



2024/1923

11.7.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/1923

of 10 July 2024

imposing a provisional anti-dumping duty on imports of titanium dioxide originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 13 November 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of titanium dioxide ('TiO₂'), originating in the People's Republic of China ('the country concerned', 'China' 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 29 September 2023 by the European Titanium Dioxide Ad Hoc Coalition ('the complainant'). The complaint was made on behalf of the European Union ('the Union') industry of TiO₂ in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) The Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2024/1617 ⁽³⁾ ('the registration Regulation').

1.3. Interested parties

- (4) In the Notice of Initiation, the Commission invited interested parties to participate in the investigation. In addition, the Commission specifically informed the complainant, Union producers, the known exporting producers and their representative associations, the authorities of the People's Republic of China, known importers, traders and users about the initiation of the investigation and invited them to participate.
- (5) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. Comments on initiation

- (6) Several parties submitted comments on initiation. These concerned the product scope, alleged injury suffered by the Union industry, target profit used in injury calculations, causal link, union interest. All of those comments are addressed below in the relevant sections of this Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of titanium dioxide ('TiO₂'), originating in the People's Republic of China (OJ C, C/2023/786, 13.11.2023, ELI: <http://data.europa.eu/eli/C/2023/786/oj>).

⁽³⁾ Commission Implementing Regulation (EU) 2024/1617 of 6 June 2024 making imports of titanium dioxide originating in the People's Republic of China subject to registration (OJ L, 2024/1617, 7.6.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1617/oj).

1.5. **Sampling**

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

Sampling of Union producers

- (8) 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 production and sales volumes taking it account the geographical location of the companies. This sample consisted of three Union producers. The sampled Union producers accounted for 50 % of the total production in the Union and 65 % of the sales volume to unrelated customers in the Union. The Commission invited interested parties to comment on the provisional sample. No comments were received on the sample of Union producers. The sample is representative of the Union industry.

Sampling of unrelated importers

- (9) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (10) One unrelated importer provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary.

Sampling of exporting producers in the PRC

- (11) 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 PRC to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (12) Twenty-nine exporting producers in the PRC 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 seven companies belonging to two separate corporate groups on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available.
- (13) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the PRC were consulted on the selection of the sample. No comments were received on the sample.

1.6. **Individual examination**

- (14) Two exporting producers in the PRC indicated their interest in requesting individual examination under Article 17(3) of the basic Regulation. However, the requesting producers did not fill out the dedicated questionnaire for the exporting producers within the deadline specified in the Notice of initiation. Therefore, no requests for individual examination were ultimately received.

1.7. **Questionnaire replies and verification visits**

- (15) The Commission sent questionnaires to the sampled Union producers, the sampled exporting producers in China, the known importers and users. The same questionnaires were made available online (*) on the day of initiation.
- (16) The Commission sent also 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').

(*) <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2694>

- (17) Furthermore, the complainant provided in the complaint sufficient *prima facie* evidence of raw material distortions in the PRC regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to the PRC. For this reason, the Commission sent additional questionnaires in this regard to the GOC.
- (18) The Commission received questionnaire replies from the three sampled Union producers, the two sampled groups of Chinese exporting producers and six users. The Commission did not receive the questionnaire reply from the GOC.
- (19) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- Kronos Titan GmbH, Leverkusen, Germany, and its related companies:
 - Kronos Europe S.A/N.V., Gent, Belgium,
 - Societe Industrielle du Titane, Paris, France,
- Precheza a.s., Olomouc, Czechia, and its related company:
 - Agrofert Italia SRL, Monza, Italy,
- Tronox Pigments Holland B.V., Rotterdam, The Netherlands.

Users

- Akzo Nobel Sourcing B.V., Amsterdam, The Netherlands,
- Flint Group GmbH, Hilversum, The Netherlands,
- Munksjö Paper AB, Aalen, Germany,
- Felix Schoeller GmbH & Co. KG, Osnabruck, Germany,
- Sherwin-Williams Italy SRL, Bologna, Italy,
- A. Schulman Plastics, Rotterdam, The Netherlands.

Exporting producers in the PRC:

Anhui Gold Star group

- Anhui Gold Star Titanium Dioxide (Group) Co., Ltd. ('Anhui Group'),
- ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED ('Anhui Trading').

LB group

- LB GROUP CO., LTD. ('LB'),
- HENAN BILLIONS ADVANCED MATERIAL CO., LTD. ('HB'),
- LB LUFENG TITANIUM INDUSTRY CO., LTD. ('LL'),
- LB SICHUAN TITANIUM INDUSTRY CO., LTD. ('LS'),
- LB XIANGYANG TITANIUM INDUSTRY CO., LTD. ('LX').

1.8. Investigation period and period considered

- (20) The investigation of dumping and injury covered the period from 1 October 2022 to 30 September 2023 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2020 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (21) The product subject to this investigation is titanium dioxide, having the chemical formula TiO_2 , in all forms, as titanium oxides or in pigments and preparations based on titanium dioxide, containing a minimum of 80 % by weight of titanium dioxide calculated on the dry matter, having all types of particle sizes, currently falling under CN codes ex 2823 00 00 and 3206 11 00 (TARIC codes 2823 00 00 10 and 2823 00 00 30) ('the product under investigation').
- (22) TiO_2 is classified under the Chemical Abstracts Service Registry Number (CAS RN) 12065-65-5 and 13463-67-7 ('the product under investigation')
- (23) Titanium dioxide is a chemical product in the form of fine white powder. It is used in a range of industrial and consumer products such as paints, coatings, paper, plastics, rubber, textiles, pharmaceutical products etc. Titanium dioxide has excellent light-scattering properties therefore applied where white opacity and brightness is required.

2.2. Product concerned

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

2.3. Like product

- (25) The investigation showed that the following products have the same basic physical chemical and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union,
 - the product under investigation produced and sold on the domestic market of the PRC, and
 - the product under investigation produced and sold in the Union by the Union industry.
- (26) 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

- (27) Several parties submitted claims regarding product scope within the deadline to submit product scope claims.
- (28) First, one user, Schulman Plastics SAS ('Schulman Plastics'), requested that product scope be extended to cover the product known as 'Masterbatch White'.
- (29) Second, one user, Akzo Nobel Sourcing B.V. ('AkzoNobel'), contended that the product control number ('PCN') structure should be amended.

- (30) Third, one user, Munksjö Paper AB ('Munksjö'), claimed that the product definition is unclear and requested the Commission to clarify that so called laminate-grade TiO₂, a particular type of TiO₂ which is used in laminate paper production ('laminate-grade TiO₂'), does not fall within the product scope. Munksjö subsequently supplanted this request, asking the Commission to exclude laminate-grade TiO₂ from the product scope of the investigation, or, alternatively, to exempt it from anti-dumping duties under the end-use procedure, provided for in Article 254 of the Union Customs Code ('UCC')⁽⁷⁾. Munksjö made the latter request together with another user, Felix Schoeller GmbH & Co. KG ('Felix').
- (31) Fourth, one user, Treibacher Industrie AG ('Treibacher') requested that TiO₂ of a purity of 99,9 % or more be excluded from the product scope.
- (32) Finally, two users, Flint Group GmbH ('Flint') and Sun Chemical Ltd. ('Sun Chemical') separately requested that a special type of TiO₂ that is only used as a pigment in the production of inks in the graphic industry ('graphic TiO₂') be excluded from the product scope. Flint additionally requested to, alternatively, exempt graphic TiO₂ from anti-dumping duties under the end-use procedure provided for in Article 254 of the UCC.
- (33) In addition, the Commission did not consider the requests submitted by several parties regarding product exclusion because those requests were made after the deadline to submit product scope claims had passed. Those requests related to uncoated TiO₂ for non-white pigments and food grade TiO₂. The Confederation of European Paper Industries ('CEPI') also requested to exclude laminate-grade TiO₂ from the product scope once the deadline to submit claims had passed. In addition, AkzoNobel introduced a product exclusion request for TiO₂ produced via chloride process in their questionnaire reply after the deadline to submit product scope claims.

2.4.1. Masterbatch White

- (34) Schulman Plastics claimed that the product scope should be extended to include 'Masterbatch White' ('MW') (currently classified under TARIC code 3206 19 00 90). MW is a concentrated mixture of basic elements, such as pigments, dyes, carriers, dispersants, and additives. These are encapsulated in a thermosetting resin, then cooled and cut into granules, which are used to colour or enhance the properties of plastic. TiO₂ is an important white pigment constituent of MW, it is the substance which allows MW to colour the plastics white. Thus, Schulman Plastics claimed that the increase in costs of importing TiO₂ to the Union, resulting from anti-dumping duties, will lead to the diversion of Chinese TiO₂ into the production of MW in China. This would, in turn, further increase the volume of cheaper MW from China being imported/dumped into the Union, making the Union MW producers unable to compete effectively.
- (35) According to the evidence collected during the investigation, as well as Schulman Plastics' own description of MW, the Commission noted that the product under investigation, as defined in the Notice of Initiation and reiterated in recital (21) above, is used as raw material in production of MW, making MW a downstream product of the product under investigation. This is further corroborated by the fact that Schulman Plastic submitted to the Commission the questionnaire for users, which additionally made clear that the product under investigation is one of the main raw materials that they use in their production of MW.
- (36) For that reason, the complaint could also not contain any evidence which would allow the Commission to assess if there is indication of dumping and associated injury caused by imports of MW originating in China, since the construction of normal value for MW would require benchmarks for different raw materials than the ones used for the product under investigation as is currently defined. The scope of this investigation could not thus be extended to MW, and any alleged dumping practices and the resulting injury inflicted on the MW producers in the Union would have to be determined in a separate anti-dumping investigation.
- (37) Therefore, the Commission rejected the request to extend the scope of this investigation to include MW.

