microeconomic injury indicators since the Union industry within the meaning of Article 4(1) of the basic Regulation is constituted of only two producers. The Commission evaluated the economic indicators on the basis of data related to these two producers.
- (182) The economic indicators are production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, labour costs, magnitude of the dumping margin, and recovery from past dumping, sales unit prices, unit cost, inventories, profitability, cash flow, investments, return on investments, ability to raise capital, export performance and overall profitability of the Union industry. They are analysed as follows.

4.6.2. Economic indicators

4.6.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2019	2020	2021	Review Investigation period
Production volume – <i>Index</i>	100	[110-115]	[120-125]	[130-135]
Production capacity – <i>Index</i>	100	[110-115]	[110-115]	[110-115]
Capacity utilisation – <i>Index</i>	100	[100-105]	[105-110]	[110-115]

Source: Verified questionnaire replies provided by the Union industry.

- (184) Production of TCCA increased by [30-35]% during the period considered. More specifically it increased by [10-15]% in 2020, then by [5-10]% in 2021 and finally by another [5-10]% in the RIP. The increase in production was driven by the high demand on the Union market and the TCCA shortage on the US market.
- (185) Union producers increased their installed capacity in 2020 to meet the increased demand in the Union, as shown in Table 2 above. Overall, production capacity increased by [10-15]%.
- (186) During the period considered, the capacity utilisation was high. In the RIP, the Union industry was close to full capacity utilisation. This optimal use of the production facilities is an important factor in the long-run viability of this industry.

4.6.2.2. Sales volume and market share

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

Table 7

Sales volume and market share (tonnes)

	2019	2020	2021	Review Investigation period
Total Sales volume on the Union market – <i>Index</i>	100	[110-115]	[90-95]	[80-85]
Market share (%)	[50-65]	[52-67]	[35-45]	[34-44]
<i>Index</i>	100	[100-105]	[70-75]	[70-75]

Source: Verified questionnaire replies provided by the Union industry and Eurostat data.

- (188) Over the period considered, the Union industry's sales volume in the Union market decreased by [15-20]%. It first increased by [10-15 %] between 2019 and 2020, pushed by the increase in consumption. The sales volume then dropped sharply by [15-25 %] in 2021 and further decreased by [5-15 %] in the RIP.
- (189) Although consumption was growing, the Union market share of the Union industry has decreased significantly by [6-31] percentage points since 2019. This shows that the Union industry did not benefit from the growth in Union consumption while Chinese importers of TCCA benefited. Indeed, the Union industry held around [34-44]% of the Union market in the RIP while the PRC's market share increased to [50-70]%, increasing their market share by [25-45] percentage points overall.

(190) Other third countries' market share decreased, all being individually below de-minimis in the RIP.

4.6.2.3. Growth

(191) The growth in consumption in the Union was of [10-20]% during the period considered. The Union industry was not able to benefit from this increase in consumption and lost significant markets share. Chinese exporting producers were the main beneficiaries of this development on the Union market.

4.6.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2019	2020	2021	Review Investigation period
Number of employees – <i>Index</i>	100	[105-110]	[125-130]	[115-120]
Productivity (tonne/employee) – <i>Index</i>	100	[100-105]	[95-100]	[110-115]

Source: Verified questionnaire replies provided by the Union industry.

(193) During the period considered, the number of employees increased by [15-20]% overall. This increase reflects the increase in production and production capacity of the Union industry during the RIP, as explained in paragraph 4.6.2.1. In addition, in the same period, the Union industry also optimised its output, increasing productivity (measured as output (tonnes) per person employed per year) by [10-15] %.

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

(194) The dumping margins found were significantly above the de minimis level and the current level of measures (see recital 144).

(195) In 2019 and 2020, the Union industry showed signs of recovery from the effects of past dumping. However, such signs of recovery faded in 2021 when the price pressure exerted by the increased Chinese import volumes became unsustainable as they entered the Union market at prices much below the cost of production of the TCCA Union producers.

