



2023/2659

28.11.2023

COMMISSION IMPLEMENTING REGULATION (EU) 2023/2659

of 27 November 2023

imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 30 March 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of polyethylene terephthalate ('PET') originating in the People's Republic of China ('the country concerned' or 'the PRC') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 14 February 2023 by PET Europe ('the complainant'). The complaint was made on behalf of the Union industry of PET in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting threat of injury that was sufficient to justify the initiation of the investigation.

1.2. Registration of imports

- (3) On 31 May 2023, the complainant submitted a request for registration of imports of PET originating in the PRC pursuant to Article 14(5) of the basic Regulation. As can be seen in Table 1, in the present case, when comparing the imports from the initiation of the investigation onwards (i.e. April until July 2023) to the investigation period (i.e. calendar year 2022) and the same months in the investigation period based on Eurostat statistics, no increase in imports took place and therefore the legal condition under Article 10(4)(d) had not been met. Thus, the Commission decided not to register imports of PET originating in the PRC.

Table 1

Imports from China in the IP and after initiation (tonnes)

	Investigation period	Investigation period monthly average	April – July 2023	April – July 2023 monthly average
Imports from the PRC to the Union	305 055	25 421	100 657	25 164

Source: Eurostat

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of certain polyethylene terephthalate ('PET') originating in People's Republic of China (OJ C 115, 30.3.2023, p. 5).

- (4) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met. Since no increase in imports took place, as set out above, the Commission decided not to register imports of PET originating in the PRC during the period of pre-disclosure.

1.3. Interested parties

- (5) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the Chinese authorities, known importers, and users about the initiation of the investigation and invited them to participate.
- (6) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. Comments on initiation

- (7) Following initiation, comments were received from the Chinese association China Petroleum and Chemical Industry Federation ("CPCIF"), the user association Union of European Soft Drinks Associations ("UNESDA"), and an unrelated importer (Svepol). The complainant submitted responses to these comments.
- (8) Both associations claimed that the complainant failed to provide meaningful non-confidential summaries of specific information, especially regarding an ICIS report on the price evolution of paraxylene, one of the raw materials for the production of PET, and regarding the closures and idling of Union production sites. UNESDA additionally claimed that some annexes were missing.
- (9) The open version of the complaint set out the conclusions of the ICIS report on the price evolution of paraxylene in paragraph 141, explaining that the price of paraxylene increased significantly over the course of 2022, affecting the import price of PET from all import destinations. The summary of the relevant open annex to the complaint indicated that this annex contained information on the idling and closures of certain Union producers during the period considered and investigation period of this complaint. UNESDA did not indicate which specific annexes were missing. Therefore, the Commission considered that the complaint included a meaningful non-confidential summary of all the information contained in the complaint and the claim was rejected.
- (10) Furthermore, both associations argued that the complaint was inconsistent and incorrect with regard the number of PET producers in the Union, claiming in part of the complaint that there are 12 producers and elsewhere in the complaint that there are around 40 producers.
- (11) As explained by complainant, this inconsistency was caused by a typographical error. The complainant clarified that the Union industry is made up by 12 companies that produce virgin PET ('vPET') and that in addition to those, there are around 40 smaller Union producers of recycled PET ('rPET') only. The companies known by the complainant have been included in an open annex to the complaint.
- (12) UNESDA claimed that the economic indicators about the situation of the domestic industry are not presented in a uniform manner. Similar information refers to 'complainants'; 'EU producers'; 'related parties'; 'unrelated parties' without explanation as to who is covered under each denomination making the information unintelligible. Estimated data is provided without explanation of the methodology used.
- (13) Since UNESDA did not specify in which exact parts of the complaint the references to the different players on the Union market were unintelligible and which data was provided without explanation, the Commission could not assess this claim and rejected it.
- (14) UNESDA argued that the information provided in the complaint to support the allegation of threat of injury did not include data about the rPET industry which when taken into account would change the conclusions on basic injury factors.

- (15) The complaint did include estimated data on the rPET industry in its threat of injury assessment. This information was based on detailed capacity figures per rPET producer which was obtained by market intelligence of PET Europe and the complaining producers, and which was extrapolated for the other injury indicators (such as production and sales). The complainant represented 11 producers, which mainly produced vPET. Pursuant to Article 5(2) of the basic Regulation, a complaint must contain information as is reasonably available to the complainant. The Commission therefore considered the estimated data on the rPET industry as sufficient evidence at the stage of the complaint.
- (16) Svepol claimed that the investigation was solely opened to eliminate competition and protecting the international PET investments of one of the complaining producers.
- (17) The Commission considered this claim to be mere speculation for which the importer did not provide any substantive evidence. Therefore, it rejected the claim.

1.5. Sampling

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

1.5.1. Sampling of Union producers

- (19) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of largest representative volume of sales and of production of the like product in the Union in the investigation period, which could reasonably be investigated within the time available. This sample consisted of three Union producers which accounted for 35 % of the estimated total production in the Union. The Commission invited interested parties to comment on the provisional sample.
- (20) One of the users, Refresco, submitted that the selection only covered a small portion of PET production. The user further requested that the sample be extended by two more producers (JBF and Plastiverd), which have modern installations that should be able to produce economically, which are closer to users in France and Spain, and would thus cover a larger part of the European production and geographically a larger customer base served by the producers.
- (21) By selecting the three largest Union producers and sellers in the investigation period, located in three different Member States, the Commission covered the largest representative volume of production and sales which could reasonably be investigated within the time available, in line with Article 17(1) of the basic Regulation. The companies selected account for 35 % of the estimated total production in the Union, hence a substantial and representative part of the Union production. The selection of producers located in three different Member States equally ensures wide geographical coverage. Moreover, Refresco did not provide any evidence that the companies selected did not have any modern facilities with the ability to make the product more economically nor did it explain how this would have been a relevant criterion in selecting a representative sample. Therefore, Refresco's claim for revision of the sample was rejected.
- (22) The Commission concluded that the sample of Union producers was therefore representative of the Union industry.

1.5.2. Sampling of importers

- (23) 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.
- (24) One unrelated importer provided the requested information and agreed to be included in the sample. Since only one company replied, the Commission decided that sampling was not necessary.

1.5.3. *Sampling of exporting producers the PRC*

- (25) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (26) Nine exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three company groups on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample.
- (27) One of the sampled exporting producers, Hainan Yisheng Petrochemical Co Ltd, withdrew its cooperation. Therefore, the Commission decided to replace this company in the sample with China Resources Chemical Innovative Materials Group, whose export quantities of the product under investigation to the Union as reported in the sampling questionnaire were the largest among the rest of the cooperating exporting producers. The final sample of exporting producers represented around 65 % of the exports reported by cooperating exporting producers from the PRC to the Union during the investigation period. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the final sample. No comments were received.

1.6. **Individual examination**

- (28) Five exporting producers in the PRC requested individual examination under Article 17(3) of the basic Regulation. However, none of them provided a reply to the questionnaire.

1.7. **Questionnaire replies and verification visits**

- (29) 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').
- (30) The Commission sent questionnaires to the sampled Union producers, the sampled exporting producers, the known importers and users. The same questionnaires were made available online ^(?) on the day of initiation.
- (31) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:
- (a) Union producers:
- Equipolymers GmbH, Germany
 - Indorama Ventures Europe BV, the Netherlands
 - Neo Group UAB, Lithuania
- (b) Importers:
- Svepol JSC, Bulgaria
- (c) Exporting producers in the PRC:
- Wankai New Materials Group ('Wankai Group'):
- Wankai New Materials Co., Ltd. ('Wankai')
 - Chongqing Wankai New Materials Technology Co. Ltd. ('Chongqing Wankai')

^(?) <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2661>

Sanfame Group:

- Jiangsu Hailun Petrochemical Co., Ltd ('Hailun')
- Jiangsu Xingye Plastics Co., Ltd. ('Xingye')
- Jiangyin Xingu New Material Co., Ltd. ('Xingyu')
- Jiangyin Xingtai New Material Co., Ltd. ('Xingtai')

China Resources Chemical Innovative Materials Group ('CRCIM Group'):

- China Resources Chemical Innovative Materials CO., LTD. ('CRCIM')
- Zhuhai China Resources Chemical Innovative Materials Co., Ltd. ('Zhuhai CRCIM')

1.8. Investigation period and period considered

- (32) The investigation of dumping and injury covered the period from 1 January 2022 to 31 December 2022 ('the investigation period' or 'the IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2019 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (33) The product under investigation is polyethylene terephthalate ('PET'), having a viscosity of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling under CN code 3907 61 00 ('the product under investigation').
- (34) PET is a chemical product normally used in the plastics industry to produce bottles and sheets. It belongs to the family of thermoplastics, i.e. the family of plastics that can be melted when heated and hardened when cooled. These characteristics are reversible. That is, it can be reheated, reshaped and frozen repeatedly, making it fully recyclable.

2.2. Product concerned

- (35) The product concerned is PET, originating in the People's Republic of China ('the product concerned').

2.3. Like product

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

2.4. Claims regarding product scope

- (38) A claim concerning the product scope of the investigation was received from Jiangsu Ceville New Materials Technology Co., Ltd. ('Ceville'), an exporting producer which recycles post-consumed PET for the production of PET pellets for direct food contact. In its submission, Ceville requested the exclusion of rPET from the product under investigation arguing that the physical and chemical characteristics, usage, raw materials, production process, and producers of rPET are vastly different from vPET.

- (39) First, it is noted that, depending on the quality of the recycling process, rPET and vPET can have exactly the same physical, technical and chemical characteristics and are interchangeable for the same end uses. Second, PET (be it vPET or rPET) is ultimately the same compound molecule, and the production process is immaterial as both types of PET have the same physical and chemical characteristics. Third, while the producers of rPET might be different from vPET producers and while imports of rPET from the PRC might have been limited, the Commission found that a number of cooperating Chinese exporting producers did have both vPET and rPET production capacity and were able to and in some cases did export rPET to the Union during the IP. Fourth, vPET and rPET are substitutable and compete with each other. Furthermore, any change in the price of vPET affects the price of rPET and vice versa. Ceville's claim was therefore rejected.

3. DUMPING

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

- (40) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (41) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide information regarding the inputs used for producing PET. Ten exporting producers submitted the relevant information.
- (42) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. No reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No comments were received.
- (43) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (44) On 12 May 2023, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value.
- (45) In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of PET. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified two possible representative countries, namely Türkiye and Malaysia. The Commission received comments on the First Note from the Chinese producers' association CPCIF, the unrelated importer Svepol, the exporting producer Wankai Group and the complainant.
- (46) On 27 July 2023, the Commission addressed the comments received from interested parties on the First Note by a second note ('the Second Note') and informed interested parties on the relevant sources it intended to use for the determination of the normal value, with Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company MPI Polyester Industries Sdn. Bhd. ('MPI'), a producer in the representative country.

- (47) The Commission received comments on the Second Note from one unrelated importer (Svepol JSC), a Chinese producers' association (CPCIF) and two sampled exporting producers (Wankai Group and Sanfame Group).
- (48) After having analysed the comments and information received, the Commission concluded that Malaysia was an appropriate representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in Section 3.2.2 below.

3.2. 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, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

3.2.1.1. 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')⁽⁴⁾, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials, and labour) as well as in specific sectors (such as steel and chemicals). The Report was 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 complaint provided additional evidence on significant distortions in the PET sector within the meaning of Article 2(6a)(b), complementing the Report. More specifically, the complaint indicated that the prevalence of State-Owned Enterprises ('SOEs') in the PRC and the influence and control exerted by the Chinese Communist Party ('CCP') over private enterprises means prices of the product under investigation are not determined by market forces. The complaint also claimed that State interventionist policies artificially decrease the domestic prices of raw materials in the PRC, resulting in lower costs of production of finished products such as PET.
- (57) The complaint also mentioned that the dominant state-ownership and interventionist government policies in the private sector of the CCP resulted in the non-market-based allocation of resources and the absence of fair competition. According to the complainant, the legal environment in the PRC is conducive of distortive practices such as preferential access to finance, land, energy, and market access restrictions exist, leading to overcapacities in encouraged industries. Furthermore, the State and the CCP control the conditions of competition in the PRC and encourage resources allocations in strategic sectors. In addition, the complaint alleged that the CCP exercises direct influence over the decision making of privately and state-owned enterprises and that all their investment is subject to approval by the National Development and Reform Commission ('NDRC').
- (58) In particular, the complaint referred to distortions concerning:

(a) Petroleum and other raw materials

The complaint stated that prices of energy are heavily distorted and do not result from market forces. Notably, it was alleged that the GOC used to set the retail price for refined petroleum at a level that does not keep pace with international prices and that since 2013, prices are adjusted by the NRDC when international prices fluctuate by more than RMB 50 per tonne for a period of 10 working days. The complaint also affirmed that water pricing in the PRC is too low and can be seen as a distortion. Finally, the complainant considered that the State controls the supply, distribution and ownership of raw material notably through the use of stockpiling, the steering of investment activities and through SOEs representing 52 % of the industry of raw chemical materials in the PRC.