⁽⁷⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

2.4.2. *Claims on the PCN structure*

- (38) AkzoNobel claimed that the PCN structure which the Commission established for this investigation should be extended by an additional field to account for surface treatment of different types of TiO₂, since: (i) most types of commercially available TiO₂ contain some form of surface treatment, (ii) such surface treatment affects the performance of TiO₂ in different applications, and (iii) surface treatment features on producers' data sheets for types of TiO₂ they produce and sell. In addition, AkzoNobel claimed that the PCN field for 'TiO₂ content per weight' is not sufficiently granular to reflect market realities. Specifically, AkzoNobel suggested that the PCN section covering the range of TiO₂ content per weight between 80 % and up to but not including 98,5 % should be broken down into three further sections: 80 % up to but not including 90 %, 90 % up to but not including 95 %, and 95 % and up to but not including 98,5 %.
- (39) The complainant opposed these claims on the grounds that surface treatment is a minimal component of the cost of manufacturing and thus does not need to be reflected in the PCN structure. The complainant further commented that the current 'TiO₂ content by weight' categorization is granular enough to reflect market realities and ensure 'like for like' comparison, while adding two additional sections to this field would only be adding unnecessary complexity to the investigation.
- (40) AkzoNobel replied to the complainant's above comments. AkzoNobel claimed that the PCN structure is not only about making fair comparisons between costs of production for different types of TiO₂, but also about making fair comparisons between the selling prices, implying that different types of surface coating will have an impact on the selling price, since it has an impact on which applications certain type of TiO₂ should be used for. In addition, examining the datasheets of TiO₂ types from the portfolio of the Union producer Kronos, AkzoNobel showed how adding two more PCNs to the 'TiO₂ content per weight' field would spread the types of TiO₂ which Kronos produces more evenly into different PCNs, claiming that such more granular PCN would be more instructive.
- (41) During the investigation, the Commission found that most types of TiO₂ marketed by both the Union producers and the exporting producers do contain surface treatment. Such surface treatment consists of different combinations of one or more chemicals, which are relevant for the product's performance in different applications, and thus do feature on the producers' data sheets and/or sales brochures.
- (42) The Commission recalls in this respect that the purpose of the PCN is to ensure a fair price comparison between the normal value and the export price under Article 2(10) of the basic Regulation. No evidence demonstrating correlation between the specific chemicals found in the coating and prices of the exporting producers was provided to the Commission, however.
- (43) Furthermore, none of the exporting producers participating in this investigation raised an objection about the proposed PCN structure on the grounds that it would result in unfair price comparison.
- (44) The Commission thus found no reason to amend the PCN structure to reflect these factors and rejected the request by AkzoNobel.

2.4.3. *Product exclusion requests*

- (45) As explained above in recitals (27) to (33), several parties introduced requests concerning product exclusion. To assess the product exclusion requests, the Commission examined (i) the basic physical, chemical and technical characteristics of those product types, (ii) their end-use and interchangeability, (iii) end-customer perception, (iv) impact of duties on the user, (v) alternative sources of supply, and (vi) impact of exemption on duties.

2.4.3.1. Laminate-grade TiO₂

- (46) Felix and Munksjö jointly requested the exclusion from the product scope, (or, alternatively, an end-use exemption under Article 254 of the UCC) of laminate-grade TiO₂, alleging that this is a special type of TiO₂ used only in laminate paper production. In its submission of 21 January 2024, CEPI also independently requested that laminate-grade TiO₂ be excluded from the product scope. CEPI's request was made after the deadline to submit product scope claims of 23 November 2023 as explained in recital (33). The analysis in this section is thus based only on the information provided by Felix and Munksjö.
- (47) The complainant submitted an additional set of comments on this request on 2 May 2024, to which Felix and Munksjö replied in a submission from 22 May 2024. Since the complainant's comments were made after the deadline for comments on information submitted by other interested parties of 29 January 2024, neither of these additional comments were taken into account. Felix and Munksjö also submitted new factual information in another submission on 30 May 2024. Due to the late stage that the investigation was already in, that information could not be taken into account for the provisional findings.
- (48) Laminate paper (also known as décor paper) is a speciality paper used as the surface of various types of furniture and a wide range of other decorative applications. The two users claimed that the TiO₂ used to colour that paper is a special type of TiO₂ which is not suitable for other applications, as it has to be covered with a thick coating containing phosphorus. This special coating allows the TiO₂ to be properly absorbed into the paper fibres and gives it superior lightfastness which prevents greying of the TiO₂ molecules (and thus the final product), which otherwise occur since the molecules are isolated from the air in the melamine resin.
- (49) The two users pointed to the Commission Decision of 4 July 2018 in the merger case Tronox/Cristal⁽⁶⁾ where the Commission concluded that there was limited demand-side substitutability between titanium dioxide pigment for use in paper laminate and titanium dioxide pigment for use in other end-applications.
- (50) The complainant commented that the application of the type of surface coating designed for laminate-grade TiO₂ does not affect the weight of TiO₂ particles nor their surface size compared to other types of TiO₂, such as plastics or coating applications, nor is the coating in general a significant component of the manufacturing costs. Furthermore, the complainant claimed that the three types of chemicals used in surface treatment are widely applied by all TiO₂ producers in their formulations for an array of TiO₂ product types (also for paints, coatings, plastic, and other uses), which demonstrates that none of those chemicals are exclusive to laminate-grade types of products.
- (51) Assessing the criteria from recital (45) above the Commission concluded that laminate-grade TiO₂ shares the same basic physical, chemical and technical characteristics with other TiO₂ types. Both laminate-grade TiO₂ and some other types of TiO₂ contain phosphorus in the coating, although the presence of phosphorus is more significant in laminate-grade TiO₂. The Commission further concluded that the specificity of laminate-grade TiO₂ coating makes it suitable for laminate-paper production, as this special coating prevents the laminate paper from becoming grey when exposed to sunlight. However, the Commission found that several exporting producers advertise this type of TiO₂ also for use in PVC and durable plastics, which suggests that it can also be used in other applications and other end uses.
- (52) TiO₂ represents around [25-35] % of these users' total costs of production, and they source between [10-40] % of their TiO₂ in China. The two users have claimed, and one of the users provided evidence to demonstrate, that the Union TiO₂ producers would only be able to offer limited quantities of TiO₂ to them, insufficient to cover their total demand.

⁽⁶⁾ Commission Decision of 4.7.2018 in Case M.8451 – TRONOX / CRISTAL, para 57-74, available at [m8451_3750_3.pdf \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018D0471)

- (53) After analysing the evidence and the comments presented by the two users and the complainant, the Commission first determined that there are no grounds to exclude laminate-grade TiO₂ from the product scope, since it shares the same basic physical, chemical and technical characteristics as other types of TiO₂, and could, in principle, be used for other purposes. The Commission furthermore considered that there is no ground to grant the end-use exemption either since, even in case of total absence of TiO₂ imports from China, based on all the information available to the Commission at this stage, there are sufficient alternative sources of supply available to the laminate-paper producers, both within the Union and from other third markets, such as Mexico.

2.4.3.2. TiO₂ of purity of 99,9 % or more

- (54) One user, Treibacher, requested to exclude TiO₂ of purity of 99,9 % from the product scope because this TiO₂ is only available in China and used for special niche applications. However, this user never submitted a questionnaire reply, or provided evidence that would demonstrate that the criteria from recital (45) above are met. Therefore, the Commission could not assess the criteria to grant the product exclusion and thus rejected this request.

2.4.3.3. Graphic TiO₂

- (55) Two users requested for graphic TiO₂ to be excluded from the product scope: Sun Chemical and Flint. Sun Chemical made their submission after the deadline for product scope claims and did not provide a questionnaire reply, while Flint made their submission within the deadline and also provided a questionnaire reply which the Commission was able to verify. The below analysis is thus based only on the information provided by Flint.
- (56) Flint claimed that the type of TiO₂ they use is a very high-end, niche grade product, used only in inks in graphics industry, the production of which involves a special production process and specific know-how.
- (57) The Commission found that graphic TiO₂ shares the same basic physical, chemical and technical characteristics with other TiO₂ types, as it is a standard rutile product with coating containing chemicals found in many other TiO₂ types. However, while the chemistry of graphic TiO₂ might not be distinct, the Commission did find that there is indeed a specific know-how to producing it mastered by only a limited number of producers in the Union and in China. Flint was also purchasing, to a limited extent, other types of TiO₂ for purposes other than graphic inks.
- (58) While in principle other types of TiO₂ could be used for production of inks, this would result in much poorer performance. While Flint has been testing various TiO₂ types from different producers to use in its ink formulas, they have provided evidence demonstrating that they generally do not reach satisfactory quality levels. The Commission thus concluded that graphic ink producers indeed have limited possibilities to switch to other suppliers, which was also confirmed in the merger case Hutsman/Rockwoods ⁽⁷⁾, and the performance of graphic TiO₂ in final products would affect customer perception. It was not demonstrated, however, that the Union industry would not be able to supply in sufficient quantity the graphic industry.
- (59) Even though graphic ink TiO₂ is not fully substitutable with other types of TiO₂, it still shares the same basic physical, chemical, and technical characteristics with them. The Commission thus concluded there is no reason for product exclusion.
- (60) Furthermore, since it was not demonstrated that graphic TiO₂ has a particular physical, chemical and technical characteristics compared to other types of TiO₂, nor a well-defined end-use due to a large number of recipes that Flint has for their products, the Commission concluded at this stage that it would not be possible for customs authorities to verify that it is indeed graphic TiO₂ being used for production of inks, especially since Flint also buys other types of TiO₂ for other purposes. Finally, the user could not clearly demonstrate that its profitability would be significantly adversely affected by the duties. Therefore, the Commission rejected the end-use exemption request.