4.6.2.6. Prices and factors affecting prices

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

Table 9

Sales prices and cost of production in the Union (EUR/tonne)

	2019	2020	2021	Review Investigation period
Average unit sales price in the Union – <i>Index</i>	100	[90-95]	[100-105]	[125-130]
Unit cost of production – <i>Index</i>	100	[90-95]	[115-120]	[155-160]

Source: Verified questionnaire replies provided by the Union industry.

- (197) The average unit sales price of the Union industry to unrelated customers in the Union first dropped by [5-10]% in 2020 before picking up in 2021 by [5-15]%. It then increased sharply by over [25-30]% in the RIP, reaching an average price of [2 000 EUR/tonne to 2 500 EUR/tonne] in the RIP.
- (198) The unit cost of production of the Union industry increased by [55-60]% over the period considered. It first decreased by [5-10]% between 2019 and 2020 and then started its increasing trend, first by [20-30]% between 2020 and 2021 and then by another [35-45]% between 2021 and the RIP.
- (199) As indicated in recital 174, a significant proportion of the Union industry's sales are based on long-term contracts that secure sales volumes over multiple years and define a price setting mechanism. Such mechanism only allows the Union industry to adapt its prices when there are significant changes in the cost of certain variables (cost of certain raw materials and logistic cost). In the RIP, electricity was also added as another variable in the price setting mechanism.
- (200) The Union industry could increase its price on the Union market by integrating the significant increase in variable costs, to the extent that such variables were part of the price setting mechanisms and that the cost increase was significant enough. However, the increase in selling price was only partial and was not sufficient to offset the even more significant increase in the cost of production that took place in 2021 and continued in the RIP. The increase in the cost of production was due to the overall increase in costs and in the price of raw materials and electricity in particular.
- (201) The Union industry prices remained above costs until 2020. Afterwards, the Union industry prices dropped below costs.

4.6.2.7. Labour costs

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

Table 10

Average labour costs per employee

	2019	2020	2021	Review Investigation period
Average labour costs per employee – Index	100	[95-100]	[95-100]	[95-100]

Source: Verified questionnaire replies provided by the Union industry.

- (203) The average labour costs per employee were stable over the period considered.

4.6.2.8. Inventories

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

Table 11

Inventories

	2019	2020	2021	Review Investigation period
Closing stocks – Index	100	[40-45]	[70-75]	[30-35]
Closing stocks as a percentage of production – Index	100	[35-40]	[55-60]	[20-25]

Source: Verified questionnaire replies provided by the Union industry.

- (205) The closing stocks of the Union industry decreased by [65-70]% over the period considered and reflect not only the increase in demand on the Union market but also the consequence of the temporary closure of the US plant of BioLab, which opened new export opportunities for the Union industry.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2019	2020	2021	Review Investigation period
Profitability of sales in the Union to unrelated customers (%)	[5-15]	[7-20]	[(- 10)- 0]	[(- 10)-(- 20)]
<i>Index</i>	100	[130-140]	[(- 10)- 0]	[(- 10)-(- 20)]
Cash flow – <i>Index</i>	100	[145-150]	[(- 105)-(- 110)]	[(- 170)-(- 175)]
Investments – <i>Index</i>	100	[70-75]	[25-30]	[75-80]
Return on investments – <i>Index</i>	100	[150-155]	[(- 150)-(- 154)]	[(- 245)-(- 250)]

Source: Verified questionnaire replies provided by the Union industry.

- (207) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (208) The profitability of the Union industry decreased sharply during the period considered. The Union industry was profitable in 2019 and 2020. The profitability of the Union industry deteriorated sharply in 2021 and even more in the RIP as the unit cost of production increased far more than the unit selling price, registering heavy losses.
- (209) The net cash flow is the ability of the Union producers to self-finance their activities. During the period considered, cash flow trend reflected the evolution of profitability, with 2020 being the best year and the RIP the worse.
- (210) Investments were made regularly during the period considered. Union producers increased their installed capacity in 2020. The needed investments were recorded in 2019 and 2020. In 2021, only maintenance investments were made. Investments in the RIP related mainly to environment.
- (211) The return on investments is the profit in percentage of the net book value of investments. It increased between 2019 and 2020 and then became negative in 2021 and the RIP following the development of profitability.