(b) Energy costs

The complaint referred to the Report and recalled the significant involvement of the State in the production of electricity and the determination of electricity prices. Notably, reference was made to the fact that energy prices are controlled by the State and that cheaper energy is provided to a subset of industries.

(c) Capital

The complaint referred back to the Report to underline that the corporate credit system in the PRC is affected by significant systemic distortions. The complaint also referred to a statement made by the U.S. Department of Commerce in a Countervailing Duty Investigation according to which the Chinese financial system is distorted.

(d) Labour costs

⁽⁴⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

The complaint recalled the Commission's observation in the Report to show that wages do not result from normal market forces or negotiations between companies and the work force. It also mentioned a previous trade defence investigation confirming the existence of distortions in the labour market in the PRC. The complainant also underlined the impact on labour costs of the hukou system, the lack of explicit right to strike and the lack of independent collective bargaining.

(e) Land costs

The complaint explained that some official documents show favoured land allocation to SOEs and referred to the Report and previous trade defence investigations to argue that the price paid for land-use rights is below market value. In addition, reference was made to the fact that other authorities investigating the situation in the PRC also found distortions with regard to preferential supply of land.

(f) Other distortive practices in the PET market

The complaint underlined that the main raw materials used in the production of PET are petrochemicals, which is a priority sector according to the 13th and 14th Five-Year-Plans ('FYP'). It also claimed that PET qualifies as a high-performance resin and polyethylene which are mentioned in Article VIII of the 14th FYP. In addition, the complaint stated that the largest producer of PTA is an SOE. As a result of the Chinese policies, production capacity of PET and PTA increased between 2020 and 2022 and there is significant overcapacity for PET, PTA, and in the Chinese chemical industry as a whole.

- (59) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand. One exporting producer group claimed in its questionnaire reply that the companies of the group made multiple purchases of materials from foreign suppliers, so these were made at undistorted values. However, this argument does not call in question the existence of significant distortions which concern not only raw materials, but the production process of PET as a whole. In addition, the exporting producer in question also bought raw materials from the domestic market and did not provide any further details to substantiate its claim.
- (60) 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 investigation. 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.

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

- (61) 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' ⁽⁵⁾. 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 ⁽⁶⁾.

⁽⁵⁾ Report – Chapter 2, p. 6-7.

⁽⁶⁾ Report – Chapter 2, p. 10.

- (62) 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.' ⁽⁷⁾ 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.
- (63) 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 ⁽⁸⁾. 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.
- (64) 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 3.2.1.5 below) ⁽⁹⁾.
- (65) 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 3.2.1.8 below) ⁽¹⁰⁾. 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 ⁽¹¹⁾.
- (66) 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 ⁽¹²⁾. 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 ⁽¹³⁾.

⁽⁷⁾ Available at: Constitution of the People's Republic of China (npc.gov.cn) (accessed on 12 September 2023).

⁽⁸⁾ Report – Chapter 2, p. 20-21.

⁽⁹⁾ Report – Chapter 3, p. 41, 73-74.

⁽¹⁰⁾ Report – Chapter 6, p. 120-121.

⁽¹¹⁾ Report – Chapter 6, p. 122-135.

⁽¹²⁾ Report – Chapter 7, p. 167-168.

⁽¹³⁾ Report – Chapter 8, p. 169-170, 200-201.

(67) 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 ⁽¹⁴⁾.

3.2.1.3. 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

(68) 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 investigation, the degree of state ownership remains significant, with a number of PET producers being fully or partially state-owned, such as: Zhuhai China Resources Chemical Innovative MATERIALS Co., Ltd (100 % owned by China Resources Group, a Central SOE ⁽¹⁵⁾) or Sinopec a producer of PTA (ultimately 100 % owned by SASAC ⁽¹⁶⁾). Given that CCP interventions into operational decision making have become the norm also in private companies ⁽¹⁷⁾, 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.

(69) 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') which is the sectoral industry association. According to Article 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' ⁽¹⁸⁾. 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' ⁽¹⁹⁾ states in Article 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 Article 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' ⁽²⁰⁾.

(70) Consequently, even privately owned producers in the sector of the product under investigation 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 the Section 3.2.1.5 below.

⁽¹⁴⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-109.

⁽¹⁵⁾ See at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023-4/2023-04-25/9052858.PDF (accessed on 12 October 2023).

⁽¹⁶⁾ See at: <http://en.sasac.gov.cn/>.

⁽¹⁷⁾ See for example Article 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).

⁽¹⁸⁾ See at: <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (accessed on 12 September 2023).

⁽¹⁹⁾ See at: <http://www.ccema.org.cn/wzsy> (accessed on 12 September 2023).

⁽²⁰⁾ See at: <http://www.ccema.org.cn/xhzc> (accessed on 12 September 2023).

3.2.1.4. 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

- (71) Apart from exercising control over the economy by means of SOEs and other tools, the GOC is in a 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 ⁽²¹⁾, 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 ⁽²²⁾) 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 ⁽²³⁾, including exercising pressure on private companies to put 'patriotism' first and to follow party discipline ⁽²⁴⁾. 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 ⁽²⁵⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under investigation and the suppliers of their inputs.
- (72) 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') ⁽²⁶⁾ 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 ⁽²⁷⁾.
- (73) The investigation confirmed that overlaps between managerial positions and CCP membership / Party functions are commonplace in the PET sector. Chongqing Wankai New Materials' general manager is also the CCP branch secretary. Jiangsu Sanfame Ltd's deputy chairman of the board of directors and general manager is a CCP member. The company also signed an agreement with the CCP committee of the city of Zhouzhuang (Jiangsu). Chongqing Wankai New Materials is also participating in a joint CCP committee together with other companies along the industry chain and district authorities, this shows how public authorities can shape the whole industry chain via CCP organisations ⁽²⁸⁾.
- (74) The CCP's interference into the business decisions is apparent also at the group level, as transpires from the available corporate filings. The 2022 annual report of the Sinopec Group, a PTA producer, 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' ⁽²⁹⁾, 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 major business and management issues simultaneously covered by the internal control management, to be

⁽²¹⁾ Report – Chapter 5, p. 100-101.

⁽²²⁾ Report – Chapter 2, p. 26.

⁽²³⁾ 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.

⁽²⁴⁾ Report – Chapter 2, p. 31-32.

⁽²⁵⁾ Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 12 October 2023).

⁽²⁶⁾ Available at: www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 12 September 2023).

⁽²⁷⁾ Chinese Communist Party asserts greater control over private enterprise, available at: <https://on.ft.com/3mYxP4j> (accessed on 12 October 2023).

⁽²⁸⁾ See at: http://www.fl.gov.cn/zwxw_206/ywdt/202307/t20230703_12113878.html (accessed on 12 October 2023).

⁽²⁹⁾ See at: <http://www.sinopec.com/listco/Resource/Pdf/2023032507.pdf>, p. 26 (accessed on 12 September 2023).

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 [...]’⁽³⁰⁾.

- (75) The State's presence and intervention in the financial markets (see also 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market⁽³¹⁾. Thus, the State presence in firms, in the chemical and petrochemical sector and other industries (such as the financial and input industries) allows the GOC to interfere with respect to prices and costs.

3.2.1.5. 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

- (76) 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⁽³²⁾.
- (77) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product under investigation. To start with, PET is included in the advanced petrochemical materials and advanced light industry materials covered by the Made in China 2025 Roadmap⁽³³⁾. Furthermore, the PET industry is listed amongst the industries to be encouraged as under the light industry and textile industry categories in the 2019 Guiding Catalogue for industry structural adjustment. This signals the authorities' intentions to create a regulatory environment conducive to the sector's development, which also potentially paves way to the industry's access to finance⁽³⁴⁾. The 2019 Guiding Catalogue for industry structural adjustment also lists some specific conventional PET production units (continuous polymerization production with a single line capacity of less than 200 000 tonnes/year) as an industry segment to be restricted meaning that the GOC seeks to strictly control its development⁽³⁵⁾. At the same time, PET (conventional polyester batch polymerization production technology and equipment) is also listed amongst the industries to be eliminated which means the GOC will support its dismantling to ensure the upgrading of the industry and further demonstrates the involvement of the GOC in the sector. Moreover, the 14th FYP on raw materials⁽³⁶⁾ directly addresses the petrochemical sector by stating that '[i]n sectors including petrochemicals and chemicals, steel, non-ferrous metals, and building materials, we shall foster a number of industry chain pioneer enterprises exerting leadership on the ecosystem and characterized by core competitiveness [...]. The guiding role of leading enterprises in chemical and building materials sectors shall be leveraged to promote corporate reform and restructuring.'

⁽³⁰⁾ See at: <http://www.sinopecgroup.com/group/gywm/ddjs.shtml> http://jssc.sinopec.com/jssc/about_us/teammanagement/ (accessed on 12 September 2023).

⁽³¹⁾ Report – Chapters 14.1 to 14.3.

⁽³²⁾ Report – Chapter 4, p. 41-42, 83.

⁽³³⁾ See, p. 145 and 147 of the Made in China 2025 Roadmap available at: <https://www.cae.cn/cae/html/files/2015-10/29/20151029105822561730637.pdf> (accessed on 12 October 2023).

⁽³⁴⁾ See p. 44 and 47 of the 2019 Guiding Catalogue for industry structural adjustment available at: <https://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf> (accessed on 12 October 2023).

⁽³⁵⁾ Ibid. p. 115.

⁽³⁶⁾ 14th FYP on raw materials, Sections IV.2 and VIII.1. Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (accessed on 12 September 2023).

- (78) The 14th FYP also mentions that '[p]etrochemical and chemical, steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan and the actual conditions in the aforesaid sectors'. In addition, the Guiding Opinion on promoting the high-quality development of the petrochemical and chemical industry ⁽³⁷⁾ provides for the enhancement of the supply capacity of high-end polymers and specialty chemicals, as well as for the acceleration of the exit of inefficient and backward production capacity.
- (79) On the provincial level, the Shandong 14th FYP on the development of chemical industry ⁽³⁸⁾ calls on the local authorities to '[i]ncrease the technological transformation of existing enterprises, improve energy and resource utilization efficiency, and enhance the core competitiveness of enterprises. Establish a mechanism for enterprises to withdraw from parks, resolutely eliminate obsolete production capacity, strictly control restricted production capacity, and implement differentiated policies and measures for the allocation of resource factors such as land, electricity, and water to force enterprises to transform and develop'. It also calls to '[i]ncrease financial support. Strengthen fiscal policy incentives, coordinate and involve special funds, support chemical companies in accelerating technological transformation, intelligent transformation, industrial transfers, relocation into parks, elimination of obsolete equipment, etc., and implement tax exemptions applicable to imports of major technical equipment, VAT refunds, research and development policies such as additional deduction of expenses and insurance compensation for the first set of technical equipment. Actively guide various financial institutions and social capital to invest in the chemical industry, leverage the advantages of policy finance, development finance and commercial finance, and increase financial support for key areas of chemical technology'.
- (80) Similarly, the Jiangsu 14th FYP on the high-end development of chemical industry ⁽³⁹⁾ promotes the intensive processing of basic raw materials including the downstream development of PTA.
- (81) Another example of public policies influencing free market forces is the Fujian Province Development and Reform Commission's implementation Opinion on promoting high-quality development of petrochemical and chemical industries and accelerating the creation of a trillion-dollar pillar industry ⁽⁴⁰⁾ which provides that '[b]y 2025, the province's designated petrochemical and chemical enterprises shall achieve operating income exceeding RMB 1 trillion, accelerate the creation of six characteristic industrial clusters, and strive to have 4 chemical industry parks (concentrated areas) with operating income exceeding RMB 100 billion, and 8 chemical industry parks (concentrated areas) with operating income exceeding RMB 10 billion' and that '[b]y 2025, the output value contribution rate of chemical industry parks (concentration areas) shall increase to more than 70 %. The petrochemical industry chain shall continue to extend and improve, developing in the direction of new chemical materials, high-end petrochemical products, and fine chemicals, and the proportion of high value-added products shall further increase'. It also provides that authorities shall '[v]igorously cultivate a group of leading enterprises with core competitiveness. Encourage leading petrochemical and chemical companies to further concentrate, improve resource allocation efficiency through mergers and reorganizations, and further extend the industrial chain. Support eligible enterprises to apply for and focus on being included in the provincial key listed reserve enterprises and provide phased listing rewards in accordance with the provincial finance incentive policy for provincial key listed reserve enterprises; if the annual operating income of the enterprise exceeds RMB 10 billion for the first time, the provincial finance administration shall grant a one-time reward of RMB 3 million. Support eligible enterprises to issue various bond financing instruments such as medium-term notes, short-term financing bonds, enterprise bonds and corporate bonds. Support the listing, financing and refinancing of eligible high-quality key enterprises'.
- (82) 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 investigation, as well as the upstream inputs.
- (83) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the chemical industry and the PET industry. Such measures impede market forces from operating freely.