⁽⁷⁾ Commission Decision of 10.9.2014 in Case M.7061 – HUNTSMAN CORPORATION / EQUITY INTERESTS HELD BY ROCKWOOD HOLDINGS, available at: m7061_20140910_20600_4133655_EN.pdf (europa.eu)

2.4.3.4. Uncoated TiO₂ for non-white pigments

- (61) In its submission of 18 December 2023, Sun Chemical requested the Commission to also exclude from the product scope TiO₂ in its uncoated form (i.e., TiO₂ without surface treatment), in addition to the graphic TiO₂ exclusion mentioned above in recital (55). Sun Chemical claimed this is a very niche market and products made from such uncoated TiO₂ compete in markets outside the Union, and any anti-dumping duties would thus make their exports uncompetitive. The Commission services also held a hearing with Sun Chemical where the company elaborated on its request.
- (62) This request was received after the deadline to submit product scope claims of 23 November 2023. The Commission noted that comments on the product scope should have been submitted in the early stages of the investigation, in order to allow sufficient time to assess their merit and to give the opportunity to other interested parties to react to them. Also, Sun Chemical did not provide the Commission with a questionnaire reply. Thus, even if the request would have been made on time, the Commission was not able to properly verify if the criteria in from recital (45) above are met. The Commission therefore did not consider this request.

2.4.3.5. Food-grade TiO₂

- (63) In its submission of 21 January 2024, CEPI requested the Commission to exclude food-grade TiO₂ from the product scope, in addition to laminate-grade TiO₂ exclusion request mentioned above in recital (46). CEPI claimed that this type of TiO₂ is special as it meets the requirements for E-171 additives and has a defined set of extremely low heavy metals thresholds, which thus makes it very expensive to produce.
- (64) However, as this request was made long after the deadline to submit product scope claims of 23 November 2023, the Commission did not consider this request. As stated in recital (62), comments on the product scope have to be submitted in the early stages of the investigation, within the deadlines set for these comments, in order to allow sufficient time to assess their merit and to give the opportunity to other interested parties to react to them.

2.4.3.6. Exclusion of TiO₂ produced using the Chloride process

- (65) AkzoNobel made a request that TiO₂ produced using the chloride process should be excluded from the scope of the investigation, because TiO₂ produced by the chloride process and TiO₂ produced by the sulphate process are not substitutable in paints and coating business. AkzoNobel further claimed that the majority of TiO₂ production in China is done by the sulphate process while the Union market mostly consumes TiO₂ produced via chloride process. AkzoNobel requested on the same grounds that, if the Commission does not accept this exclusion request, it should at least conduct a separate injury and causality analysis between the TiO₂ produced via the chloride process and the one produced via sulphate process.
- (66) The Commission noted that AkzoNobel's request for product exclusion was submitted in its questionnaire reply, which was submitted on 20 December 2023, after the 23 November 2023 deadline to make product scope claims. The request was therefore not considered. As stated in recital (62), comments on the product scope have to be submitted in the early stages of the investigation, within the deadlines set for these comments, in order to allow sufficient time to assess their merit and to give the opportunity to other interested parties to react to them.
- (67) As concerns the request to conduct separate injury and causality analysis based on the production process, the Commission noted, first, that the investigation has shown that many users, including paints and coatings manufacturers, buy TiO₂ produced through both methods.
- (68) Second, the Commission has found that one third of the total Union sales of the sampled exporting producers are of TiO₂ produced using the chloride process.
- (69) Furthermore, just because the Chinese producers currently produce more TiO₂ using the sulphate process does not mean that this will remain the case in the future. In fact, the investigation has shown that the Chinese industry is committed to accelerate the transition from the sulphate process to the chloride process to produce TiO₂.

- (70) Third, the Commission could not establish that there were such differences in physical, chemical, or technical characteristics between the products derived from the two production processes that would warrant the exclusion of one. Ultimately, both production processes can yield anatase TiO₂, differentiated almost unanimously by other interested parties from the rutile TiO₂ due to their different crystal structure, making this the main distinction between the types of TiO₂.
- (71) Based on the above considerations, the Commission rejected AkzoNobel's request.

3. DUMPING

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

- (72) 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.
- (73) 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 TiO₂. Twenty-five exporting producers submitted the relevant information.
- (74) 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.
- (75) 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.
- (76) On 26 March 2024, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of TiO₂. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Brazil, Malaysia, Mexico and the Russian Federation. The Commission received comments on the First Note from the exporting producer LB group, the complainant and a user, AkzoNobel.
- (77) On 16 April 2024, 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 Brazil as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profit based on available information for the company Tronox Pigmentos do Brasil S.A. ('Tronox Brazil'), a TiO₂ producer in the representative country.
- (78) The Commission received comments on the Second Note from AkzoNobel as well as the complainant. These comments have been addressed under respective heading under Section 3.4 below.

- (79) After having analysed the comments and information received, the Commission concluded that Brazil 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 3.3 below.

3.2. Normal value

- (80) 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'.
- (81) 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').
- (82) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

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

- (86) 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'.
- (87) Pursuant to this provision, the Commission issued a country report concerning China ('the Report')⁽⁸⁾, which contains evidence of the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as selected sectors (including the chemical sector). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report.
- (88) More specifically, the complainant relied on the evidence contained in the Report to stress the presence of systemic significant distortions in the economy of the PRC, a 'socialist market economy' where the Chinese Communist Party ('CCP') guides both the public and private sector.
- (89) The complainant recalled that the Report observed elements pointing to significant distortions in the titanium sector in China. Since many TiO₂ producers are also in the titanium metal business, the complainant argued that the TiO₂ sector in China is affected by significant distortions just as much as the titanium sector.
- (90) Moreover, the complainant pointed out that China's 14th Five-Year Plan for National Economic and Social Development ('14th FYP') maintained and strengthened the above-mentioned significant distortions, by integrating the previous 13th FYP and setting the following priorities, as explained in the 2024 Shanghai International Titanium Dioxide Exhibition website:
- (1) Break through the chloride process and optimize the product structure to enter the international market: the industry of the product concerned should accelerate its transition from a traditional industry to an advanced manufacturing industry and optimize the product structure of chloride and sulfuric acid production processes. Supply may exceed demand, which would trigger Chinese producers to expand on international markets.
 - (2) Coexistence of two production processes and optimization: the 14th FYP requires to actively promote industrial upgrading, optimize the product structure of chloride and sulfuric acid, increase investment in scientific research and technological transformation, and continue to improve the overall competitiveness of the product market. Although a big push should be made for the chloride process, it is nevertheless expected that the sulfate process will remain the main production process and both processes will thus coexist together even during the 15th FYP.
 - (3) Emphasis on greening the sulfate process and push on the chloride process development: since the sulfate process has downsides, it is necessary to make breakthroughs in the chloride process, promote the structural reform of the supply side of the industry, promote the healthy development of the Chinese titanium industry chain, introduce and use advanced technology and equipment.
 - (4) New production capacity: during the 13th FYP, the Chinese capacity had massively increased. Now that Chinese producers have finally started to implement the chloride process, it is expected that expansion projects of the product concerned will add 1,96 million tonnes/year of new production capacity, of which more than 400 000 tonnes/year will be produced by the chloride method. Such a large new production capacity, difficult to absorb on the Chinese domestic market, will encourage the Chinese producers to export their materials.
 - (5) The complainant therefore observed that the massive increase of the Chinese TiO₂ imports into the Union during the past years was merely the result of the implementation of the 13th and 14th FYPs.

⁽⁸⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations (SWD(2017) 483 final/2 of 20 December 2017).

- (91) Moreover, the complaint pointed out the following elements indicative of significant distortions.
- (92) First, the market of the product concerned is being served to a significant extent by enterprises that operate under the ownership, control or policy supervision or guidance of state authorities. In China, as the Report has demonstrated, state-owned enterprises ("SOEs") represent the majority of the raw material industries.
- (93) The complainant submitted that a substantial degree of ownership by the GOC persists in the major manufacturers, producers and sellers of the product concerned, among which the following companies and group companies:
- Pangang Group Company, Ltd., which in 2010 merged with Anshan Iron and Steel Group Corporation to become Ansteel;
 - Shandong Jinhai Titanium Industry Resources Technology Co., Ltd ('Shandong Jinhai'), part of Shandong Lubei Enterprise Group Corporation;
 - China National BlueStar (Group) Co. ('BlueStar'), part of Sinochem Holdings Corporation, Ltd. ('Sinochem') and, as established by the European Commission⁽⁹⁾, a subsidiary of China National Chemical Corporation ('ChemChina').
- (94) Therefore, the complainant observed that the GOC controls and coordinates the commercial strategy of the companies involved in the TiO₂ production.
- (95) Second, the state presence in TiO₂ firms also allows the state to interfere with prices and/or costs.
- (96) The complainant observed, for instance, that state presence in firms does not concern only SOEs, but also private companies. In the Report, as well as in numerous previous investigations, the Commission found that the CCP exercises pressure on private companies 'to put patriotism first and to follow party discipline' throughout all sectors of Chinese economy. Indeed, Article 19 of the PRC Company Law requires a Party cell within each company.
- (97) The sector of the product concerned is regularly subject to overlaps between managerial positions and CCP membership. For instance, the secretary of the Board of the LB Group is a member of the CCP, while the chairmen of the boards of, respectively, GPRO Group (which is the parent company of Nanjing Titanium White Chemical Co., Ltd, a Chinese TiO₂ producer), Bluestar and Lubei Group all hold the position of secretary of their own Party Committees, with the chairman of the latter also being a representative of the Chinese National Congress.
- (98) Not only, the chairman of the GPRO declared that 'the Communist Party of China is a great, glorious and correct Marxist party. Adhering to the leadership of the party and strengthening party building are the fundamental guarantee for the company's development to always go into the right direction and reach major achievements', whereas the chairman of the Lubei Group presided a meeting to 'convey and study the spirit of the important speech of General Secretary Xi Jinping and the main content of the government work report, emphasizing that thoughts and actions must be quickly unified in line with this speech'.
- (99) Third, the GOC pursues public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces.
- (100) The complainant recalled that evidence from Commission's previous anti-dumping investigations demonstrates that '[o]verall, the system of planning in the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces'.
- (101) Furthermore, the complainant stated that the TiO₂ industry is considered a strategic industry by the GOC in both the 13th and 14th FYP (see recital (90)).