4.6.2.10. Export performance

- (212) The export volume and average unit sales price on non-Union markets developed over the period considered as follows:

Table 13

Exports of the Union Industry

	2019	2020	2021	Review Investigation period
Export volume – <i>Index</i>	100	[940-950]	[2 255-2 265]	[3 070-3 080]]
Average unit price – <i>Index</i>	100	[80-85]	[85-90]	[145-150]

Source: Verified questionnaire replies provided by the Union industry.

- (213) The export performance of the Union industry was driven by the exceptional circumstances in the USA as explained in recital 170. In a context of shortage, the Union industry could increase significantly its export sales volume during the period considered. The average unit sales price on non-Union markets also followed a positive trend and remained above the price applicable in the Union throughout the RIP. Such price difference is explained by the existence of high trade measures against imports originating in the PRC ⁽¹⁰³⁾ on the US market, the main export market for the Union industry.

4.6.2.11. Profitability of the product under review

- (214) The overall profitability of the product under review in the Union and on non-Union markets developed over the period considered as follows:

Table 14

Overall profitability of the Union Industry

	2019	2020	2021	Review Investigation period
Profitability total product under review (%)	[5-15]	[7-21]	[(- 10)- 0]	[0-10]
<i>Index</i>	100	[130-135]	[(- 10)- 0]]	[0-10]

Source: Verified questionnaire replies provided by the Union industry.

- (215) The Commission established the overall profitability of the Union producers for the product under review by expressing the pre-tax net profit of the sales of the like product to unrelated customers in and outside the Union as a percentage of the turnover of those sales.
- (216) During the period considered, the Union industry could increase substantially its export sales volume at prices well above prices applicable in the Union. The profits generated by those sales have improved the overall performance of the Union producers.

4.7. Conclusion on injury

- (217) The market share held by the Chinese exporters increased by ca. [25-45] percentage points over the period considered, reaching a significant [50-70]% market share in the RIP. The most significant increase took place between 2020 and 2021 (+[15-35] percentage points).
- (218) While the Union consumption increased, by [10-20]% over the period considered, the market share of the Union industry decreased by [30-40]% over the same period to a market share of [34-44]% in the RIP.

⁽¹⁰³⁾ Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China, 70 Fed. Reg. 36,561 (June 24, 2005) 2022-01933.pdf (govinfo.gov); Level of the measures (285,6 %).

- (219) In this context, Chinese import prices dropped in the course of the period considered (2020 to 2021) to levels below the average costs and selling price of the Union industry. This drop coincided with the sudden increase in market share of Chinese imports. Despite a significant increase in prices in the RIP, Chinese imports kept their market share.
- (220) Although some of the injury indicators show a favourable trend mostly driven by the export activities (production, production capacity, capacity utilisation, employment, productivity, inventories and average unit sales price in the Union and outside the Union), the economic situation of the Union industry on the Union market deteriorated significantly during the period considered, as shown by indicators such as market share, sales volume in the Union, average unit cost of production, profitability, cash flow, investments and return on investments.
- (221) In particular, the situation of the Union industry started deteriorating in 2021 when Chinese imports entered the Union market in much greater quantities, at prices below the average unit selling price of the Union producers and below the average unit cost of production of the Union industry. In this context, the Union industry, which was unable to compete, turned loss-making in the Union market.
- (222) In spite of the amendment to the price setting mechanism (inclusion of electricity) of its main long-term contracts in the RIP, the Union industry could only partially transfer the steady cost increase to its customers. Consequently, the situation aggravated in the RIP.
- (223) In order to ensure its sustainability, the Union industry decided to reduce its sales on the Union market and re-allocated part of its production volume to export markets where it could achieve higher prices.
- (224) On the basis of the above, the Commission concluded that the Union industry continued to suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

5. CAUSATION

- (225) 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.