⁽³⁷⁾ Guiding Opinion on promoting the high quality development of the petrochemical and chemical industry 2022/34, available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html (accessed on 22 October 2023).

⁽³⁸⁾ See at: <http://gxt.shandong.gov.cn/module/download/downloadfile.jsp?classid=0&filename=17e54531cb74483596b5cca1a40ec8d8.pdf> (accessed on 12 September 2023).

⁽³⁹⁾ See at: http://gxt.jiangsu.gov.cn/art/2021/9/3/art_6197_10099378.html (accessed on 12 September 2023).

⁽⁴⁰⁾ See at: http://www.qg.gov.cn/zwgk/zcfg/sjfgwj/202208/t20220829_2769471.htm (accessed on 12 October 2023).

3.2.1.6. 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

- (84) 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 like 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 ⁽⁴¹⁾.
- (85) 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 ⁽⁴²⁾. 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 ⁽⁴³⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁴⁴⁾.
- (86) Much like other sectors in the Chinese economy, the producers of the product under investigation 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 chemical industry sector. The present investigation revealed nothing that would call those findings into question.
- (87) Considering 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 investigation.

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

- (88) 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 ⁽⁴⁵⁾. 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 ⁽⁴⁶⁾. 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

⁽⁴¹⁾ Report – Chapter 6, p. 138-149.

⁽⁴²⁾ Report – Chapter 9, p. 216.

⁽⁴³⁾ Report – Chapter 9, p. 213-215.

⁽⁴⁴⁾ Report – Chapter 9, p. 209-211.

⁽⁴⁵⁾ Report – Chapter 13, p. 332-337.

⁽⁴⁶⁾ Report – Chapter 13, p. 336.

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 ⁽⁴⁷⁾. Those findings lead to the distortion of wage costs in the PRC.

- (89) No evidence was submitted to the effect that the chemical and PET 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).

3.2.1.8. 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

- (90) 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 ⁽⁴⁸⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly, to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁴⁹⁾ 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 ⁽⁵⁰⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁵¹⁾.
- (91) 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 ⁽⁵²⁾, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (92) 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 ⁽⁵³⁾. 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' ⁽⁵⁴⁾.

⁽⁴⁷⁾ Report – Chapter 13, p. 337-341.

⁽⁴⁸⁾ Report – Chapter 6, p. 114-117.

⁽⁴⁹⁾ Report – Chapter 6, p. 119.

⁽⁵⁰⁾ Report – Chapter 6, p. 120.

⁽⁵¹⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁵²⁾ 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 71-75, 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 151-188.

⁽⁵³⁾ 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.'

⁽⁵⁴⁾ 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).

- (93) 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 ⁽⁵⁵⁾.
- (94) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁵⁶⁾. 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.
- (95) 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.
- (96) 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 ⁽⁵⁷⁾. Official media in the PRC have recently reported that the CCP called for 'guiding the loan market interest rate downwards' ⁽⁵⁸⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (97) 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.
- (98) 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.
- (99) No evidence was submitted in the present investigation demonstrating that the sector of the product under investigation 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.

⁽⁵⁵⁾ 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.

⁽⁵⁶⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁵⁷⁾ 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).

⁽⁵⁸⁾ See: http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm (accessed on 12 September 2023).

3.2.1.9. Systemic nature of the distortions described

- (100) 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 3.2.1.2 to 3.2.1.8 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 3.1 and 3.2 and in Part II of the Report.
- (101) The Commission recalls that, in order to produce the product under investigation, certain inputs are needed. When the producers of PET 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.
- (102) As a consequence, not only the domestic sales prices of the product under investigation 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.

3.2.1.10. Conclusion

- (103) The analysis set out in Sections 3.2.1.1 to 3.2.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the sector of the product under investigation, showed that prices or costs of the product under investigation, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, 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.
- (104) 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 Malaysia, an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as described in the following section.

3.2.2. Representative country

3.2.2.1. General remarks

- (105) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- a level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁵⁹⁾;
 - production of the product under investigation in that country;
 - availability of relevant public data in the representative country;

⁽⁵⁹⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

— where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(106) As explained in recitals (44) to (48), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

3.2.2.2. A level of economic development similar to the PRC

(107) In the investigation period, the World Bank classified countries with a similar level of economic development as the PRC as 'upper-middle income' countries on a gross national income basis. In the First Note, a sizeable production of the product under investigation was found to exist only in seven of those countries, namely Argentina, Brazil, Malaysia, Mexico, Thailand, Türkiye, and South Africa.

(108) Svepol, CPCIF and Wankai Group proposed Vietnam to be considered as the most suitable representative country despite the latter not classifying as an upper middle-income country but argued that due to a recent growth in GNI per capita, Vietnam is close to the lower threshold to qualify as an upper middle-income country.

(109) The basic Regulation requires the representative country to have a similar level of development as the exporting country. In applying this provision, the Commission decided that the World Bank database was the most appropriate source to comply with this requirement. This database allowed the Commission to have a sufficient number of potentially appropriate representative countries to choose from and find the most suitable source of undistorted costs and prices in each case. Furthermore, it is a ranking based on an objective criterion and used consistently in all anti-dumping cases where the determination of the normal value is based on the provisions of Article 2(6a) of the basic Regulation. The Commission did not see grounds in this case to deviate from its practice to only consider countries inside the World Bank's definition of an upper middle-income economy. The Commission thus did not consider Vietnam an appropriate representative country.

3.2.2.3. Availability of relevant public data in the representative country

(110) For the countries considered and mentioned above, the Commission further verified the availability of the public data, including the data on imports of factors of production as well as of financial data from the producers of the product under investigation in the potential representative countries.

(111) The analysis of imports of the main factors of production showed that only for Malaysia data on representative undistorted volumes of the key inputs for production of PET (namely purified terephthalic acid or 'PTA') as well as representative company data for the investigation period was available as opposed to Argentina, Brazil, Mexico, Thailand, Türkiye, and South Africa.

(112) The analysis further showed that Malaysian imports were not materially affected by imports from the PRC or any of the countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council⁽⁶⁰⁾. Furthermore, the PET production and production capacity is significant in Malaysia and no particular trade distortions on the factors of production nor on PET exist in the country.

(113) Regarding the producers in representative countries and availability of their data, the Commission identified a PET producer, MPI, for which financial results were available for the financial year from Q3 2021 until Q2 2022, thus covering two quarters with the investigation period.

⁽⁶⁰⁾ 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).

- (114) It is observed that MPI does not produce solely PET, but its main business is PET production. Therefore, the consolidated SG&A and profit identified for MPI were deemed representative to be applied for the purposes of the present investigation.
- (115) The Commission received comments on the Second Note from one unrelated importer (Svepol JSC), a Chinese producers' association (CPCIF) and two sampled exporting producers (Wankai Group and Sanfame Group).
- (116) Svepol JSC agreed with the choice of Malaysia as the representative country but requested the Commission to determine a reasonable amount of profit and S&GA on the basis of Recron Malaysia SDN ('Recron'). Svepol JSC and Sanfame Group argued that Recron's economic scale is closer to that realised by the PET producers in the PRC than MPI as a smaller PET producer with less export activities. Also, Recron's data was more representative as it covered the entire IP, whereas MPI's data only covered the first half of the IP. In addition, Sanfame Group argued that Recron, like the Sanfame group, starts its production from paraxylene ('PX'). CPCIF and Wankai Group expressed their agreement that Malaysia constituted an appropriate representative country also in terms of availability of relevant company data such as the data of MPI.
- (117) The Commission noted that no party argued against the use of Malaysia as a representative country. Regarding the Malaysian company data to be used, the Commission has analysed the data of Recron and MPI. However, this data showed that the SG&A of Recron was only 1,4 % which cannot be considered to be a reasonable amount within the meaning of Article 2(6a)(a) of the basic Regulation. As Sanfame Group admitted in its submission, Recron's publicly available information does not allow to precisely determine the relevance of PET compared to the total company turnover. As indicated above in recital (114), the Commission seeks the closest readily available proxy, including consolidated information of producer(s) active among others in the business covering the product under investigation. While Recron is indeed a large-scale company, it indicates on its website to be amongst the world's largest integrated polyester and textile companies with a focus on complex derivative polyester products. Contrary to that MPI has its main focus on PET resin manufacturing. The Commission therefore concluded that MPI is the closest readily available proxy and decided not to use the data of Recron. The Commission therefore confirmed its decision to use the data of MPI.

3.2.2.4. Conclusion

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

3.2.3. Sources used to establish undistorted costs

- (119) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.
- (120) Subsequently, in the Second Note, the Commission stated that in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas ⁽⁶¹⁾ ('GTA') to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Department of Statistics of the Ministry of Economy of the Government of Malaysia for establishing undistorted costs of labour ⁽⁶²⁾ and data of the electricity provider Tenaga Nasional Berhad and the Malaysian Energy Commission for energy ⁽⁶³⁾.
- (121) In the Second Note, the Commission also informed the interested parties that due to the large number of factors of production of the sampled exporting producers that provided complete information and the negligible weight of some of the raw materials in the total cost of production, these negligible items were grouped under 'consumables'. Further, the Commission informed that it would calculate the percentage of the consumables on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country.

⁽⁶¹⁾ Global Trade Atlas, <http://www.gtis.com/gta/secure/default.cfm>

⁽⁶²⁾ <https://www.dosm.gov.my/portal-main/home>

⁽⁶³⁾ <https://www.st.gov.my/en/>

3.2.4. Undistorted costs and benchmarks

3.2.4.1. Factors of production

- (122) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production (‘FOP’) 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 2

Factors of production of PET

Factor of Production	Malaysian Commodity Code	Source of data	Value (CNY)	Unit of measurement
Raw Materials				
Purified terephthalic acid (PTA)	2917_36_00	Global Trade Atlas (GTA) ⁽⁶⁴⁾	5,81	kg
Mono-ethylene glycol (MEG)	2905_31_00	GTA	5,74	kg
Isophthalic acid (PIA)	2917_39_20	GTA	10,28	kg
Para-xylene (PX)	2902_43_00	GTA	7,50	kg
Labour				
Labour	[N/A]	Department of Statistics of the Ministry of Economy of the Government of Malaysia ⁽⁶⁵⁾	39,64	Labour Hour
Energy				
Electricity	[N/A]	Tenaga Nasional Berhad (TNB) ⁽⁶⁶⁾	[0,50-0,60]	kWh
Natural Gas	[N/A]	Suruhanjaya Tenaga ⁽⁶⁷⁾	1,64	m ³

3.2.4.2. Raw materials

- (123) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA at 8-digit code level to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 ⁽⁶⁸⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recitals (103) and (104) that in this case it was not appropriate to use domestic prices and costs in the

⁽⁶⁴⁾ Global Trade Atlas, <http://www.gtis.com/gta/secure/default.cfm>

⁽⁶⁵⁾ Department of Statistics of the Ministry of Economy of the Government of Malaysia, <https://www.dosm.gov.my/portal-main/landingv2>

⁽⁶⁶⁾ Tenaga Nasional Berhad, Pricing and tariffs for industrial users, <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>

⁽⁶⁷⁾ Suruhanjaya Tenaga, <https://www.st.gov.my/en/>

⁽⁶⁸⁾ Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

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. The remaining volumes were considered to be representative.