⁽⁹⁾ Commission Decision of 31.3.2011 declaring a concentration to be compatible with the common market (Case No COMP/M.6082 – CHINA NATIONAL BLUESTAR / ELKEM) according to Council Regulation (EC) No 139/2004 – recital 3.

- (102) Moreover, the complainant emphasized that China applies *de facto* export restraints on titanium related products. The PRC has in place a Catalogue of Goods Subject to Export Licensing which is updated regularly by announcements from the Ministry of commerce and the General Administration of Customs. For goods listed in this catalogue, exporters must obtain an export license from the Ministry of Commerce or the authorized local department ⁽¹⁰⁾.
- (103) In this respect, the Ministry of Commerce may restrict or forbid the export of goods if it is necessary for the purpose of maintaining state security, social public good or public morality, if the goods in question are in short supply or subject to effective protection, if the destination country or region has limited market capacity, or in any other circumstances under any international treaty China has concluded.
- (104) Therefore, the complainant observed that this export license system may generate export restraints to ensure that the domestic Chinese industry can benefit from a preferential and cheap access to titanium-related products. Accordingly, the GOC keeps implementing the policies that operators must follow, thereby impeding market forces from operating freely.
- (105) Fourth, the sector of the product concerned is subject to the distortions resulting from the discriminatory application or inadequate enforcement of Chinese bankruptcy, corporate and property rules.
- (106) Such distortions apply to all sectors according to the complainant: the GOC plays an important role in the insolvency proceedings and often has direct influence on the outcome through various means. For instance, the GOC has to give prior approval for the courts to decide on whether to accept or reject the applications of listed companies in practice.
- (107) Many insolvent firms end up with restructuring plans and are rarely delisted. This translates into SOEs benefiting from *de facto* governmental guarantees. Due to the absence of normal market mechanisms such as effective and transparent bankruptcy procedures, the Chinese financial system remains highly distorted.
- (108) Indeed, in a previous investigation on steel road wheels ⁽¹¹⁾, the Commission found that ‘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 interest of creditors and debtors’.
- (109) The above-mentioned investigation found distortions with regards to Chinese property laws as well, since the rules on land provision and acquisition in the PRC are often unclear and non-transparent, and the prices are often set by the authorities based on non-market considerations.
- (110) Since bankruptcy, corporate or property laws in China apply to all sectors, there is no available evidence showing that those laws would not apply in the Chinese TiO₂ sector.
- (111) In conclusion, the complainant argued that significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the TiO₂ sector. It is thus not appropriate to use domestic prices and costs in China are not reliable and the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks.

⁽¹⁰⁾ Ilmenite (also known as titanium ores) – the main raw material for manufacturing TiO₂ – is not listed in the Catalogue of Goods Subject to Export Licensing. However, this product is not substantially exported outside China and is used for the manufacture of TiO₂ domestically.

⁽¹¹⁾ Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China (OJ L 259, 10.10.2019, p. 15), recital 93.

- (112) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file. The evidence on the file included the evidence contained in the Report, as well as in its updated version ('updated Report')⁽¹²⁾, which relies on publicly available sources.
- (113) That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China.

3.2.2. Significant distortions affecting the domestic prices and costs in China

- (114) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'⁽¹³⁾.
- (115) The state-owned economy is the 'leading force in the national economy' and the state has the mandate to ensure its 'consolidation and growth'⁽¹⁴⁾. 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.
- (116) 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⁽¹⁵⁾.
- (117) In addition, under Chinese law, the socialist market economy is developed under the leadership of the CCP. The structures of the Chinese state and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the state are indistinguishable.
- (118) 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.
- (119) 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.'⁽¹⁶⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of China.
- (120) 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.
- (121) 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⁽¹⁷⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.

⁽¹²⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations (SWD(2024) 91 final of 10 April 2024).

⁽¹³⁾ Updated Report – Chapter 2, p. 7.

⁽¹⁴⁾ Updated Report – Chapter 2, p. 7-8.

⁽¹⁵⁾ Updated Report – Chapter 2, p. 10, 18.

⁽¹⁶⁾ Available at: http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm (accessed on 30 April 2024).

⁽¹⁷⁾ Updated Report – Chapter 2, p. 29-30.

- (122) 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.
- (123) 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.
- (124) 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.).
- (125) 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 ⁽¹⁸⁾.
- (126) Second, on the level of allocation of financial resources, the financial system of China is dominated by the state-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project ⁽¹⁹⁾.
- (127) 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 ⁽²⁰⁾.
- (128) 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 ⁽²¹⁾.
- (129) 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 ⁽²²⁾.
- (130) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²³⁾.

⁽¹⁸⁾ Updated Report – Chapter 4, p. 57, 92.

⁽¹⁹⁾ Updated Report – Chapter 6, p. 149-150.

⁽²⁰⁾ Updated Report – Chapter 6, p. 153 -171.

⁽²¹⁾ Updated Report – Chapter 7, p. 204-205.

⁽²²⁾ Updated Report – Chapter 8, p. 207-208, 242-243.

⁽²³⁾ Updated Report – Chapter 2, p. 19-24, Chapter 4, p. 99-100, Chapter 5, p. 130-131.

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

(131) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.

(132) The sector of the product concerned is served both by SOEs and private companies.

(133) For instance, Pangang Group Vanadium and Titanium Resources, Ltd. ⁽²⁴⁾ ('Pangang') part of Pangang Group, a subsidiary of the SOE group Anshan Iron and Steel Group ('Ansteel') ⁽²⁵⁾, has a significant degree of state ownership (more than 54 %) ⁽²⁶⁾. On the other hand, LB Group, formerly called Lomon Billions Group Co., Ltd. ('LB Group') ⁽²⁷⁾ is a private company ⁽²⁸⁾, while CNNC Huan Yuan Titanium Dioxide Co., Ltd ⁽²⁹⁾ ('CHTI CNNC') is a private company, but it still has little more than 7 % of state-related shareholding ⁽³⁰⁾.

(134) Moreover, the authorities encourage the creation of clusters in the petrochemical and chemical sector, not least to take advantage of the interdependencies of various chemical manufacturing processes. Indeed, the 14th FYP on Developing Raw Materials Industry requires that '[m]easures shall be taken to make leading enterprises bigger and stronger. Led by the market and supported by the government, we shall [...] help such enterprises accelerate trans-regional and cross-ownership mergers and reorganization, so as to make the industry more concentrated and facilitate international operations. In sectors including petrochemicals and chemicals [...] we shall foster a number of pioneering enterprises that could lead the ecosystem of the industrial chain with core competitiveness [...]' ⁽³¹⁾.

(135) The state guidance is reflected by the action of the companies, as transpires from Pangang's website: 'Facing the future, Pangang Vanadium and Titanium Co., Ltd. will continue to focus on national strategies and market demands, continuously strengthen its independent innovation capabilities, and accelerate the construction of a world-class specialized new enterprise with "outstanding professionalism, innovation-driven, lean management, and distinctive features" to serve as the basis for China's vanadium and titanium industry and make greater contributions to high-quality development' ⁽³²⁾.

(136) However, CCP interventions into operational decision making have become the norm not only in SOEs, but also in private companies ⁽³³⁾, with CCP claiming leadership over virtually every aspect of the country's economy. Indeed, the State's influence by means of CCP structures within companies effectively results in economic operators being under the government's control and policy supervision, given how far the State and Party structures have grown together in China.

⁽²⁴⁾ See https://www.pgvt.cn/index.php?s=Home/Article/lists/art_type/strat_index (accessed on 30 April 2024).

⁽²⁵⁾ See <http://www.ansteel.cn/yewubankuai/fantaichanye/2016-11-18/5.html> (accessed on 30 April 2024).

⁽²⁶⁾ See the company's 2023 Annual Report, p. 73, available at: <https://static.cninfo.com.cn/finalpage/2024-03-26/1219403167.PDF> (accessed on 30 April 2024).

⁽²⁷⁾ See <http://www.lomonbillions.com/news1/10935> (accessed on 30 April 2024).

⁽²⁸⁾ See the company's 2023 Annual Report, available at 6384971587015100121058021.PDF (ruituoyun.com) (accessed on 30 April 2024).

⁽²⁹⁾ See <https://www.zhtb.com/> (accessed on 30 April 2024).

⁽³⁰⁾ See the company's 2023 Annual Report, p. 111, available at http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2024/2024-4/2024-04-18/9985963.PDF (accessed on 30 April 2024).

⁽³¹⁾ Updated Report – Chapter 13, p. 466.

⁽³²⁾ See <http://www.panzhijhua.gov.cn/zwgk/gzdt/bdyw/4434292.shtml> (accessed on 30 April 2024).