5.1. Effects of the dumped imports

- (226) During the period considered, Chinese imports of TCCA accounted for the vast majority of imports into the Union. Chinese exporting producers benefited greatly from the growth on the Union market and managed to increase their import volume by 76 %, increasing their market share by [25-450] percentage points at the expense of the Union industry and other third country producers. In the RIP, Chinese exporting producers were market leaders with over [50-70 %] market share.
- (227) The combined analysis of the development of Chinese imports and the injury indicators between 2019 and 2021 shows a clear causal link between, on the one hand, the combined drop in prices of Chinese imports that went below the Union industry's cost and their massive increase in volume in 2021, and, on the other hand, the significant deterioration of the situation of the Union industry, which lost sales volume, market share and also turned loss-making.
- (228) The RIP also reflects the continuation of the injurious behaviour of the Chinese exporting producers. As explained in recital 174, in view of the current and past dumping practices and the historical import prices undercutting the Union prices, the Union producers decided to sign long-term contracts covering significant volumes but limiting price flexibility. These contracts prevented Union producers from raising their prices enough to transfer the surge in cost of production, leading to a further deterioration of their situation in the RIP. The fact that no undercutting was found in spite of the deterioration of the situation of the Union industry is explained by the behaviour of Chinese exporting producers taking advantage of their market leader position to increase their prices above the Union industry's average selling price that was limited by the long-term contracts.

- (229) The continued deterioration of the situation of the Union industry in the RIP is thus closely linked to the constant price pressure exerted by Chinese importers in previous years and by the surge in import volumes originating in the PRC.
- (230) On the basis of the above, the Commission concluded that the dumped imports from China contributed to the injury suffered by the Union industry.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (231) The total volume of imports into the Union from countries other than the PRC decreased significantly over the period considered and remained at a very low level, see above Section 4.5. The average prices of these imports were higher than the average prices of the Union industry. The imports from third countries have therefore not contributed to the injury suffered by the Union industry.

5.2.2. Exceptional situation during the RIP and export performance of the Union industry

- (232) As mentioned in Section 4.6.2.10, the export performance of the Union industry was driven by the exceptional circumstances in the United States.
- (233) The fire at a major US TCCA producer reduced US-based supply by 30 % and led to a shortage of supply on the US market, creating opportunities for non-US producers, including the Union industry. The increased demand for TCCA, driven by an increase in swimming pool installations in the USA and global logistic issues (closure of the Suez Canal, lack of available containers) also contributed to this shortage, which was mostly visible in the second semester of 2021. The production at BioLab resumed after the end of the period considered, in November 2022, leading to a likely 'normalisation' of the US market.
- (234) The export performance of the Union industry was driven by the above-mentioned exceptional circumstances. In a context of shortage in the US, the Union industry could significantly increase its export sales volume to a market protected by high trade measures against China during the period considered.
- (235) Export sales were made at prices significantly above the average selling price on the Union market and were profitable. Therefore, the export performance of the Union industry has not contributed to the injury, but to the contrary, contributed to compensate the losses incurred on the Union market. Had the Union industry sold additional quantities on the Union market on spot basis, it would not have reached the same price level as on the US market, as it would have faced Chinese competition.

5.2.3. Long-term contracts with customers

- (236) As explained in recitals 174 and 228, in an attempt to remain competitive in view of the past and current dumping practices and consequent price pressure exerted by the Chinese imports, Union producers signed long-term contracts with their main customers. Prices were negotiated annually at the beginning of the selling campaign (fall of year-1) and could only be adjusted to reflect significant cost fluctuations in raw materials, transport and electricity. In the context of continued price and volume pressure from the imports from China, these contracts ensured not only a given volume of sales, but also an increase in volumes sold by the Union industry. The drawback was the reduced flexibility in terms of price policy.
- (237) In the RIP, due to an unforeseen event- an unprecedented increase in electricity prices- costs of production surged by [35-45]% in comparison with 2021. Union producers imposed exceptional price increases to their clients, but these increases were not enough to compensate the sustained increase in cost of production driven by the continued inflationary context.
- (238) Therefore, the Commission concluded that the long-term contracts may have contributed to the injury suffered by the Union Industry in the RIP. No other factor attenuates the causal link between the dumped imports originating in the PRC and the injury suffered by the Union industry.