- (124) The Commission expressed the transport cost incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (125) For a small number of FOPs, due to their insignificant share in the total raw material costs in the IP, the Commission treated those FOPs as consumables. The Commission calculated the percentage of consumables including a negligible amount of raw materials over the costs of manufacturing for each sampled exporting producer. That percentage ranged from around 1 % to around 7 % depending on the exporting producer. The Commission applied this percentage to the calculation of the normal value of the sampled exporting producers accordingly.

3.2.4.3. Labour

- (126) The source that the Commission used to establish the benchmark for labour costs is based on the most recent statistics published by the Department of Statistics of the Ministry of Economy of the Government of Malaysia ⁽⁶⁹⁾. This source was used to determine the wage received by employees ⁽⁷⁰⁾, including the social benefits and social security contributions on the employee side in the sector of petroleum, chemical rubber and plastic in Malaysia for the investigation period. It was divided by the average hours per week per employed person in 2022 ⁽⁷¹⁾, then divided per 52 ⁽⁷²⁾ working weeks in Malaysia to calculate an average wage received by employees per hour. The employer's part for the applicable social contributions ⁽⁷³⁾ was added to calculate the labour cost per hour.

3.2.4.4. Electricity

- (127) The Commission established the benchmark price for electricity using the quotation for companies (industrial users) in Malaysia published by the electricity company Tenaga Nasional Berhad ⁽⁷⁴⁾. The electricity benchmark was established based on the price for electricity published for the billing month of January 2014 and adjusted to the IP with the applicable energy inflation rate for Malaysia, published by the World Bank ⁽⁷⁵⁾. To establish the electricity cost per kWh:

- the rate of tariff E1 applicable to medium voltage general industrial tariff, was used for producers that reported electricity consumption as 'general';
- the rate of tariff E2 applicable to medium voltage peak/off-peak industrial tariff, was used for producers that reported peak/off-peak electricity consumption.

The benchmark was established for each company based on respective peak and off-peak consumption of the sampled exporting producers when available. The resulting percentage was allocated to the peak and off-peak rates. If a sampled exporting producer did not distinguish peak and off-peak consumption, general tariffs were applied to their whole consumption.

⁽⁶⁹⁾ <https://www.dosm.gov.my/portal-main/home>

⁽⁷⁰⁾ <https://www.dosm.gov.my/portal-main/release-content/3ea8a244-81c4-11ed-96a6-1866daa77ef9>

⁽⁷¹⁾ Statistics on working time – ILOSTAT

⁽⁷²⁾ <https://www.mida.gov.my/setting-up-content/statutory-contributions/>

⁽⁷³⁾ <https://www.mida.gov.my/setting-up-content/statutory-contributions/>; <https://www.perkeso.gov.my/en/our-services/employer-employee/contributions.html>; <https://www.mida.gov.my/setting-up-content/human-resources-development-fund/>; <https://ins-globalconsulting.com/news-post/severance-pay-malaysia/>

⁽⁷⁴⁾ <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>

⁽⁷⁵⁾ <https://www.worldbank.org/en/research/brief/inflation-database>

3.2.4.5. Natural gas

- (128) The Commission established the benchmark for gas by using the prices of gas for companies (industrial users) in Malaysia published by the Malaysian Energy Commission (Suruhanjaya Tenaga) ⁽⁷⁶⁾.
- (129) The monthly averages for the year 2021 available from the source ⁽⁷⁷⁾ were adjusted by the yearly energy CPI inflation rate ⁽⁷⁸⁾ for Malaysia for the investigation period.

3.2.4.6. Manufacturing overhead costs, SG&A, profit and depreciation

- (130) 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. In addition, a percentage factor of consumables including a number of raw materials, which represent only an insignificant share in the total raw material costs, was calculated over the costs of manufacturing for each producer.
- (131) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (132) For establishing an undistorted and reasonable amount for manufacturing overheads, SG&A, profit and depreciation, the Commission relied on the financial data for the financial year Q3 2021 to Q2 2022 for MPI as extracted from Orbis ⁽⁷⁹⁾.

3.2.4.7. Calculation

- (133) Based on the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (134) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. These consumption rates provided by the applicant were verified during the verification. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in Section 3.2.4.1.
- (135) Once the undistorted manufacturing cost established, the Commission applied the manufacturing overheads, SG&A, profit and depreciation as noted in recitals (130) to (132). They were determined based on the financial statements of MPI as explained in recital (132).
- (136) Manufacturing overheads were not separately identified in the available Profit and Loss account figures of MPI, so they are deemed to be included in is the costs of goods sold.
- (137) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of MPI. SG&A expressed as a percentage of the costs of goods sold and applied to the undistorted costs of production, amounted to 2,51 %. The profit expressed as a percentage of the costs of goods sold and applied to the undistorted costs of production, amounted to 14,84 %.
- (138) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.3. Export price

- (139) The sampled exporting producers exported to the Union directly to independent customers.

⁽⁷⁶⁾ <https://www.st.gov.my/en/>

⁽⁷⁷⁾ <https://www.st.gov.my/en/web/consumer/details/2/10> and <https://www.st.gov.my/contents/2021/Fuel%20Prices/11%20Nov/1-%20Regulated%20piped%20gas%20prices%20as%20of%20November%202021.pdf>

⁽⁷⁸⁾ <https://www.worldbank.org/en/research/brief/inflation-database>

⁽⁷⁹⁾ Orbis | Company information across the globe | BvD (bvinfo.com)

- (140) All the sampled exporting producers exported the product concerned directly to independent customers in the Union, so the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.4. Comparison

- (141) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (142) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling and loading, discounts, commission, credit costs and bank charges as well as for the differences in sales channels.

3.5. Dumping margins

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

Company	Provisional weighted average dumping margin
Sanfame Group: — Jiangsu Hailun Petrochemical Co., Ltd — Jiangsu Xingye Plastics Co., Ltd. — Jiangyin Xingu New Material Co., Ltd. — Jiangyin Xingtai New Material Co., Ltd.	16,0 %
China Resources Chemical Innovative Materials Group: — China Resources Chemical Innovative Materials CO., LTD — Zhuhai China Resources Chemical Innovative Materials Co., Ltd.	17,2 %
Wankai New Materials Group: — Wankai New Materials Co., Ltd. — Chongqing Wankai New Materials Technology Co. Ltd.	22,6 %

- (145) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established based on the margins of the sampled exporting producers.
- (146) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 19,7 %.
- (147) For all other exporting producers in the PRC, the Commission established the dumping margin based on the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers.
- (148) The level of cooperation in this case is low because the imports of the cooperating exporting producers constituted around 76 % of the total exports to the Union during the IP, according to Eurostat statistics. On this basis, the Commission considered it appropriate to establish the residual dumping margin at the level of the highest margin found among the entities of the sampled exporting producers.

(149) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Sanfame Group: — Jiangsu Hailun Petrochemical Co., Ltd — Jiangsu Xingye Plastics Co., Ltd. — Jiangyin Xingu New Material Co., Ltd. — Jiangyin Xingtai New Material Co., Ltd.	16,0 %
China Resources Chemical Innovative Materials Group: — China Resources Chemical Innovative Materials CO., LTD — Zhuhai China Resources Chemical Innovative Materials Co., Ltd.	17,2 %
Wankai Group — Wankai New Materials Co., Ltd. — Chongqing Wankai New Materials Technology Co. Ltd.	22,6 %
Other cooperating companies	19,7 %
All other companies	24,2 %

4. INJURY

4.1. Definition of the Union industry and Union production

(150) The like product was manufactured by around 60 producers in the Union during the investigation period. They constitute the ‘Union industry’ within the meaning of Article 4(1) of the basic Regulation.

(151) The total Union production during the investigation period was established at around 3 250 thousand tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry from the complainant, the producers’ association Plastic Recyclers Europe (‘PRE’) and Wood Mackenzie (Woodmac) industry experts. As indicated in recital (19), the sampled Union producers represented 35 % of the total Union production of the like product.

4.2. Union consumption

(152) The Commission established the Union consumption on the basis of:

- the verified sales of the sampled Union producers;
- the sales of non-sampled cooperating Union PET producers, obtained from the complainant;
- the sales of non-sampled Union rPET producers, obtained from the complainant, extrapolated on the basis of the proportion of rPET production (obtained on the basis of Woodmac data on flake consumption for (i) production of PET bottles (food/non-food grade) and (ii) PET production resulting from chemical recycling on the total Union vPET and rPET production);
- the imports from the country concerned and from all other third countries, as recorded in the Comext database of Eurostat.

(153) The Commission also found that around 2 % of the total Union producers’ production (not reflected in the Union consumption and other economic indicators outlined in this Regulation) was destined for captive use in the period considered.

(154) Union consumption developed as follows:

Table 3

Union consumption (tonnes)

	2019	2020	2021	Investigation period
Total Union consumption	3 765 652	3 815 572	3 629 938	3 893 890
Index	100	101	96	103

Source: questionnaire replies of sampled Union producers, complaint, information provided by the complainant, Woodmac and Eurostat

(155) On this basis, Union consumption increased slightly over the period considered.

4.3. Imports from the country concerned

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

(156) The Commission established the volume of imports on the basis of the Eurostat database. The market share of the Chinese imports was established by comparing import volumes with the Union market consumption (see Table 3 above).

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

Table 4

Import volume (tonnes) and market share

	2019	2020	2021	Investigation period
Volume of imports from the PRC (tonnes)	192 941	88 041	102 865	305 055
Index	100	46	53	158
Market share	5,1 %	2,3 %	2,8 %	7,8 %
Index	100	45	55	153

Source: Eurostat, replies of sampled Union producers

(158) The above table shows that in absolute figures the imports from the PRC increased during the period considered by 112 115 tonnes. In parallel, the total market share of the Chinese imports into the Union increased by 2,7 percentage points (or by 53 %) during the period considered. In 2020, Chinese imports were severely affected by the COVID-19 pandemic but recovered in 2021 and almost tripled during the IP compared to the previous year. The majority of these imports was vPET, however four of the eight cooperating exporting producers indicated in their sampling reply that they had the capacity to produce rPET. Some of the cooperating exporting producers indicated that they exported rPET to the Union during the IP, however those represented less than 1 % of the Union exports by the cooperating exporting producers.

(159) One of the Union producers resold on the Union market PET that it imported from the PRC in the period considered ('UI imports'). The table below indicates the size of these imports during the period considered and the market share of the Chinese imports without these imports. This shows that even when excluding the Chinese imports by the Union industry, the market share of the Chinese imports increased by 1,0 – 1,5 % percentage points during the period considered.

Table 5

UI imports (tonnes) and Chinese market share without UI imports

	2019	2020	2021	Investigation period
Volume of UI imports from the PRC (tonnes)	[0 – 3 000]	[4 000 – 6 000]	[7 000 – 9 000]	[50 000 – 70 000]
Market share of Chinese imports without UI imports	[5,0 – 5,5 %]	[2,0 – 2,5 %]	[2,5 – 3,0 %]	[6,0 – 6,5 %]

Source: Eurostat, replies of sampled Union producers

4.3.2. *Prices of the imports from the country concerned and price undercutting*

(160) The Commission established the prices of imports on the basis of Eurostat data.

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

Table 6

Import prices (EUR/ tonne)

	2019	2020	2021	Investigation period
Price of imports from the PRC	1 013	778	884	1 276
Index	100	77	87	126

Source: Eurostat

(162) The average price of the Chinese imports first decreased in 2020, reaching 778 EUR/tonne (from 1 013 EUR/tonne in 2019) and then increased to 884 EUR/tonne in 2021 and to 1 276 EUR/tonne during the investigation period. During the period considered, the increase of the average unit price of the dumped imports was 26 %. In 2021 and the IP, import prices were around 9 % and 13 % lower compared to Union prices, as shown in Table 10.