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

- (137) An accurate representation of government control and supervision on enterprises can be found at provincial level. In Yunnan, the Chuxiong 14th FYP on new materials and advanced manufacturing development ('Chuxiong 14th FYP') addresses and influences the sector of the product concerned, by setting the following objectives: '[g]ive full play to the advantages of Chuxiong's titanium resources and titanium industry, especially the advantages of hydropower resources, and continue to expand the scale of the titanium industry with the extension of the industrial chain and the improvement of product added value as the main line. Relying on the resources, technology and market advantages of large enterprises such as Longbai and Kunming Iron and Steel, we will accelerate the construction of Longbai Group's new titanium industry and Yunnan Titanium Industry-related projects, strengthen investment promotion, introduce downstream enterprises in the titanium industry chain to develop, and focus on building titanium industry [...]' ⁽³⁴⁾.
- (138) The Chuxiong 14th FYP goes even more into detail, as follows: 'Taking advantage of the opportunity of the state to encourage the development of chloride-based titanium dioxide, we will focus on supporting Longbai Lufeng Titanium Industry to rebuild and expand the chloride-based titanium dioxide production line, eventually forming a chloride-based titanium dioxide production base of 300 000-400 000 tons/year. At the same time, Longbai Group will give full play to its sulfur-chlorine coupling technology advantages, accelerate the structural adjustment and integration of the sulfate-based titanium dioxide industry, strengthen cooperation between sulfate-based titanium dioxide production enterprises and Longbai Group, improve resource utilization, export ferrous sulfate to Southeast Asia, occupy in the Southeast Asian market, we also encourage and support the development of domestic and foreign strong titanium dioxide downstream coatings and plastics companies in Yunnan. It has become the most important chloride titanium dioxide production base in the country and leads the development of China's titanium dioxide industry. Accelerate the development of titanium sponge, focus on promoting the construction of high-end rotor-grade titanium sponge projects of Longbai Group, accelerate the development of full-process titanium sponge production technology, and transform and expand the existing titanium sponge production line based on it, eventually forming an annual production capacity of 100 000-300 000 tons, becoming the world's largest titanium sponge production base. Actively promote the development of high-end fine titanium materials' ⁽³⁵⁾.
- (139) Government control and policy supervision can be also observed at the level of the relevant industry associations ⁽³⁶⁾.
- (140) For instance, Titanium Dioxide Industry Branch of China Coating Industry Association ('TiO₂ Branch') states in Article 3 of its Articles of Association that the organisation '[e]stablishes an organization of the Communist Party of China, carries out Party activities, and provides the necessary conditions for the activities of the Party organization. [...] 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' ⁽³⁷⁾. Article 36 further states that the persons in charge of the Association have to meet conditions such as '[a]dhere to the leadership of the Communist Party of China, support socialism with Chinese characteristics, resolutely implement the party's line, principles and policies, and have good political quality.' ⁽³⁸⁾
- (141) TiO₂ Branch counts among its members both LB Group and CHTI CNNC, respectively the first and second biggest producers in China ⁽³⁹⁾.
- (142) Consequently, even privately owned producers in the sector of the product concerned are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance.

⁽³⁴⁾ See https://www.cxz.gov.cn/info/egovinfo/1001/xxgkxt_content/115323000151673132-/2022-06110032.htm – Section II.2. (accessed on 30 April 2024).

⁽³⁵⁾ Ibid. – Section II.2.4.

⁽³⁶⁾ Updated Report – Chapter 2, p. 24-27.

⁽³⁷⁾ See <https://www.chinacoatingnet.com/about/regulations.html> (accessed on 30 April 2024).

⁽³⁸⁾ Ibid.

⁽³⁹⁾ The full list of the members of TiO₂ Branch is available at: <https://www.chinacoatingnet.com/news/show.php?itemid=9466> (accessed on 30 April 2024).

3.2.4. *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*

- (143) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through state presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant state authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights⁽⁴⁰⁾, CCP cells in enterprises, state-owned and private alike, represent an important channel through which the state can interfere with business decisions.
- (144) According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution⁽⁴¹⁾) and the company shall provide the necessary conditions for the activities of the Party organisation.
- (145) In the past, this requirement appeared not to have always been followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle⁽⁴²⁾, including exercising pressure on private companies to put 'patriotism' first and to follow Party discipline⁽⁴³⁾.
- (146) Already 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⁽⁴⁴⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product concerned and the suppliers of their inputs.
- (147) 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')⁽⁴⁵⁾ was released, which further expanded the role of the Party committees in private enterprises.
- (148) Section II.4 of the Guidelines states: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers'. The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities⁽⁴⁶⁾.
- (149) The investigation confirmed that overlaps between managerial positions and CCP membership / Party functions exist also in the TiO₂ sector. Several members of the board of directors and supervisory board of LB Group, the largest producer of the product concerned, are CCP members and hold positions in the secretariat of the Party Committee⁽⁴⁷⁾. The same applies to CHTI CNNC⁽⁴⁸⁾ and Pangang⁽⁴⁹⁾.

⁽⁴⁰⁾ Updated Report – Chapter 5, p. 124-125.

⁽⁴¹⁾ Updated Report – Chapter 3, p. 40.

⁽⁴²⁾ 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.

⁽⁴³⁾ Updated Report – Chapter 3, p. 41.

⁽⁴⁴⁾ Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 30 April 2024).

⁽⁴⁵⁾ General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era: www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 30 April 2024).

⁽⁴⁶⁾ *Financial Times* (2020) – Chinese Communist Party asserts greater control over private enterprise: <https://on.ft.com/3mYxP4j> (accessed on 30 April 2024).

⁽⁴⁷⁾ See the following: <http://www.lomonbillions.com/newsinfo/10911/32246>; https://www.sohu.com/a/293150452_698242; https://vip.stock.finance.sina.com.cn/corp/view/vCI_CorpManagerInfo.php?stockid=002601&Pcode=30749532&Name=%D5%C5%B8%D5 (accessed on 30 April 2024).

⁽⁴⁸⁾ See the company's 2023 Annual Report, p. 50.

⁽⁴⁹⁾ See the company's 2023 Annual Report, p. 33 and following.

- (150) The CCP interference into the business decisions is apparent in LB Group's website, which describes the role of the Party within the Group as follows: '[p]arty building leads the way and enterprises set sail. In recent years, the Party Committee of Lomon Billions Group Co., Ltd. Has continued to innovate the party-building work model, continuously improved the party-building cultural position, and actively explored the deep integration of party-building work with the central work of the enterprise, stimulating vitality and adding impetus to the high-quality development of the enterprise. Xu Gang, Secretary of the Party Committee and Chairman of Lomon Billions, concluded: "Lomon Billions always adheres to the unchanged organization, publicity, and discipline inspection pattern of the party's work institutions in the enterprise. The party organization guarantees the supervision of the party and the country's policies and major deployments. The role of enterprise implementation remains unchanged, the principle that the Party manages cadres and the Party manages talents remains unchanged, and the practice of 'building branches wherever there are party members' remains unchanged, so that the enterprise's party building always maintains strong combat effectiveness." [...] Lomon Billions Party Committee has explored a good practice of deeply integrating non-public party building with enterprise central work: insisting on full coverage of party organizations and party work, vertical in-depth and horizontal expansion [...]' ⁽⁵⁰⁾.
- (151) Notably, LB Group is deeply influenced by governmental authorities, as shown in the previous recitals (see recital (137)).
- (152) The state's presence and intervention in the financial markets as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁵¹⁾. Thus, the state presence in firms, in the TiO₂ and other sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.
- 3.2.5. *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*
- (153) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central, provincial and local governments must focus on. Relevant plans exist at all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government.
- (154) Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁵²⁾.
- (155) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.
- (156) The 14th FYP (see recital (90)) aims to 'Transform and upgrade traditional industries, promote the layout optimization and structural adjustment of raw material industries such as petrochemicals, steel, nonferrous metals, and building materials, expand the supply of high-quality products such as light industry, and textiles, accelerate the transformation and upgrading of enterprises in key industries such as chemical industry [...] In-depth implementation of special projects to enhance the core competitiveness and technological transformation of the manufacturing industry, encourage enterprises to apply advanced and applicable technologies, strengthen equipment updates and large-scale application of new products' ⁽⁵³⁾.

⁽⁵⁰⁾ See <http://www.lomonbillions.com/newsinfo/10911/13846> (accessed on 30 April 2024).

⁽⁵¹⁾ Updated Report – Chapter 14, Sections 14.1 to 14.3.

⁽⁵²⁾ Updated Report – Chapter 4, p. 56-57, 99-100.

⁽⁵³⁾ See http://www.xinhuanet.com/2021-03/13/c_1127205564.htm – Section III.8.3 (accessed on 30 April 2024).

- (157) Similarly, the Guiding Opinion on Promoting the High-quality Development of the Petrochemical and Chemical Industry During the 14th Five Years Plan Period ('the Guiding Opinion'), emphasizes the need to '[...] accelerate the transformation and upgrading of traditional industries, and vigorously develop new chemical materials and fine chemicals. Accelerate the digital transformation of the industry [...] and promote China's progress from a large petrochemical and chemical country to a strong petrochemical and chemical country' ⁽⁵⁴⁾. The main objectives are set as follows: '[b]y 2025, the petrochemical industry shall basically follow a high-quality development pattern with strong independent innovation capability, reasonable structure and layout, green, safe and low-carbon with significant improvements in the ability to guarantee high-end products, a significant increase in core competitiveness, and a solid step of high-level self-reliance and self-improvement' ⁽⁵⁵⁾.
- (158) The above-mentioned objectives are further specified in the subsequent sections of the Guiding Opinion. For instance, the issuing authorities intend to '[s]upport enterprises to take the lead in forming collaborative innovation organizations such as industrial technology innovation alliances and upstream and downstream cooperation mechanisms and support the rational layout of local governments to build regional innovation centers and pilot bases', to '[c]onquer core technologies and enhance the momentum of innovation and development, [...] accelerate breakthroughs in key technologies [...]' ⁽⁵⁶⁾.
- (159) Moreover, the 2024 version of Guidance Catalogue for the Industry Structural Adjustment ('Guidance Catalogue') directly addresses the sector of the product by listing the TiO₂ sulfuric acid process as a restricted industry, while its 2019 version lists the TiO₂ chloride process as an encouraged one ⁽⁵⁷⁾.
- (160) On the provincial level, policy objectives and corresponding support tools become more specific and targeted.
- (161) For instance, the 14th FYP on high-end development of chemical industry of Jiangsu ⁽⁵⁸⁾ ('Jiangsu Chemical Plan') sets major objectives for the sector of the product concerned: '[b]y the end of the "14th Five Years Plan", the industrial structure of dye pigments and their intermediates shall be significantly optimized', and again '[w]e shall strive to increase the total output value of the ink industry to RMB 8 billion, the superior production capacity shall be included into the development and integration of chemical parks (concentration areas)'.
- (162) Regarding the inorganic chemical industry, the Jiangsu Chemical plan sets the goals of: '[t]otal quantity control, quality and efficiency improvement, optimization of configuration [...] Adopt advanced energy saving and emission reduction technologies to transform and upgrade industries and enterprises [...] [P]romote the downstream industries of chlorine and hydrogen to develop towards high-end, functional and refined direction. Extend and expand the regional chlorine industry chain [...]' ⁽⁵⁹⁾.
- (163) The Jiangsu Chemical Plan further specifies the goals for each coastal industrial zone. For instance, in Lianyungang the goals are to: '[p]romote the integration of refining and chemicals. [...] Development of high-end polyolefins. [...] Promote the deep processing of raw materials' ⁽⁶⁰⁾. In Yancheng the industries have to develop new chemical materials, among which sulfuric acid.