5.2.4. Conclusion on causation

- (239) On the basis of the above, the Commission concluded that the dumped imports originating in the PRC materially injured the Union industry.

6. LIKELIHOOD OF CONTINUATION OF INJURY

- (240) The Commission concluded in Section 4.7 that the Union industry suffered material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by the dumped imports from the PRC if the measures were allowed to lapse.
- (241) In that regard, the Commission examined the spare capacity in the PRC, measures on third markets, the attractiveness of the Union market, the post RIP developments and the impact of imports from the PRC on the situation of the Union industry should the measures be allowed to lapse.

6.1. Spare capacity in the PRC

- (242) As indicated in section 3.8.1, the PRC is the largest producer of TCCA in the world with a spare capacity of 550 000 tonnes/year, which is more than eight times the consumption in the Union. Therefore, the Chinese TCCA industry, which is export-oriented and is always looking for opportunities to sell its goods abroad, would be readily able to increase exports of TCCA to the Union if the anti-dumping duties expired. This would further impact adversely the economic situation of the Union industry and, in the short to medium term, lead to the complete disappearance of the Union industry.

6.2. Trade measures in third country markets

- (243) The US market is the largest TCCA market in the world, before the Union. It is protected by high trade defence measures against China. These measures have been reviewed in February 2023 and prolonged for another 5 years ⁽¹⁰⁴⁾. Given the high level of these measures, Chinese exporting producers are normally not present in substantial quantities on the US market. Yet, in 2021, following the shortage on the US market linked to the fire at US producer BioLab, Chinese exported ca. 47 600 tonnes of TCCA to the US and 39 700 tonnes in 2022 ⁽¹⁰⁵⁾.
- (244) In November 2022, BioLab resumed production so that the demand for non-domestic TCCA in the US market will decrease significantly. In this context, the US market will no longer represent an opportunity for TCCA producers in third countries and the PRC in particular. This change in the US market will increase the PRC spare capacity and is likely to lead to additional import pressure in the Union market as Chinese exporting producers are very likely to redirect their exports at dumped prices to the Union.

6.3. Attractiveness of the Union market

- (245) The Union market is attractive due to its large size since it is the second biggest TCCA market in the world after the USA.
- (246) Statistics ⁽¹⁰⁶⁾ show that the Union market is attractive to Chinese exports with regard to prices as well. In 2023, Chinese exports entered the Union at significant higher prices compared to the Chinese average export price to other destinations.

⁽¹⁰⁴⁾ <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03652.pdf>

⁽¹⁰⁵⁾ Source: GTA

⁽¹⁰⁶⁾ Source: Customs statistics from the General Administration of Customs of the PRC- from 海关统计数据查询平台 (customs.gov.cn)

6.4. Post-RIP developments

Table 16

Post-RIP sales prices & undercutting

	China-EU prices/tonne	Undercutting
Q4 2022	2 139	[- 5 %-10 %]
Q1 2023	1 727	[20 %-30 %]
Q2 2023	1 507	[30 %-40 %]
Period Oct 22-May 23	1 731	[20 %-25 %]

Source: Comext+ information provided by the Union industry.