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

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

(164) The price comparison was made for the same product type (in this case solely vPET) for transactions at the same level of trade. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. On the basis of the above, the dumped Chinese imports were found to undercut the Union industry prices by 9,5 %.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (165) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (166) As mentioned in recital (19), sampling was used for the determination of possible injury suffered by the Union industry.
- (167) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in complaint and the complainant's reply to a specific questionnaire. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (168) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (169) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 7

Production, production capacity and capacity utilisation

	2019	2020	2021	Investigation period
Production volume (tonnes)	3 173 696	3 321 519	3 365 795	3 248 786
Index	100	105	106	102
Production capacity (tonnes)	3 718 259	3 880 522	3 956 555	4 043 716
Index	100	104	106	109
Capacity utilisation	85 %	86 %	85 %	80 %
Index	100	100	100	94

Source: PET Europe questionnaire reply

- (171) During the period considered, the Union industry's production volume increased by 2 %, despite the fact that several Union producers of (predominantly) vPET reduced their operating rate towards the end of the period considered. Such reduction of vPET output was offset by an increasing trend in production of rPET which reached 63 % (632 000 tonnes in the IP up from 388 000 tonnes in 2019) over the period considered, representing around 20 % of PET capacity and production of the Union industry in the IP.

- (172) The reported capacity figures refer to installed capacity, which increased by 9 % during the period considered. This trend was due to a steady increase in production capacity at rPET production facilities, while the production capacity at vPET producers remained stable.
- (173) The decrease in capacity utilisation rate by 6 % over the period considered was driven mainly by sharp drop in utilisation rate levels in the last quarter of the IP.
- (174) CPCIF claimed that the Union PET production capacity was increasing, as a number of Union producers have expanded their facilities or were planning to do so.
- (175) An increase in production capacity does not inevitably imply equivalent rise in production. As evidenced in Table 7, the production increase did not match the rate of capacity increase, and capacity utilisation figures even showed a downward trend over the period considered.

4.4.2.2. Sales volume and market share

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

Table 8

Sales volume and market share

	2019	2020	2021	Investigation period
Sales volume on the Union market (tonnes)	2 768 907	2 951 147	2 850 509	2 755 783
Index	100	107	103	100
Market share	73,5 %	77,3 %	78,5 %	70,8 %
Index	100	105	107	96

Source: PET Europe questionnaire reply

- (177) The Union industry sales volume on the Union market remained relatively stable during the period considered, i.e. between 2 750 and 2 950 thousand tonnes. The Union sales volume in 2019 was comparable to that in the investigation period.
- (178) During the period considered, the Union industry's market share in terms of Union consumption went down with 2,7 percentage points, i.e. from 73,5 % to 70,8 %, with a significant drop between 2021 and the IP of 7,7 percentage points.

4.4.2.3. Growth

- (179) The Union consumption slightly increased during the period considered, while the sales volume of the Union industry in the Union market remained stable. The Union industry thus lost market share, contrary to the market share of the imports from the country concerned which increased by 2,7 percentage points during the period considered.

4.4.2.4. Employment and productivity

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

Table 9

Employment and productivity

	2019	2020	2021	Investigation period
Number of employees	1 365	1 410	1 453	1 529
Index	100	103	106	112
Productivity (tonne/FTE)	2 325	2 356	2 317	2 125
Index	100	101	100	91

Source: PET Europe questionnaire reply

(181) During the period considered, employment in the Union increased by 12 %, while the productivity dropped by 9 % over the period considered, given that the employment increase was not matched by the rate of increase in production.

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

(182) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was not negligible, given the volume and prices of imports from the country concerned.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

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

Table 10

Sales prices in the Union

	2019	2020	2021	Investigation period
Average unit sales price in the Union on the total market (EUR/ tonne)	972	716	956	1 444
Index	100	74	98	149
Unit cost of production (EUR/ tonne)	930	721	916	1 353
Index	100	78	98	146

Source: Questionnaire reply of sampled Union producers

(184) The table above shows the evolution of the unit sales price on the Union market as compared to the corresponding cost of production. Sales prices have on average been higher than the unit cost of production.

(185) The Union industry's average unit sales price to unrelated customers in the Union ⁽⁸⁰⁾ increased by 49 % from 2019 to the IP, which is due mainly to the tight PET supply and successful passing-on of increase in raw material prices in the course of 2022.

(186) The average cost of production of the Union industry increased over the period considered, although to a lower extent than the sales prices (by 46 %). However, in general the evolution of the cost of production followed the same trend as the sales prices. The major factor having influenced the increase in the unit cost of production was the increase in the raw material price ⁽⁸¹⁾ over the period considered.

4.4.3.2. Labour costs

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

Table 11

Average labour costs per employee

	2019	2020	2021	Investigation period
Average labour costs per employee (EUR)	57 253	61 824	64 372	67 727
Index	100	108	112	118

Source: Questionnaire reply of sampled Union producers

(188) During the period considered, the average wage per employee went up by 18 %.

4.4.3.3. Inventories

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

Table 12

Inventories

	2019	2020	2021	Investigation period
Closing stocks (tonnes)	67 824	51 189	58 133	83 236
Index	100	75	86	123
Closing stocks as a percentage of production	6,09 %	4,67 %	5,12 %	8,05 %
Index	100	77	84	132

Source: Questionnaire reply of sampled Union producers

⁽⁸⁰⁾ In the IP, [30-35] % of the sales by the sampled Union producers in the Union was made indirectly via related trading entities.

⁽⁸¹⁾ The price of PET is by around 90 % determined by the prices of the main raw material, i.e. purified terephthalic acid (PTA), which in turn fluctuates on the basis of prices of crude oil. This causes high volatility of the PET prices.

- (190) There was an increase in stock levels over the period considered of 23 %. While the stock levels in 2020 and 2021 were below the 2019 levels, the increase in inventories in 2022 is largely due to accumulation of stock by the producers in the second half of 2022, when the demand for PET dropped.

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

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

Table 13

Profitability, cash flow, investments and return on investments

	2019	2020	2021	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	4 %	1 %	8 %	7 %
Index	100	20	208	193
Cash flow (EUR)	63 713 072	57 496 364	96 321 869	91 341 517
Index	100	90	151	143
Investments (EUR)	2 667 066	8 305 772	15 937 339	14 756 777
Index	100	311	598	553
Return on investments	18 %	6 %	41 %	48 %
Index	100	32	225	266

Source: Questionnaire reply of sampled Union producers

- (192) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Profitability was positive throughout the entire period considered, with the highest profits recorded in 2021 and 2022, with 8 % and 7 % profitability respectively. However, as mentioned in recital (197), the Union industry incurred in losses (-12 %) during the last quarter of the IP, in view of the continued increase in the dumped imports at lower prices, leading to price suppression.
- (193) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow remained overall largely positive, following similar trend as profitability throughout the period considered.
- (194) Investments, while being relatively low at the beginning of the period considered increased by 453 % over the period considered. Most of the investment concerned production line maintenance aiming at increasing the longevity of the plants. There was no investment in new PET capacity at the sampled Union producers during the period considered.
- (195) The return on investments is the profit in percentage of the net book value of investments. Consistent with the profitability, the return on investment was positive over the period considered, increasing by 166 % in the investigation period.
- (196) The sampled Union producers' ability to raise capital has not been affected over the period considered.

4.4.3.5. Developments in the investigation period and post-IP

- (197) During the period considered the injury indicators showed a stable trend. However, when assessing the indicators at a more granular level for the IP and in Q1 2023, a negative trend is visible. Validation of this trend, taking into account the developments in 2023 is subject to further investigation at the definitive stage of the proceedings.
- (198) As outlined in Table 14 below, Union consumption, production and sales of the Union industry showed a decline in the last two quarters of the IP. Moreover, after an increase in market share in 2020 and 2021, the Union industry lost 4 percentage points of market share in the course of the IP and another 7 percentage points between the end of 2022 and the first quarter 2023 alone. This deterioration is also reflected in the profitability of the Union industry, which became lossmaking in the last quarter of the IP, while this trend continued also into the first quarter of 2023.

Table 14

2022 and Q1 2023 Union consumption / production / sales / market share / profitability / Chinese imports

	Union consumption (tonnes)	Union production (tonnes)	Union sales volume (tonnes)	Union industry market share (%)	Profitability (%)	Chinese imports (tonnes)	Chinese import prices including common customs duty of 6,5 % (EUR)
Q1 2022	1 005 290	918 123	744 321	74 %	15 %	54 765 (including [0 – 4 000] tonnes of UI imports)	1 212
Q2 2022	1 075 432	886 642	773 099	72 %	12 %	84 906 (including [20 000 – 25 000] tonnes of UI imports)	1 306
Q3 2022	979 842	814 673	656 453	67 %	13 %	112 658 (including [20 000 – 25 000] tonnes of UI imports)	1 426
Q4 2022	833 326	629 348	581 910	70 %	- 12 %	52 726 (including [13 000 – 18 000] tonnes of UI imports)	1 455
Q1 2023	1 036 561	685 594	654 045	63 %	- 11 %	134 604 (including [20 000 – 25 000] tonnes of UI imports)	1 146

Source: Questionnaire reply of sampled Union producers, PET Europe questionnaire reply, Eurostat

4.4.4. Conclusion on injury

- (199) The Union industry performed well during the period considered, with the injury indicators and trends largely stable or positive, in particular at microeconomic level.

- (200) However, towards the end of the investigation period, a number of injury indicators (in particular, market share and profitability) showed a sharp deterioration of the situation on the market for the Union industry, beyond what could be expected as a return to normal market conditions as seen in 2019 and 2020. Losses were incurred in the last quarter of 2022, which were at unsustainable levels (-12 %). The Union industry, faced with undercutting during the IP and increased costs, had to reduce operating rates in the light of the reduced demand and started losing sales volumes towards the end of 2022, which was reflected also in loss of market share in 2022.
- (201) Imports from the PRC were affected in 2020 and 2021 because of the high transport shipping costs and economic conditions during and after the COVID-19 pandemic. However, when comparing the start of the period considered with the IP, an increase of 58 % is visible. Especially during the IP, when returning to normal market conditions after the COVID-19 pandemic, the dumped imports showed an increasing trend. At the end of the IP as well as in Q1 2023, Union industry prices were suppressed by the dumped imports. Indeed, in view of the low prices of the Chinese imports, the Union industry could not sell above its cost of production, incurring losses also in Q1 2023 (-11 %). Compared to the period concerned, there is a change in circumstances resulting from the recovery of normal market conditions in the Union market now affected by the increase in Chinese imports leading to a vulnerable situation of the Union industry up to the first quarter of 2023.
- (202) On the basis of the above, it is concluded at this stage that the Union industry was negatively affected by imports from the PRC, especially at the end of the investigation period, but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation. The Commission therefore proceeded with the analysis of a threat of material injury in accordance with Article 3(9) of the basic Regulation.
- (203) CPCIF claimed that considering the evolution of indicators such as profitability, sales, market share, Union production and Union production capacity, investments and employment over the period considered, the Union industry did not suffer material injury in the said period. Svepol equally argued with reference to the long-term trends in the injury indicators over the period considered that the Union industry is not suffering material injury.
- (204) For the Commission to impose anti-dumping duties, it is sufficient that the investigation concludes that there is a threat of material injury. While no material injury was found over the period considered, it is noted that the facts of the case are assessed against Article 3(9) basic Regulation for establishment of threat of injury.

5. THREAT OF INJURY

5.1. Introduction

- (205) In the analysis of a threat of material injury to the Union industry, in accordance with Article 3(9), second subparagraph, of the basic Regulation, consideration is given below to such factors as:
- a significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports;
 - sufficient freely disposable capacity of the exporting producer on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Union, account being taken of the availability of other export markets to absorb any additional exports;
 - whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports, and;
 - the level of inventories.
- (206) As the wording 'such as' in Article 3(9), second subparagraph, indicates, next to these four factors other factors may be analysed as well for the determination of a threat of injury. In particular, the Commission further analysed factors like recent evolution in profitability, for which it had investigation period and post-investigation period data available.