⁽⁵⁴⁾ See https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html – First section, General Requirements (accessed on 30 April 2024).

⁽⁵⁵⁾ Ibid. – First section, Main Objectives.

⁽⁵⁶⁾ Ibid. – Second section, Improve the level of innovation and development.

⁽⁵⁷⁾ For the sulfuric acid process method, see the 2024 Guidance Catalogue, p. 88 (in force as of 1 February 2024) available at <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202312/P020231229700886191069.pdf> (accessed on 30 April 2024). The method was listed as restricted in the 2019 Guidance Catalogue, p. 84, as well. For the chloride process method, see the 2019 Guidance Catalogue, p. 15 (in force until 31 January 2024), available at <https://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf> (accessed on 30 April 2024).

⁽⁵⁸⁾ Available at: http://gxt.jiangsu.gov.cn/art/2021/8/25/art_83673_10000511.html (accessed on 30 April 2024).

⁽⁵⁹⁾ Ibid.

⁽⁶⁰⁾ Ibid.

- (164) In Henan, the Notice from the General Office of the People's Government of Henan Province on the issuance of Henan Province's Action Plan (2022-2025) to accelerate the restructuring and leadership of the materials industry sets the following goals for titanium-based new materials: '[a]ccelerate the localization of high-quality chloride titanium dioxide raw materials and the research and development of new high-performance green titanium dioxide, and establish titanium, zirconium, vanadium and scandium resources. The new green comprehensive extraction system promotes the development of titanium industry clusters in Jiaozuo, Luoyang and other places' ⁽⁶¹⁾.
- (165) In Sichuan, the Decision of the Sichuan Provincial Committee of the Communist Party of China on promoting the high-quality development of green and low-carbon advantageous industries with the goal of achieving carbon peak and carbon neutrality also sets numerous objectives: 'Deepen the comprehensive development and utilization of vanadium and titanium resources. [...] strengthen the titanium industry, create a world-class vanadium and titanium industry base, and build Panzhihua as the "Vanadium and Titanium Capital of China". [...] Implement the project to strengthen and extend the chain of the vanadium and titanium industry and accelerate the development of high-end vanadium and titanium products, functional materials, special parts [...]' ⁽⁶²⁾.
- (166) At the same time, Sichuan Province's Guide for the high-quality development of vanadium, titanium, steel, and rare earth industries urges the 'Breakthrough in key core technologies. Break through the comprehensive utilization technology of vanadium-titanium magnetite, realize the industrialization technology of high-value titanium extraction from high-titanium blast furnace slag, accelerate high-grade chloride titanium dioxide, aviation titanium and titanium alloy products' ⁽⁶³⁾.
- (167) The Chuxiong 14th FYP accurately addresses and influences the sector of the product concerned, as already seen (see recital (137)). The plan lists also the following objectives: '[t]he chemical industry chain and the titanium metallurgical industry chain will create a whole industry chain, improve the sustainable development capabilities, core competitiveness and market share of the titanium industry, and become an important national chloride titanium dioxide production base and the world's largest sponge titanium production base. Form a 100-billion-level titanium industry. Standardize the titanium ore mining and dressing industry, build a model green mine, integrate, transform, and upgrade high-titanium slag and sulfuric acid titanium dioxide production technology and equipment, and optimize regional layout. Vigorously develop high-end chloride titanium dioxide and rotor-grade sponge titanium and encourage various enterprises to actively develop marketable products such as titanium alloys and titanium products, as well as high-end titanium materials in aviation, aerospace, navigation and other fields' ⁽⁶⁴⁾. It continues by setting the goals to: '[c]reate a whole industrial chain. Accelerate the construction of the titanium metallurgical industry chain of "ilmenite – titanium concentrate – high titanium slag – sponge titanium (titanium dioxide) – titanium profiles (titanium alloy or coating)", and the "high titanium slag – titanium dioxide – coating – plastic" titanium chemical industry industrial chain, accelerate the development of high-end chloride titanium dioxide, and expand titanium dioxide production capacity and technical advantages [...]' ⁽⁶⁵⁾.
- (168) Furthermore, the product concerned is subject to several export restrictions.
- (169) First, titanium dioxide and other titanium related products are subject to non-automatic export licensing ⁽⁶⁶⁾, forcing exporting companies to receive prior approval from the government in the form of licenses or permits in order to export the product. Such procedures not only give the government control over the exporters and the amounts of exported goods but may also increase transaction costs or prevent exporters from reacting quickly to sales opportunities abroad due to long processing times ⁽⁶⁷⁾.

⁽⁶¹⁾ See https://www.shenqiu.gov.cn/p_detail_12649.html – Section II.2.5 (accessed on 30 April 2024).

⁽⁶²⁾ See <https://www.sc.gov.cn/10462/10464/10797/2021/12/8/74e1f8013f874f5c9e2f2a2aafd4141b.shtml> (accessed on 30 April 2024).

⁽⁶³⁾ See <https://h5.drcnet.com.cn/docview.aspx?version=integrated&docid=6718774&leafid=3046&chnid=1024> (accessed on 30 April 2024).

⁽⁶⁴⁾ See https://www.cxz.gov.cn/info/egovinfo/1001/xxgkxt_content/115323000151673132-/2022-06110032.htm – Section II.2 (accessed on 30 April 2024).

⁽⁶⁵⁾ Ibid. – Section II.2.4.

⁽⁶⁶⁾ Other titanium related products are unforged titanium sponge, other unwrought titanium, titanium powder and titanium waste and scrap. See the Catalogue of Goods Subject to Export Licensing, p. 17, published annually by MOFCOM and available at <http://images.mofcom.gov.cn/wms/202212/20221230211147281.pdf> (accessed on 30 April 2024).

⁽⁶⁷⁾ Updated Report – Chapter 12, p. 343-344.

- (170) Second, the product concerned is not subject to VAT export refund ⁽⁶⁸⁾.
- (171) Therefore, through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (172) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector. Such measures impede market forces from operating freely.

3.2.6. *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*

- (173) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement.
- (174) 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 ⁽⁶⁹⁾.
- (175) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China ⁽⁷⁰⁾. 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 ⁽⁷¹⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁷²⁾.
- (176) Much like other sectors in the Chinese economy, the producers of the product concerned are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the sector of the product concerned. The present investigation revealed nothing that would call those findings into question.
- (177) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product concerned.

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

- (178) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organization, in particular those on freedom of association and on collective bargaining ⁽⁷³⁾.

⁽⁶⁸⁾ See <https://hd.chinatax.gov.cn/nszx2023/cktslxcx2023.html> (accessed on 30 April 2024).

⁽⁶⁹⁾ Updated Report – Chapter 6, p. 171-179.

⁽⁷⁰⁾ Updated Report – Chapter 9, p. 260-261.

⁽⁷¹⁾ Updated Report – Chapter 9, p. 257-260.

⁽⁷²⁾ Updated Report – Chapter 9, p. 252-254.

⁽⁷³⁾ Updated Report – Chapter 13, p. 360-361, 364-370.

- (179) 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 ⁽⁷⁴⁾. 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.
- (180) This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁷⁵⁾. Those findings lead to the distortion of wage costs in China.
- (181) No evidence was submitted to the effect that the TiO₂ sector would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).
- 3.2.8. *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*
- (182) Access to capital for corporate actors in China is subject to various distortions.
- (183) First, the Chinese financial system is characterised by the strong position of state-owned banks ⁽⁷⁶⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similar to non-financial SOEs, the banks remain connected to the state not only through ownership but also via personal relations (the top executives of large state-owned financial institutions are ultimately appointed by the CCP) ⁽⁷⁷⁾ and they regularly implement public policies designed by the GOC.
- (184) For instance, in the sector of the product concerned, the 14th FYP on Developing Raw Materials Industry has the central objective to improve chemical industry's competitiveness. In this regard, '[f]inancial institutions will be encouraged to [...] provide comprehensive financial services for raw materials enterprises that have implemented mergers and reorganization as well as transformation and upgrading' ⁽⁷⁸⁾.
- (185) The Guiding Opinion also reveals the range of support tools and policies used to pursue the industrial policy objectives: '[i]mprove supporting policies. Strengthen the coordination between fiscal, financial, regional, investment, import and export, energy, ecological environment, price and other policies and industrial policies. Involve national industry-finance cooperation platforms and promote bank-enterprise connections and industry-finance cooperation. [...]' ⁽⁷⁹⁾
- (186) 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 ⁽⁸⁰⁾. While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

⁽⁷⁴⁾ Updated Report – Chapter 13, p. 366.