- (247) Chinese export prices into the Union decreased sharply after the RIP, being in the second quarter 2023, at around 1 500 EUR/tonne. At the same time, costs of production of the Union producers, in particular the energy costs remained high and will probably remain high for a while. Therefore, the Union industry is unable to lower prices to compete with cheap Chinese TCCA imports. The investigation also revealed that some clients already turned their backs on Union producers alleging the considerable difference in prices, compared with the Chinese exports.
- (248) Indeed, the export prices of the Chinese exporting producers in the Union market undercut the Union industry sales price in the whole post RIP period. By [30 %-40 %] in Q2 2023 and by [20 %-25 %] on average in the post RIP period. In the likely event that imports would continue entering the Union at such low prices, the situation of the Union industry, which is already suffering material injury, would further deteriorate.
- (249) If the measures were allowed to lapse, Chinese dumped imports at injurious prices would likely exert a further downward pressure on the sales prices in the Union market. The Union industry will very likely register further losses and, in all likelihood, will lose clients and may potentially be kicked out of the Union market.
- (250) Following definitive disclosure, the three Chinese interested parties: Hebei Jiheng, Heze Huayi and Puyang Cleanway claimed that the Union industry had recovered from any alleged injury as some of the injury indicators showed a favourable trend (production, production capacity, capacity utilisation, employment, productivity, inventories and average unit sales price in the Union and outside the Union). The three Chinese interested parties also indicated that such indicators were mostly driven by the export activities.
- (251) As acknowledged by the three Chinese interested parties, the positive evolution of certain indicators was mainly due to the performance of the Union industry on export markets where exceptional circumstances applied and where trade measures are in place against imports originating in the PRC (see Section 4.6.2.10), thus not reflecting the situation of the Union market. Moreover, as mentioned in Sections 4.7 and 5 and demonstrated by most indicators relating to the Union market, the situation of the Union industry deteriorated significantly during the review investigation period so that the Union industry suffered material injury as a consequence of the increased Chinese imports. In addition, other elements mentioned in Sections 6.1 to 6.47 point to a likelihood of continuation and recurrence of injury should the measures be allowed to lapse. On this basis, this claim was rejected.

7. LIKELIHOOD OF RECURRENCE OF INJURY

- (252) In addition, the Commission found that the repeal of the measures would in all likelihood result in recurrence of further injury. Indeed, even if the continuous injury suffered by the Union industry could not be attributed to the subject imports, the Commission found that there is strong likelihood of recurrence of injury on the basis of the significant level of the spare capacity in the PRC (see Section 6.1), the attractiveness of the Union market (see Section 6.3) and the analysis of the Post-RIP developments (see Section 6.4). Following the definitive disclosure, no interested party made any comment on this finding. Therefore, the Commission maintained that, even if as alleged the Union industry would have recovered from the injurious situation, material injury will recur should the measures lapse.

8. CONCLUSION ON THE LIKELIHOOD ANALYSIS

- (253) The situation of the Union industry would further deteriorate should the measures be allowed to lapse. Indeed, in the absence of measures, Chinese exporting producers would have sufficient capacity to increase their dumped exports to the Union. Also, recent development in post-RIP import prices confirm that such dumped prices would also undercut Union prices. Such imports would exert a downward pressure on prices in the Union whereby the Union industry would be forced to decrease its sales prices not to lose market share. By decreasing its prices, the profitability of the Union industry would deteriorate even more. In the short to medium term, such developments would not be sustainable forcing the Union industry to potentially stop its operations.
- (254) In view of the above, the Commission concluded that the repeal of the measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious price levels and lead to continuation or recurrence of injury. This will further aggravate the injurious and in any event fragile situation of the Union industry. As a consequence, the viability of the Union industry would be at serious risk should the measures lapse.

9. UNION INTEREST

- (255) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would clearly be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, unrelated importers, traders, and users.

9.1. Interest of the Union industry

- (256) The investigation found that the Union industry was injured and in a vulnerable situation. As mentioned in recital 253, the situation of the Union industry would likely further deteriorate in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of measures would benefit the Union industry.
- (257) Moreover, the Union industry being integrated, it also produces upstream raw materials on site, that are used in the TCCA production process. This is the case for chlorine, a very unstable compound, that is difficult to store and to transport. Therefore, a reduction in the TCCA activity would also directly affect upstream activities negatively. Indeed, their output could not be absorbed, and their production volume would thus decrease, leading to an increase in fixed costs and an overall negative impact for the Union industry's profitability.
- (258) On this basis, the Commission concluded that the continuation of the anti-dumping measures in force would be in the interest of the Union industry.