- (207) With respect to the period considered, the Commission reviewed again the data collected for 2019 until the IP, as an understanding of the present situation of the Union industry is necessary in order to be able to determine whether there is a threat of injury to the Union industry⁽⁸²⁾. It then conducted a prospective analysis for all factors. In addition, it collected data on dumped import volumes and import prices for the first two quarters of 2023 in order to confirm or invalidate the forecasts, as required by the Court⁽⁸³⁾. For the level of inventories and profitability, comprehensive data was collected up to the end of March 2023. This data will be updated for a definitive determination and, where possible, also other factors will be analysed. At this stage, the data for spare capacity in the PRC and the level of inventories were the best available data.
- (208) Finally, Article 3(9) first subparagraph, second sentence of the basic Regulation requires that the change in circumstances must have been clearly foreseen and must be imminent.
- (209) All those elements and the data collected are analysed in the next sections.

5.2. Significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports

- (210) Imports from the country concerned significantly increased from 192 941 to 305 055 tonnes between 2019 and the investigation period, as shown in Table 4. Such an increase was significant between 2021 and the IP. The same trend was observed in Q1 2023. During 2021 and the IP these imports have taken place at a price lower than that of the Union industry. The market share held by these Chinese dumped imports (+53 %) confirms the substantial increase of imports while demand remained stable (+3 %). The Chinese exporting producers have gained market share with low-priced imports at the expense of the Union producers. The volume of Chinese imports further increased (by 60 %) in the first half of 2023 (223 558 tonnes) (source: Eurostat), compared to the first half of 2022 (139 672 tonnes). The available data show that not only the Chinese dumped imports have shown a substantial increase during the period considered, but also that this trend was not stopped or reversed during the post-investigation period.
- (211) Moreover, as indicated below, the Chinese overcapacity and attractiveness of the Union market for the Chinese imports, due to the absence of trade defence measures in the Union, coupled with the existence of measures against the Chinese PET imports in numerous other countries, indicate that there is a likelihood of substantial increase of Chinese imports into the Union.

5.3. Sufficient freely disposable capacity

- (212) Concerning Chinese PET capacity, the available information (Woodmac) indicates that the production capacity of PET in the PRC has increased from [11,3 – 12,3] million tonnes in 2020 to [11,6 – 12,6] million tonnes in the IP, while the spare capacity in the IP was [1,5 – 2,5] million tonnes, accounting for no less than [40 – 60] % of the Union consumption. Both the production capacity as well as freely disposable capacity are expected to grow significantly to [21,0 – 23,0] million tonnes and [10,5 – 11,5] million tonnes respectively in 2026.
- (213) Chinese domestic demand has grown in the period considered in line with the increase in capacity and made up around [50 – 60] % of Chinese capacity. However, in the coming years the growth in capacity is expected to significantly overtake the increase in domestic demand, which is expected to drop below [35 – 45] % of capacity

⁽⁸²⁾ World Trade Organization, WT/DS132/R, 28 January 2000, Mexico- Anti-dumping investigation of high fructose corn syrup (HFCS) from the United States – Report of the Panel, recital 7.140, page 214. The WTO Panel stated the following: ‘in order to conclude that there is a threat of material injury to a domestic industry that is apparently not currently injured, despite the effects of dumped imports during the period of investigation, it is necessary to have an understanding of the current condition of the industry as a background. Merely that dumped imports will increase, and will have adverse price effects, does not, ipso facto, lead to the conclusion that the domestic industry will be injured – if the industry is in very good condition, or if there are other factors at play, dumped imports may not threaten injury’.

⁽⁸³⁾ Judgment of The Court of Justice, 7 April 2016, case number C-186/14, paragraph 72, confirming the General Court’s judgment of 29 January 2014, on case T-528/09, Hubei Xinyegang Steel Co. Ltd versus Council of the European Union.

in 2026. This would thus increase Chinese export capacities from a level of [5 – 6] million tonnes in 2022 to [7,5 – 8,5] million tonnes in 2023 and more than [13 – 15] million tonnes in 2026, while the Union consumption has been stable around 3,8 million tonnes during the period considered.

- (214) CPCIF claimed that demand for PET in the Chinese market has significantly increased, which led to a corresponding increase in production capacity in order to satisfy the needs of the Chinese consumers. As noted above, the growth in capacity is expected to significantly overtake the increase in domestic demand. Therefore, CPCIF's claim had to be rejected.
- (215) UNESDA argued that the production in the PRC is not expected to grow in line with the estimated increase in installed capacity. According to UNESDA, production estimates are more realistic than the future installed capacity forecasts, as the former is based on operating plants and utilisation rates adjusted according to the demand. Moreover, UNESDA maintained that the production/demand ratio for the years 2023 to 2026 is similar to the ratio existing in the period considered, when the excess capacity of the PRC did not create injury to Union producers.
- (216) As mentioned in recital (212), PET capacity in the PRC is expected to increase significantly in the coming years, while domestic consumption in the PRC is not expected to increase at the same rate as capacity. The increase in production capacity inevitably implies pressure on the Chinese PET facilities to raise production levels and will incentivize them to look for market opportunities outside of the PRC given the limitations to the domestic demand. Given the Chinese export record and the attractiveness of the Union market (see recitals (217)-(220)), it is likely that a sizeable part of Chinese production would be directed at the Union market. Therefore, UNESDA's claim was rejected.
- (217) In line with Article 3(9), 2nd subparagraph, lit (b) of the basic Regulation, the Commission analysed the availability of other export markets for the Chinese exporting producers to absorb any additional exports and found that some (major) exporting markets are increasingly difficult to access for the Chinese exporting producers because of trade defence measures, including Argentina, Türkiye, Brazil, Indonesia, the United States, Japan, India, and South Africa. Mexico imposed in August 2023 tariffs on imports of PET originating in the PRC. Furthermore, it is observed that in the first quarter of 2023, Chinese exports to the Union rose at a pace higher than the overall worldwide Chinese exports of PET.
- (218) UNESDA claimed that any trade deviation that could have occurred from the adoption of trade defence measures by third countries has already taken place, since these measures have been in force for several years. It is considered that the existence of the trade defence measures must be read in light of the recent surge in Chinese PET capacity. With trade defence measures in place in other export markets, Chinese export capacity will likely be directed to those countries without any trade defence measures, such as the Union.
- (219) CPCIF argued that Russia was the largest destination for Chinese PET exports during the IP and that Latin American countries continued to be key destinations for Chinese exports. UNESDA also submitted that there is a wide spread of countries without any particular concentration that may be abnormal and that proportionally to population, the PRC's exports to the Union are smaller than exports to Russia, Philippines, Türkiye and Algeria, the next four largest Chinese importers.
- (220) The Commission found that exports to the Union during the IP were larger than those to Russia, i.e. 305 000 tonnes and 274 000 tonnes respectively, showing the attractiveness of the Union market for Chinese exporting producers. None of the other Chinese export destinations for PET came close to the export volume made during the IP to the Union. Furthermore, this trend continued even in the post-IP period. The import statistics show that the Union is the PRC's primary PET export destination and a large proportion of the Chinese overcapacity is very likely to be directed for export to the Union.

(221) In conclusion, it is likely that significant volumes of the existing excess capacity on PET will continue to be directed to the Union market. The present overcapacities and the insufficient absorption capacity of third states or the PRC itself indicate the likelihood of further substantial increase of Chinese exports to the Union, where an increase in market share has proven relatively easy during the period considered and notably during the IP and the first quarter of 2023.

5.4. Price level of imports

(222) During the period considered, the average import price of the country concerned showed a 26 % increase over the full period considered. As explained in recital (164), the Commission established for the investigation period that Chinese prices undercut the Union industry's prices. The Chinese prices started to decrease in the last quarter of the investigation period and this trend continued in the two quarters following the investigation period.

Table 15

Import price of Chinese imports after the investigation period

Average import price of Chinese imports (euro/tonne)	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023
	1 158	1 067	1 030	1 011	993	1 006

Source: Eurostat

(223) The sales price of the Union industry increased over the period considered by 49 %, while the cost of production increased by 46 %. This resulted in increasing profit margins for 2021 and the investigation period. However, due to the large influx of dumped Chinese imports in the investigation period at prices undercutting the Union industry's prices, the Union industry was forced to lower its prices in the last quarter of the investigation period and the first quarter after the investigation period, resulting in a lossmaking situation in those two quarters.

(224) The continuing large volume of Chinese imports at decreasing prices after the investigation period show a further shift towards these dumped imports at prices that suppress the prices offered by the Union producers.

(225) An unrelated trader claimed that import prices from the PRC have increased in the second half of the IP, while the Union industry price has shown a decrease in the same period. This resulted in Chinese import prices above Union industry's prices in the last quarter of the IP.

(226) The Commission found that over the investigation period the Chinese import price was undercutting the Union industry's price and that the Chinese import price increased less than the overall increase in the cost of production. With regard to the last quarter of the IP, the increasing Chinese imports in the quarters before pushed the Union industry to decrease its prices to an unsustainable lossmaking level to remain competitive, as set out in recital (223).

(227) CPCIF claimed that the transport costs have stabilised since the beginning of the investigation period after historical highs.

(228) The Commission assessment showed that an extreme surge in the shipping costs provided an impediment to Chinese exports to the Union from 2021 until mid-2022. Now that the costs have dropped to previous levels, this impediment no longer exists allowing for Chinese dumped imports to flood the European market. It is this return to the usual level of transport costs, and the disappearance of the previous surge, that contributes to the threat of injury.

5.5. Level of inventories

- (229) The evolution of the level of inventories of the sampled Union producers has been described in detail in recitals (189) and (190). The Commission considered that this factor is not of any particular significance for the analysis because producers are able to respond to changes in demand relatively rapidly, hence keeping stocks at sustainable levels. No evidence could be found that stockpiling activities might have taken place by the Union industry or the Chinese exporting producers to an extent which may significantly influence the Union market in the near future.

5.6. Other elements: profitability and other economic indicators

- (230) While the Union industry showed an increase in profitability during the period considered, there was a significant deterioration in the last quarter of the IP due to depressing sales prices on the Union market caused by the dumped Chinese imports. Also other injury indicators showed a deterioration of the Union industry situation. The Union sales volume, the Union production, and capacity utilisation all dropped significantly in the course of the IP, causing a drop in the Union industry's market share. This situation caused the Union industry to reduce its sales prices in the last quarter of the IP while the cost of production kept increasing, resulting in a lossmaking situation. This negative trend continued in the first quarter of 2023 (see Table 14 for more details).
- (231) Furthermore, the Commission established the existence of price suppression. Indeed, the Union industry was selling below the cost of production in the last quarter of the IP and the first quarter post-IP. Due to the significant price pressure caused by the low-priced dumped imports from the PRC, the Union industry was prevented from increasing its sales prices to achieve a profitable situation, resulting in a loss at the end of the IP, which continued after the IP.

5.7. Foreseeability and imminence of the change in circumstances

- (232) Article 3(9) of the basic Regulation provides that '[...] the change in circumstances which would create a situation in which the dumping would cause injury must have been clearly foreseen and must be imminent.'
- (233) All the above-mentioned factors have been analysed and verified with respect to the investigation period. In particular, the profitability of the sampled Union producers reached an unsustainable level of -12 % in the fourth quarter of 2022 when Chinese price pressure was felt most after the continuous increase in undercutting Chinese imports during the first three quarters of the IP. Furthermore, the post-investigation period data revealed that this negative situation was still present during the first quarter of 2023. If this trend continues, the fragile situation of the Union industry will be turned into a material injury immediately. Moreover, the fact that the Chinese capacity is expected to almost double in the period 2020 – 2026 which cannot be absorbed by domestic Chinese demand or by other Chinese export markets, makes the Union market increasingly attractive to low-priced Chinese imports. Based on the data for the investigation period, the Commission thus concluded that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which will create a situation in which the dumping will cause injury. When the market conditions changed after the COVID-19 pandemic, the Chinese imports started to come back to the Union market, displacing the sales of the Union industry, which had to start reducing prices and incurred in losses towards the end of the IP and Q1 2023, having to sell at loss to compete with the dumped imports.
- (234) Svepol argued that the complainant could not be considered to be in a vulnerable situation on the basis of the data submitted in the complaint, but that this data showed a return to normal market conditions following the post-COVID-19 pandemic boom. Svepol further submitted that the Union producers' profit margins in fact showed signs of a stabilising industry after a period with exceptionally high profitability, when the Union producers have been able to increase prices above unit costs, made high investments and maintained a dominant market share.
- (235) The Commission acknowledged that profit level of the Union industry during the period considered, especially in 2021 and the first three quarter of the IP, was much higher than seen in the years before. However, a multitude of injury indicators, such as production, sales, and profitability, show a massive and extraordinary drop at the end of the IP to unsustainable levels. Therefore, the Commission concluded that the situation at the end of the IP could not simply be considered a return to normal market conditions.