⁽⁷⁵⁾ Updated Report – Chapter 13, p. 370-373.

⁽⁷⁶⁾ Updated Report – Chapter 6, p. 137-140.

⁽⁷⁷⁾ Updated Report – Chapter 6, p. 146-149.

⁽⁷⁸⁾ See <https://www.gov.cn/zhengce/zhengceku/2021-12/29/5665166/files/90c1c79a00b44c67b59c29392476c862.pdf> – Section IV(III) (accessed on 30 April 2024).

⁽⁷⁹⁾ See https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html – Eighth section, Strengthen organizational safeguards (accessed on 30 April 2024).

⁽⁸⁰⁾ Updated Report – Chapter 6, p. 149.

- (187) 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⁽⁸¹⁾. 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'.⁽⁸²⁾
- (188) 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⁽⁸³⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁽⁸⁴⁾. 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.
- (189) Second, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (190) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. 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⁽⁸⁵⁾ and, in 2020, official media in China have reported that the CCP called for 'guiding the loan market interest rate downwards'⁽⁸⁶⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (191) Overall credit growth in the China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (192) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

⁽⁸¹⁾ See official policy document of the China Banking and Insurance Regulatory Commission of 28 August 2020: Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022): <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 30 April 2024). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management'.

⁽⁸²⁾ 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 30 April 2024).

⁽⁸³⁾ Updated Report – Chapter 6, p. 157-158.

⁽⁸⁴⁾ Updated Report – Chapter 6, p. 150-152, 156-160, 165-171.

⁽⁸⁵⁾ 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 30 April 2024).

⁽⁸⁶⁾ http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm (accessed on 30 April 2024).

(193) No evidence was submitted in the present investigation demonstrating that the sector of the product concerned is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.9. *Systemic nature of the distortions described*

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

(195) The Commission recalls that in order to produce the product concerned, certain inputs are needed. When the producers of the product concerned purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors. These distortions were described in detail in Sections 3.2.2-3.2.8 above. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, TiO₂ producers being subject to those rules as any other economic operator in China. The distortions have therefore a direct bearing on the cost structure of the product concerned.

(196) As a consequence, not only the domestic sales prices of the product concerned are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the updated Report.

(197) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy, and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

(198) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.10. *Conclusion*

(199) The analysis set out in this section, which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the sector of the product concerned showed that prices and costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein.

(200) On that basis, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(201) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3. Representative country

3.3.1. General remarks

(202) 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 ⁽⁸⁷⁾;
- Production of the product under investigation in that country;
- Availability of relevant public data in the representative country; and
- 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.

(203) As explained in recitals (76)-(77), 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 Brazil 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.

3.3.2. A level of economic development similar to the PRC

(204) In the First Note, the Commission identified Brazil, Malaysia, Mexico and the Russian Federation as TiO₂ producing countries with a similar level of economic development as the PRC according to the World Bank (i.e. 'upper-middle income' countries on a gross national income basis). However, the Russian Federation could not be used as a representative country because no reliable import statistics are available to the Commission. No comments were received concerning the countries identified in the First Note.

3.3.3. Readily available data in the representative country

(205) For the countries considered and mentioned above, the Commission further verified the readily available 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 these potential representative countries.

(206) The analysis of imports of the main factors of production (namely titanium ores and concentrates with varying concentrations of TiO₂ and titanium slags) showed that, irrespective of the potential representative country, either no reliable statistics or no statistics allowing for differentiation based on TiO₂ concentration in the ores are available.

(207) Therefore, the Commission resorted to the use of an international price benchmark from a widely recognized ore market platform (TZMI ⁽⁸⁸⁾) in accordance with Article 2(6a)(a) of the basic Regulation for the titanium ores and concentrates, namely ilmenite, rutile, calciner discharge, synthetic rutile and titanium slags.

⁽⁸⁷⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁽⁸⁸⁾ <https://www.tzmi.com>

- (208) Furthermore, the Commission analysis showed that only for Brazil data on representative undistorted volumes of other key inputs for production of TiO₂ (principally sulfuric acid) as well as a representative company data showing a reasonable amount for profitability and for SG&A for the investigation period (or part thereof) were available, as opposed to Mexico and Malaysia. Moreover, Brazilian 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⁽⁸⁹⁾. Furthermore, the TiO₂ production and production capacity is significant in Brazil and no particular trade distortions on TiO₂ are known to exist in the country. While Brazil makes exports of ilmenite, one of the raw materials used in the production of TiO₂, subject to licensing requirement, such potential trade distortion is irrelevant given the use of TZMI benchmark instead of the Brazilian import data for ilmenite in this case. It is further noted that no interested party argued against the use of Brazil as a representative country.
- (209) Regarding the producers in Brazil and the availability of their data, the Commission identified a TiO₂ producer, Tronox Brazil, for which financial results showing reasonable amount for profitability and for SG&A specifically in the TiO₂ segment are available for 2022, thus period overlapping by one quarter with the investigation period.
- (210) The Commission used the profitability and SG&A data for 2022 despite availability of financial data also for the entire investigation period (Q4 2022-Q3 2023). This is because, according to the financial statements of the company, the market and business performance of Tronox Brazil in 2023 was affected by a reduction of market demand combined with imports from China of TiO₂, which resulted in reduction of profitability, net revenues, sales volume, and average sales price of Tronox Brazil on the TiO₂ market. This made the relevant amounts for profit and SG&A not reasonable within the meaning of Article 2(6a) of the basic Regulation.
- (211) The LB Group objected to the Commission's decision to use financial data from Tronox Brazil for 2022 and argued that the Commission had the possibility of using data that would fully overlap with the investigation period.
- (212) It is noted that while the financial data of Tronox Brazil, showing reasonable profitability for the entire investigation period is available, such data concerns the entire business operations of the company, including activity not related strictly to the TiO₂ segment. On the contrary, when extracting solely data for the TiO₂ segment, financial data for 2023 are not reasonable for the reasons set out in recital (210) above. As a result, the investigation period data for TiO₂ segment of Tronox Brazil would show operating results close to the breakeven point, which could not be deemed reasonable within the meaning of Article 2(6a)(a) of the basic Regulation. Instead, 2022 data for TiO₂ segment is the best available source for reasonable amounts for profit and SG&A, given that the data concerns exclusively the TiO₂ segment, under Article 2(6a)(a) of the basic Regulation.
- (213) In view of the above, the Commission considered the 2022 financial information available for Tronox Brazil for TiO₂ segment the most appropriate for the purposes of Article 2(6a)(a) of the basic Regulation.

3.3.4. *Level of social and environmental protection*

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

3.3.5. *Conclusion*

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

⁽⁸⁹⁾ 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).

3.4. Sources used to establish undistorted costs and benchmarks

- (216) 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.
- (217) Subsequently, in the Second Note, the Commission stated that, to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas ('GTA') and TZMI data 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 Instituto Brasileiro de Geografia e Estatística ('IBGE') and Ministry of Mines and Energy of Brazil respectively for establishing undistorted costs of labour ⁽⁹⁰⁾ and energy ⁽⁹¹⁾.
- (218) 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'. The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in Brazil.
- (219) AkzoNobel argued following the First and Second Note that the GTA price for sulfuric acid cannot be representative, insisting that instead, a conversion factor of 1,05 be used for calculation of CIF prices from FOB prices available in the Brazilian or International Trade Center ('ITC') statistics. The user further sought to undermine the reliability of the GTA data by referring to the excessive GTA prices for a number of countries (Poland, Finland and Germany). Moreover AkzoNobel alleged, with reference to the average cost of freight for TiO₂ shipped to Brazil, that the cost of freight for the acid is in the range of 5-7 % of the acid price.
- (220) Article 2(6a)(a) of the basic Regulation prescribes the use of corresponding data in an appropriate representative country 'provided the relevant data are readily available'. The Commission does not have at its disposal data on domestic prices of the sulfuric acid in Brazil, and such data are not readily available. By contrast, data on import prices of the sulfuric acid are readily available in the Global Trade Atlas (GTA). Considering that these imports compete on the Brazilian domestic market they are considered to reflect the relevant domestic prices.
- (221) Further to the argument on unrepresentativeness of GTA import values for certain countries, it was noted that relative to the total imports of sulfuric acid, imports from the disputed countries, in particular Finland and Germany account only for around 5 % of total imports into Brazil. Overall, the Commission checked that there were sufficient representative quantities of the sulfuric acid imports so that the average price used reduces the impact of any potentially abnormal prices at the lower and higher end of the range. As long as the import quantities were sufficiently representative, which was the case for sulfuric acid, and there were no other specific circumstances rendering them unrepresentative or unsuitable, there was no objective reason to exclude the GTA data from the analysis.
- (222) Furthermore, the suggested use of the percentage ratio of freight on the price of TiO₂ as a reference point for determining the transport cost for sulfuric acid cannot be sustained. AkzoNobel seemed to ignore the fact that sulfuric acid is a much cheaper material compared to TiO₂. Instead, it would be more appropriate to consider the absolute unit costs of freight as a reference point, given the contrast in the prices of TiO₂ and sulfuric acid.
- (223) Therefore, in the absence of any plausible evidence showing that the GTA data for sulfuric acid used would not be representative, the Commission rejected this claim.