9.2. Interest of unrelated importers and traders

- (259) Three unrelated importers submitted a questionnaire reply following the publication of the Notice of Initiation. While one stopped cooperating, the two others cooperate fully in the investigation by submitting a complete questionnaire reply and answers to the deficiency points raised during the investigation.
- (260) The importers ⁽¹⁰⁷⁾ bought mainly TCCA from the PRC during the RIP. They also bought limited quantities of TCCA from Union producers. TCCA represented between 20 % and 30 % of their total turnover. Furthermore, the investigation revealed that the importers were profitable, despite the measures in force.
- (261) One importer was in favour of the continuation of measures, the other remained silent on its position.
- (262) On these grounds, the Commission concluded that the continuation of the measures would not have any significant negative impact for importers.

⁽¹⁰⁷⁾ Who are also transforming TCCA into tablets or other packaging/labelling formats.

9.3. Interest of users

- (263) One user submitted a questionnaire reply. This company was a producer of TCCA until 2017 when it changed its business model from the production of TCCA to TCCA transformation tableting.
- (264) This user was in favour of the extension of the measures as they allow a level playing field.
- (265) No other user came forward following the publication of the Notice of initiation and during the investigation. Therefore, the conclusions reached in previous investigations are still valid. The continuation of the measures would not have a negative impact on competition in the Union market.

9.4. Conclusion on Union interest

- (266) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of TCCA originating in China.
- (267) Following definitive disclosure, the three Chinese interested parties, Hebei Jiheng, Heze Huayi and Puyang Cleanway, claimed that the continued imposition of measures would enhance the monopoly position of the Union industry and allow it to sell at abnormally high prices to the detriment of the users.
- (268) The Union market is characterized by the existence of several players based in the Union but also based in other countries. Considering the market share of each of the players over the period considered, the Commission considered that the level of competition applicable on the EU market is high and that the Union industry does not enjoy a monopolistic position. This is also evidenced by the price difference observed during and after the period considered between the Chinese import prices and the prices charged by the Union industry. On this basis, this claim was rejected.

10. ANTI-DUMPING MEASURES

- (269) On the basis of the conclusions reached by the Commission on continuation of dumping, continuation of injury and Union interest, the anti-dumping measures on TCCA from China should be maintained.
- (270) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The 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) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (271) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (272) 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.
- (273) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in China and produced by the named legal entities. Imports of the product under review 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.

- (274) 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 ⁽¹⁰⁸⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (275) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.
- (276) The Commission received a submission from the Union industry that further substantiated the Commission's findings that the Chinese exporting producers were able to sell at prices below the Union target price. It was therefore not deemed necessary to amend the text of the present Regulation.
- (277) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹⁰⁹⁾ 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.
- (278) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of trichloroisocyanuric acid and preparations thereof, also referred to under the international non-proprietary name (INN) 'symclosene', currently falling under CN codes ex 2933 69 80 and ex 3808 94 20 (TARIC codes 2933 69 80 70, 3808 94 20 20), and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable before duty to the net free-at-Union-frontier price for products manufactured by the companies listed below shall be as follows:

Company	Anti-dumping duty	TARIC additional code
Hebei Jiheng Chemical Co. Limited	8,1 %	A604
Puyang Cleanway Chemicals Limited	7,3 %	A628
Heze Huayi Chemical Co. Limited	3,2 %	A629
Zhucheng Taisheng Chemical Co. Limited	40,5 %	A627
Liaocheng City Zhonglian Industry Co. Ltd	32,8 %	A998
All other companies	42,6 %	A999

⁽¹⁰⁸⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽¹⁰⁹⁾ 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 Regulations (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).

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 under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

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, 13 December 2023.

For the Commission
The President
Ursula VON DER LEYEN