- (236) CPCIF and Svepol argued that the Chinese imports did not indicate foreseen or imminent injury, since they dropped by more than half during the last quarter of the investigation period and the increased imports in the third quarter of the investigation period were an exception. Svepol moreover claimed that there was no coincidence in time between the decline in the Union industry's sales and the Chinese import volume trend.
- (237) The Commission found that the Chinese imports had significantly increased over the full period considered. Moreover, the drop in imports in the last quarter of the investigation period succeeded a continuous and steep increase in dumped imports in the quarters before and was followed by a further increase in the first quarter after the investigation period. Contrary to the claim of Svepol, this coincided with a continuous decrease in sales by the Union industry during the investigation period. Therefore, the Commission concluded that there was a significant rate of increase of dumped imports indicating the likelihood of substantially increased imports.

5.8. Conclusion on threat of injury

- (238) While the Union industry was doing well until the third quarter of 2022, almost all injury indicators started to fall dramatically during the last quarter of 2022. The investigation provisionally revealed that this negative situation continued during the first quarter of 2023.
- (239) Whereas the average cost of Union producers and Union producer sales prices were highly correlated during the period considered, with an increase of 46 % in costs matched by an increase of 49 % in the average sales price in the IP compared to 2019, the Chinese prices had only risen by about 26 %. In 2019 and 2020, average Chinese import prices had been above Union industry prices, whereas in the IP, Chinese imports were undercutting.
- (240) Although imports from other countries also exhibited a slight increase in the IP, notably from Türkiye, Egypt, and Vietnam, the average prices of those imports were on average 1,2 % lower to 2,0 % higher than Union average sales prices. When assessed cumulatively, these imports were slightly higher than Union prices.
- (241) The Union industry's forecast concerning future profitability and future sales is negative. Decreasing sales and negative margins are most likely to lead to heavy losses, lost orders and reduced jobs. As a result, all factors assessed in the framework of Article 3(9) of the basic Regulation, in particular the significant rate of increase of dumped imports in 2022 which continued in the first half of 2023 at further decreasing prices, the excess capacity in the PRC, and the negative developments in profitability of the Union industry point to the same direction.
- (242) In the view of this analysis, at this stage the Commission concluded that there was a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period.

6. CAUSATION

- (243) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the threat of material injury to the Union industry was caused by the existing and future dumped imports from the country concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have threatened to injure the Union industry. The Commission ensured that any possible threat of injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports by the complainants and related companies to the complainants, the increased use of recycled PET by PET users, imports from other third countries, cost increases in raw materials and energy prices, and an increase in investment costs.

6.1. Effects of the dumped imports

- (244) As set out in recital (210), the import volume of PET from the PRC increased significantly over the period considered and showed an increasing trend over the IP and the first quarter after the IP, with the exception of the last quarter of the IP. As shown in recital (164), the Chinese imports were undercutting the Union industry prices. The Commission also established that the Chinese PET imports suppressed the Union industry prices, in particular at the end of the investigation period.
- (245) Due to the significant increase of the Chinese PET imports during the investigation period at prices below those of the Union industry, the Union industry lost market share to the Chinese imports and lost its profitable situation in the last quarter of the IP.
- (246) Therefore, the Commission provisionally concluded that those dumped imports had a negative impact on the situation of the Union industry.
- (247) Moreover, not only do the Chinese PET producers have significant spare capacity as set out in recital (212), which is forecasted to grow even larger in the coming years, but the Union has also been the most attractive destination for dumped Chinese imports during the investigation period, to the detriment of the Union industry, and no other third countries would be able to absorb the Chinese spare capacity of PET.
- (248) The CPCIF claimed with reference to the Commission's reasoning in *Silico-Manganese* and *Styrene-Butadiene-Styrene* cases that there has been a lack of coincidence in time between the profitability and capacity utilisation trend of the Union industry and the increase of dumped imports from the PRC, a claim that was echoed by Svepol, and that the increase in market share of the Chinese imports and the level of undercutting were too limited to have a material impact on the Union industry. Also, comparing Eurostat figures on PRC import prices with the Union industry sales figures presented in the complaint, the unrelated importer argued that the Union industry could not be threatened by PRC imports when import prices from the PRC actually increased and stood above the Union industry's sales prices since September 2022.
- (249) The Commission found that the production level and capacity utilisation of the Union industry showed a significant drop during the investigation period, right after a period where a significant increase in Chinese imports was seen. The Chinese prices, which were below the Union industry's price and the price from other third countries in the first three quarters of the investigation period, drove the prices of the Union industry and third countries down in the last quarter of the investigation period to the price level of the Chinese imports in the previous quarter, resulting in a lossmaking level for the Union industry. This showed that the Chinese prices were capable of negatively impacting the price level on the Union market. Therefore, the claim was rejected.
- (250) Therefore, the Commission provisionally concluded that the Chinese dumped imports had a negative impact on the situation of the Union industry and were causing a threat of material injury to the Union industry.

6.2. Effects of other factors

- (251) The Commission also examined whether other known factors, individually or collectively, are capable of attenuating the causal link established between the dumped imports and the threat of injury provisionally found to exist to the effect that such link would no longer be genuine and substantial.

6.2.1. Imports by the complainants and related companies to the complainants

- (252) UNESDA argued that the sampled Union producers Indorama and NEO have made imports of PET from the PRC. Indeed, the Commission found that a part of the imports from the PRC were made by the complaining companies accounting for [15 – 25] % of imports from the PRC in 2022 and [25 – 35] % in the last quarter of 2022 alone. However, even when assessing the import trends without these imports, a significant increase in Chinese imports took place over the period considered. Therefore, the existence of imports by the complainant did not attenuate the causal link.

6.2.2. The increased use of recycled PET by PET users

- (253) UNESDA claimed that policies by the European Union concerning waste management and reduction of plastic use have led to the increasing substitution of vPET for rPET (despite the systematically higher prices of rPET over vPET), resulting in a high usage rate of rPET.
- (254) Indeed, when analysing the injury indicators at a more granular level, an increasing trend in capacity, production, and sales of rPET can be observed during the period considered. However, this increase of around 250 000 tonnes in production and around 200 000 tonnes in sales, representing around 20 % of the Union industry's PET capacity and production, did not make up for the loss of production to the dumped Chinese imports and stagnation of sales and therefore did not attenuate the causal link between the dumped Chinese imports and the threat of injury suffered by the Union industry. Moreover, the complainant provided data that rPET producers were reducing their production post-IP due to low vPET prices on the Union market, caused by the dumped imports from the PRC.

6.2.3. Imports from third countries

- (255) CPCIF and UNESDA submitted that import volumes from Egypt, Türkiye, and Vietnam have increased considerably during the period considered but all showed a significant drop in import volume in the last quarter of the IP. However, the fall in import volumes from the PRC during this quarter was far larger than for the other third countries. Furthermore, CPCIF observed that imports from India remained significant and stable over the period considered and imports from South Korea increased in the last quarter of the IP. Therefore, CPCIF argued that any injury suffered by the Union industry is caused by the imports from other countries and not by imports from the PRC, notably because the imports from these other countries also undercut the Union industry's prices to a similar degree as the Chinese imports. Moreover, the 6,5 % customs duty levied on the Chinese imports when entering the Union should be incorporated in this analysis.
- (256) The volume of imports from other third countries developed over the period considered as follows:

Table 16

Imports from third countries

Country		2019	2020	2021	Investigation period
Egypt	Volume (tonnes)	87 688	81 942	70 786	172 913
	Index	100	93	81	197
	Market share	2 %	2 %	2 %	4 %
	Average price	997	794	1 020	1 474
Türkiye	Volume (tonnes)	103 246	124 883	160 162	172 516
	Index	100	121	155	167
	Market share	3 %	3 %	4 %	4 %
	Average price	1 033	787	940	1 443
	Index	100	76	91	140

Vietnam	Volume (tonnes)	77 961	92 359	91 709	156 003
	Index	100	118	118	200
	Market share	2 %	2 %	3 %	4 %
	Average price	1 008	732	940	1 426
	Index	100	73	93	141
Other third countries	Volume (tonnes)	534 910	477 200	353 908	331 621
	Index	100	89	66	62
	Market share	14 %	13 %	10 %	9 %
	Average price	998	756	925	1 458
	Index	100	76	93	146
Total of all third countries except the country concerned	Volume (tonnes)	803 805	776 385	676 564	833 052
	Index	100	97	84	104
	Market share	21 %	20 %	19 %	21 %
	Average price	1 003	762	940	1 451
	Index	100	76	94	145

Source: Eurostat

- (257) As set out in the table in recital (157), imports from the PRC grew with 58 % during the period considered. Although the growth rate for Egypt, Türkiye, and Vietnam cumulatively has been larger, their individual levels of imports were much lower than the imports from the PRC in absolute figures.
- (258) Moreover, the average prices of all other third countries in the investigation period were higher than the import price from the PRC and were around the price of the Union industry. Cumulatively assessed, these imports were above the price of the Union industry.
- (259) Therefore, the Commission provisionally concluded that aside from the fact that these imports were not made at prices below the prices of the Union industry, the import volumes were also not of such a scale that they would attenuate the causal link between the Chinese dumped imports and the threat of injury to the Union industry.

6.2.4. Export performance of the Union industry

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

Table 17

Export performance of the sampled Union producers

	2019	2020	2021	Investigation period
Export volume (tonnes)	228 466	260 053	333 941	291 338
Index	100	114	146	128
Average price (EUR)	1 006	741	992	1 469
Index	100	74	99	146

Source: verified data from questionnaire replies

- (261) The exports of the Union industry increased from 2019 to 2021, after which they dropped but remained significantly above the quantity sold at the start of the period considered.
- (262) Exports were only a small part of the Union industry's overall sales, accounting for between 7 % and 10 % of its production in 2019. The average sales price for exports followed the fluctuations in the cost of production of the Union industry.
- (263) Therefore, the Commission provisionally concluded that the export performance of the Union industry did not attenuate the causal link between the dumped imports from the country concerned and the threat of injury found.

6.2.5. Cost increases in raw materials and energy prices

- (264) UNESDA claimed that the price of PET in the second semester of 2022 has been affected by the energy crisis that unfolded due to the war of Russia on Ukraine. CPCIF also contended that the increase in the costs of raw materials, energy costs and the inflationary pressure were factors that caused injury to the Union industry, arguing that the decrease in profitability of the Union industry coincided with a high inflation rate, caused by increasing energy costs. As a result of war in Ukraine petroleum prices have increased significantly in Europe, affecting the price of the raw materials paraxylene, purified terephthalic acid, and mono-ethylene glycol, while Chinese producers of PET were less affected by the rise in energy costs.
- (265) As set out in recital (183), the Union industry's cost of production first showed a decrease in 2020, after which the costs increased significantly in the investigation period. However, the Union industry could also increase its prices in line with the increase in cost of production for most of 2021 and the investigation period. When assessing this data at a quarterly level for the investigation period, it is visible that the Union industry had to lower its prices in the last quarter of the investigation period to the level below its cost of production in response to the unfair competition of dumped imports. Therefore, the cost increase did not attenuate the causal link.

6.2.6. Increase in investment costs

- (266) CPCIF claimed that the investment figures of the Union industry more than quadrupled over the period considered, caused by an increase in working capital due to higher inventories and to comply with the regulatory obligations under the Single-use plastics Directive.
- (267) As set out in recital (191), the Commission found that investments indeed increased substantially. However, when compared to the sales value on the Union market, investment costs were limited and never got above 2,1 % of turnover for the sampled Union producers. Moreover, the investments were made in order to ensure compliance with existing Union regulations, for plants' maintenance and to increase their longevity. This level of investment costs could therefore not attenuate the causal link between the dumped Chinese imports and the threat of injury found.

6.2.7. Customer purchasing preferences

- (268) Svepol argued that the declining production and sales volumes were responses to changes in customer purchasing preferences (including shifting from long-term contracts to more flexible spot contracts) and wide-spread destocking by PET customers.
- (269) The Commission found that while the Union consumption temporarily decreased in the last quarter of 2022, it has actually increased in the IP compared to the beginning of the period considered and remained at the average quarterly IP level also in the first quarter of 2023 (see Table 3 and Table 14). Therefore, the alleged destocking by customers is not duly substantiated. Moreover, a potential change in preferred purchasing terms itself cannot be considered a factor that should automatically lead to a drop in production or sales of the Union producers. Indeed, the investigation provisionally found that the Chinese imports were done on spot contract basis, while historically the Union industry sold mainly on a long-term contract basis. However, the Chinese imports were made at dumped prices undercutting the Union industry, thus potentially even aggravating this shift from long-term contracts to spot contracts. The difference in purchase contracts might therefore have aggravated the effect between the dumped Chinese imports and the threat of injury found.

6.2.8. Conclusion on causation

- (270) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of these other factors on the Union industry's negative developments were however only limited, if any.
- (271) On the basis of the above, the Commission provisionally concluded at this stage that the dumped imports from the PRC caused a threat of material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

7. LEVEL OF MEASURES

- (272) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

7.1. Injury margin

- (273) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.
- (274) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the PRC, the level of profitability needed to cover full costs and investments, research and development ('R&D') and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (275) The profit in the first two years of the period considered was below 6 % (in 2019 or 2020) and the market conditions were abnormal in 2021, due to the COVID-19 pandemic coupled with unprecedented rise in transport costs associated with an overall drop in imports from third countries in 2021. None of these years would therefore qualify for providing a target profit in accordance with Article 7(2c) of the basic Regulation. None of the sampled Union producers made a substantiated claim for investments foregone or R&D and innovation costs. In view of those facts, the Commission resorted to the use of the minimum 6 % target profit which was added to the Union industry's actual cost of production to establish the non-injurious price.
- (276) As no substantiated claims were made pursuant to Article 7(2d) concerning current or future costs which result from multilateral environmental agreements and protocols thereunder or from the listed ILO Conventions, no further costs were added to the non-injurious price thus established.

- (277) The Commission then determined the injury margin level based on a comparison of the weighted average import price of the individual sampled cooperating exporting producers in the PRC, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (278) Svepol suggested that if the Commission were to impose duties, the actual prices and profit realised by the Union producers during the second half of 2022 should be relied upon in order to establish the injury margin, since the Union industry sales prices were neither depressed, nor suppressed in 2022. It is noted that 2022 was the year when imports from the PRC increased substantially and hence the profit realised by the Union producers in the investigation period or any period within 2022 was not deemed appropriate to be used as a target profit.
- (279) The injury elimination level for ‘other cooperating companies’ and for ‘all other companies’ is defined in the same manner as the dumping margin for these companies (see Section 3.5).

Company	Dumping margin	Injury margin
Sanfame Group: — Jiangsu Hailun Petrochemical Co., Ltd — Jiangsu Xingye Plastics Co., Ltd. — Jiangyin Xingu New Material Co., Ltd. — Jiangyin Xingtai New Material Co., Ltd.	16,0 %	6,6 %
Wankai New Materials Group: — Wankai New Materials Co., Ltd. — Chongqing Wankai New Materials Technology Co. Ltd.	22,6 %	10,7 %
China Resources Chemical Innovative Materials Group: — China Resources Chemical Innovative Materials CO., LTD — Zhuhai China Resources Chemical Innovative Materials Co., Ltd.	17,2 %	21,2 %
Other cooperating companies	19,7 %	11,1 %
All other companies	24,2 %	27,5 %

7.2. Conclusion on the level of measures

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

Company	Provisional anti-dumping duty
Sanfame Group: — Jiangsu Hailun Petrochemical Co., Ltd — Jiangsu Xingye Plastics Co., Ltd. — Jiangyin Xingu New Material Co., Ltd. — Jiangyin Xingtai New Material Co., Ltd.	6,6 %
Wankai New Materials Group: — Wankai New Materials Co., Ltd. — Chongqing Wankai New Materials Technology Co. Ltd.	10,7 %

China Resources Chemical Innovative Materials Group: — China Resources Chemical Innovative Materials CO., LTD — Zhuhai China Resources Chemical Innovative Materials Co., Ltd.	17,2 %
Other cooperating companies	11,1 %
All other companies	24,2 %

8. UNION INTEREST

(281) The Commission examined whether, despite the determination of injurious dumping, the imposition of measures would not be against the Union interest in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users, and consumers.

8.1. Interest of the Union industry

(282) Across the Union around 60 companies produced PET, providing employment to around 1 500 staff. 16 producers cooperated during the investigation. None of the known producers opposed the initiation of the investigation. As shown above when analysing the injury indicators, the Union industry showed a deteriorating trend at the end of the investigation period. In particular, injury indicators related to the financial performance of the sampled Union producers, such as profitability, were seriously affected. The Union industry experienced a deterioration of its situation at the end of the investigation period and was negatively affected by the dumped imports from the PRC, causing the threat of injury at the end of the investigation period.

(283) It is expected that the imposition of provisional anti-dumping duties will restore fair trade conditions on the Union market, putting an end to the price suppression and enabling the Union industry to recover. This would result in an improvement of the Union industry's profitability. In absence of measures, it is very likely that the threat of injury will materialise and that there will be a further deterioration of the Union industry's economic situation and idling or closure of Union industry plants.

(284) The Commission therefore concluded at this stage that the imposition of anti-dumping duties would be in the interest of the Union industry.

8.2. Interest of users and unrelated importers

(285) An unrelated importer (Svepol) and a number of large user companies like Danone, Nestle Waters, Coca-Cola, and Refresco, along with associations like Soft Drinks Europe (UNESDA) and Natural Mineral Waters Europe (NWME), have come forward and cooperated in this investigation. UNESDA represents major corporate users, national soft drink producers, bottlers, and distributors, while NWME speaks for the natural mineral water producers. Svepol as well as four groups of users (Refresco, Danone, Nestle and Retal) provided structured replies (verified at this stage for Svepol) to the Commission questionnaire. Furthermore, over 30 other users (mainly bottlers) and national associations from Austria, Bulgaria, Germany, France, Italy, Spain, and Poland came forward, providing comments and voicing the opposition to the potential duties on PET imports.

(286) The PET bottling industry is significant in terms of employment, with over 300 000 direct jobs provided across 1 000 bottling sites. Importantly, most of these businesses are small and medium enterprises ('SMEs'), often employing fewer than 50 people. Many of the users claimed to already operate on thin margins and face rising costs due to EU regulatory measures on single-use plastics and other packaging obligations. They further argued that PET is a commodity not produced in sufficient quantities in the Union, making therefore imports an essential component of the Union consumption.

(287) Furthermore, the users and Svepol (importer) claimed that imposing anti-dumping measures on PET imports from the PRC would adversely affect these European businesses in several ways, as set out below.

8.2.1. *Increased vPET Prices*

- (288) The users argued that measures will likely raise the prices of vPET. This is documented on the example of the United States, which has significantly higher PET prices compared to countries with lower or no duties such as the Union or South Korea. This would impact SMEs who cannot easily transfer these increased costs to their customers hampering the beverage industry, where PET is a major cost component. The users have indicated (without further substantiation) that the price of PET on the final product varies between 8 and 15 % and that a price increase cannot be fully passed on to buyers.

8.2.2. *Slower transition to rPET*

- (289) The soft drinks industry submitted that it is trying to shift from vPET to rPET, which is currently more expensive. Higher vPET prices might slow this shift, undermining the industry's sustainability initiatives.

8.2.3. *Concerns over market dominance*

- (290) Several users submitted that anti-dumping measures on PET imports from the PRC would further consolidate the control of the Union producer Indorama in the PET market, also in a view of Indorama's ownership of PET production facilities in Türkiye and Egypt, the next major PET exporters to the Union, and argued that such market constellation could negatively impact competition and might not align with the broader interests of the Union.

8.2.4. *Analysis of the impact of the measures on users and unrelated importers*

- (291) While the anti-dumping measures are indeed likely to increase the PET price and negatively impact the user industries and final users of PET-packaged products, this would not necessarily result in job losses among PET users, given the PET costs make up to 15 % of final product prices. Furthermore, it follows from the evidence available that not only are the PET production facilities at the Union producers fully utilised, but that also numerous other countries such as Türkiye, Egypt, and Vietnam have the capacity to supply PET to the user industry in the Union.

8.3. **EU's Ambition Towards Sustainable Plastics**

- (292) The European Union, in its commitment to counteract pollution and single-use plastics, adopted the EU Action Plan for a Circular Economy in 2015. This plan marked plastics as a priority, aiming for strategies that consider the entire life cycle of plastics. PET, a fully recyclable plastic, is at the forefront of these efforts. In 2016, while 72,7 % of plastic waste was collected in the Union, only 31,1 % was recycled, underscoring the importance of pure plastics like PET.

8.4. **Challenges with regard to rPET**

- (293) The Union's directive on single-use plastics set ambitious recycling targets for the upcoming decade, pushing Union PET producers to invest in rPET technologies. However, this progress is threatened by the influx of dumped vPET from the PRC. These dumped imports have made European-produced rPET less competitive, leading to a shift back to vPET, especially when energy costs for rPET production are high. The dumped imports might hinder innovation and built up of rPET production capacity, and weaken the recycling PET loop, essential for the Union's carbon reduction and recycling targets.

8.5. **Conclusion on Union interest**

- (294) The duties (see Section 9 below) are moreover set at a level which would allow imports of Chinese PET at fair prices.
- (295) The Union's commitment to environmental protection, as evident in the single plastics directive, emphasizes recycling investments, would be potentially hindered by cheap vPET.

- (296) Overall, it is provisionally found that the benefits of measures outweigh potential negative impact for importers, users, and consumers.
- (297) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of PET originating in the PRC at this stage of the investigation.

9. PROVISIONAL ANTI-DUMPING MEASURES

- (298) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent that the imminent threat of material injury which is caused to the Union industry by the dumped imports would materialise.
- (299) Provisional anti-dumping measures should be imposed on imports of PET originating in the PRC, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins in recital (279) above. The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (300) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty
Sanfame Group: — Jiangsu Hailun Petrochemical Co., Ltd — Jiangsu Xingye Plastics Co., Ltd. — Jiangyin Xingu New Material Co., Ltd. — Jiangyin Xingtai New Material Co., Ltd.	6,6 %
Wankai New Materials Group: — Wankai New Materials Co., Ltd. — Chongqing Wankai New Materials Technology Co. Ltd.	10,7 %
China Resources Chemical Innovative Materials Group: — China Resources Chemical Innovative Materials CO., LTD — Zhuhai China Resources Chemical Innovative Materials Co., Ltd.	17,2 %
Other cooperating companies	11,1 %
All other companies	24,2 %

- (301) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (302) 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'.

- (303) 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.
- (304) 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.

10. INFORMATION AT PROVISIONAL STAGE

- (305) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (306) No comments on the accuracy of the calculations were received.

11. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of polyethylene terephthalate ('PET'), having a viscosity of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling under CN code 3907 61 00 and originating in the People's Republic of China.
2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Provisional anti-dumping duty	TARIC additional code
Sanfame Group: — Jiangsu Hailun Petrochemical Co., Ltd — Jiangsu Xingye Plastics Co., Ltd. — Jiangyin Xingu New Material Co., Ltd. — Jiangyin Xingtai New Material Co., Ltd.	6,6 %	899V
Wankai New Materials Group: — Wankai New Materials Co., Ltd. — Chongqing Wankai New Materials Technology Co. Ltd.	10,7 %	899W

China Resources Chemical Innovative Materials Group: — China Resources Chemical Innovative Materials CO., LTD — Zhuhai China Resources Chemical Innovative Materials Co., Ltd.	17,2 %	899X
Other cooperating companies	11,1 %	See annex
All other companies	24,2 %	8999

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

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

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

Article 2

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

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

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

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. Article 1 shall apply for a period of six months.

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

Done at Brussels, 27 November 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Country	Name	TARIC additional code
People's Republic of China	Sinopec Yizheng Chemical Fibre Limited Liability Company	899Y
People's Republic of China	Dragon Special Resin (XIAMEN) Co., Ltd.	899Z
People's Republic of China	Far Eastern Industries (Shanghai) Ltd.	89AA
People's Republic of China	Jiangsu Ceville New Materials Technology Co., Ltd.	89AB