⁽⁹⁰⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=destaques>

⁽⁹¹⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles>

3.4.1. Factors of production

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

Table 1

Factors of production of TiO₂

Factor of Production	Commodity Codes /available codes and source of data	Price in CNY	Unit of measurement	
Raw materials				
Ilmenite (Sulphate Process)	2614 00	TZMI	2 842,20	Tonne
Ilmenite (Chloride Process)	2614 00	TZMI	2 772,72	Tonne
Synthetic Rutile	2614 00	TZMI	9 827,98	Tonne
Refined Synthetic Rutile / Calciner Discharge / Rough TiO ₂ – Rutile	2614 00	TZMI	10 568,24	Tonne
(High) Titanium Slag / Chloride Process Slag	2620 99	TZMI	6 757,92	Tonne
Sulfuric acid (98 %)	2807 00 00 10	Global Trade Atlas (GTA) ⁽¹⁾ / MacMap ⁽²⁾	912,61	Tonne
Sulphur	2503 00 00 00	GTA / MacMap	1 250,16	Tonne
Calcined petroleum coke	2713 12 90 00	GTA / MacMap	5 271,81	Tonne
(Liquid) caustic soda / Sodium hydroxide (32 %)	2815 11 00 00, 2815 12 00 00	GTA / MacMap	3 386,93	Tonne
Bituminous coal	2701 12	GTA / MacMap	1 762,22	Tonne
Zirconyl Chloride ⁽³⁾	2827 49 12, 2827 49 29	GTA / MacMap	16 761,84	Tonne
Iron Powder	7205 29 10, 7205 29 20, 7205 29 90	GTA / MacMap	13 049,93	Tonne
Aluminium Powder	7603 10	GTA / MacMap	39 179,62	Tonne
Aluminium Hydroxide	2818 30	GTA / MacMap	13 943,93	Tonne
Phosphoric acid	2809 20 11, 2809 20 19, 2809 20 20, 2809 20 30, 2809 20 90	GTA / MacMap	6 062,29	Tonne
Labour				
Labour	[N/A]	Instituto Brasileiro de Geografia e Estatística ⁽⁴⁾	79,05	FTE
Energy				
Electricity	[N/A]	Ministério de Minas e Energia ⁽⁵⁾	0,8868	kWh
Natural Gas	[N/A]	Ministério de Minas e Energia ⁽⁶⁾	4,58	m ³
Steam	[N/A]	Ministério de Minas e Energia ⁽⁷⁾	356,66	Tonne

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- (¹) <https://connect.ihsmarket.com/>, <http://www.gtis.com/gta/secure/default.cfm>
- (²) <http://www.macmap.org>
- (³) In the zirconyl chloride price, the Commission included zirconium chloride oxides and other chloride oxides, as the import prices of zirconium chloride oxides separately were not representative.
- (⁴) <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=resultados>
- (⁵) <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles>
- (⁶) <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles>
- (⁷) <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles>
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3.4.2. Raw materials

- (225) To establish the undistorted price of raw materials as delivered at the gate of a representative country producer, for raw materials other than the titanium ores and concentrates, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA at the national tariff level, to which import duties and transport costs were added.
- (226) 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 (⁹²).
- (227) The Commission decided to exclude imports from the PRC into the representative country as it concluded in Section 3.2.10 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. The remaining volumes were deemed to be representative.
- (228) For the undistorted prices of titanium ores and concentrates, the Commission used as a basis the prices as reported by TZMI, to which transport costs were added. The unit cost of transport was set as a difference between the CIF price of ilmenite as reported in Metal Bulletin/Fast Markets (⁹³) and the FOB price for the same type of titanium ore, as reported by TZMI.
- (229) 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 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.
- (230) LB claimed that the cost of titanium ore sourced domestically from related mines is actually incurred and not distorted within the meaning of Article 2(6a)(a) of the basic Regulation. The Commission recalls that to produce TiO₂, a range of inputs is needed, including the ores. When the producers of TiO₂ source these inputs domestically, the prices they pay (and which are recorded as their costs) are clearly exposed to the same distortions as outlined in recital (195) above. More specifically, an input that in itself was produced in China by combining a range of factors of production and input costs (such as raw materials, energy, land, financing, labour, etc.) is also exposed to significant distortions. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation and hence LB's argument had to be dismissed.

(⁹²) Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

(⁹³) <https://www.fastmarkets.com/login>

3.4.3. Labour

- (231) The Commission used the statistics published by the IBGE ⁽⁹⁴⁾ to determine the wages in Brazil using the detailed information on wages in the producing sector for 2021, for the economic activity 20.1 'Manufacture of inorganic chemical products' according to NACE Rev.2 classification.
- (232) The IBGE statistics provide information on the total annual wages and related charges and on the number of employees in the chemical sector. Only information related to staff linked to production was considered. Values were indexed to the investigation period using the national consumer price index ⁽⁹⁵⁾.

3.4.4. Electricity

- (233) The Commission used the industrial electricity price statistics published by the Ministry of Mines and Energy of Brazil ⁽⁹⁶⁾ for the investigation period. The rates published in the monthly bulletin included the 'Imposto sobre Circulação de Mercadorias e Serviços' ('ICMS'), a tax levied by the Brazilian states on the circulation of goods and the provision of interstate and inter municipal transportation and communications services. This tax could be claimed back by the industrial users and was therefore not effectively paid. As ICMS was collected by most states at the rate of 17 % to 18 % during the investigation period, the Commission recalculated the electricity benchmark, deducting an average of 17,5 % from the rates published.

3.4.5. Natural gas

- (234) The Commission used the price of natural gas for industrial users in Brazil as published by the Ministry of Mines and Energy of Brazil ⁽⁹⁷⁾ for the investigation period. The rates published in the monthly bulletin included the ICMS tax, and the Commission applied the methodology used for determination of the electricity prices, as outlined in recital (233).

3.4.6. Steam

- (235) The Commission calculated the price of steam in Brazil using the methodology suggested by the U.S. Department of Energy ⁽⁹⁸⁾. This methodology provides a cost for steam based on the heat input required to produce it. To this end, the Commission used natural gas as heat input and used the price of gas for industrial users in Brazil as published by the Ministry of Mines and Energy of Brazil covering the investigation period.

3.4.7. Manufacturing overhead costs, SG&A and profits

- (236) 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.
- (237) 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.
- (238) For establishing an undistorted and reasonable amount for SG&A and for profit at the ex-works level of trade, the Commission relied on the financial data for 2022 for Tronox Brazil as extracted from the company's website ⁽⁹⁹⁾.

⁽⁹⁴⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=destaques>

⁽⁹⁵⁾ <https://www.ibge.gov.br/en/statistics/economic/prices-and-costs/17136-national-consumer-price-index.html?edicao=36055&t=downloads>

⁽⁹⁶⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles>

⁽⁹⁷⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles>

⁽⁹⁸⁾ https://www1.eere.energy.gov/manufacturing/tech_assistance/pdfs/steam15_benchmark.pdf (last accessed on 22 April 2024). The methodology refers to the cost of saturated steam for typical values of operating pressure and feedwater temperature. In the application of the methodology, an average of these typical values was used.

⁽⁹⁹⁾ <https://www.tronox-ri.com.br/informacoes-financeiras/central-de-resultados/>

3.4.8. Calculation

- (239) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (240) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producers. These consumption rates provided were verified during the verifications. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in Section 3.4.1.
- (241) Once the undistorted manufacturing cost was established, the Commission applied the manufacturing overheads, SG&A and profit as noted in Section 3.4.7. The SG&A and profit were determined on the basis of the financial statements of Tronox Brazil as explained in section 3.3.3. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 5,9 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 5,0 %.
- (242) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.5. Export price

- (243) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.
- (244) For the exporting producers that exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (245) For the exporting producers that exported the product concerned to the Union also through a related company acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses of the related importer, and a reasonable profit.
- (246) In the absence of cooperation of unrelated importers in the present case, a reasonable profit established at 6,89 % in the recent polyvinyl alcohols ('PVA')⁽¹⁰⁰⁾ investigation for another chemical product was used in the present investigation, to establish a reliable export price at the Union frontier level.

3.6. Comparison

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

3.6.1. Adjustments made to the normal value

- (248) As explained in recital (239), the normal value was established at the ex-works level of trade by using costs of production together with amounts for SG&A and for profit, which were considered to be reasonable for that level of trade. Therefore, no adjustments were necessary to net the normal value back to the ex-works level.

⁽¹⁰⁰⁾Recital (352) of Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1).

(249) The Commission found no reasons for making any allowances to the normal value (other than the adjustment for VAT, which was payable on the export sales without refund), nor were such allowances claimed by any of the sampled exporting producers.

3.6.2. *Adjustments made to the export price*

(250) In order to net the export price back to the ex-works level of trade, adjustments were made on the account of transport, warehousing costs, customs duties, insurance, handling and loading expenses.

(251) Allowances were made for the following factors affecting prices and price comparability: commission, credit costs and bank charges.

(252) Regarding the adjustment for commissions, during the investigation period, LB exported TiO₂ to the Union through related traders located outside the Union, namely in Hong Kong and in the UK. The traders bore the responsibility for the selling process and commercial risks associated therewith and received a markup for the sales. Therefore, the Commission found that the functions of these traders were similar to those of an agent working on a commission basis. Consequently, an adjustment under Article 2(10)(i) was also made for sales through the related trading companies. The adjustment consisted of the deduction of SG&A of the trading companies and a 6,89 % profit established as set out in recital (246).

3.7. **Dumping margins**

(253) 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.

(254) 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 dumping margin
LB group:	39,7 %
— LB GROUP CO., LTD.	
— HENAN BILLIONS ADVANCED MATERIAL CO., LTD.	
— LB LUFENG TITANIUM INDUSTRY CO., LTD.	
— LB SICHUAN TITANIUM INDUSTRY CO., LTD.	
— LB XIANGYANG TITANIUM INDUSTRY CO., LTD.	
Anhui Gold Star group:	14,4 %
— Anhui Gold Star Titanium Dioxide (Group) Co., Ltd.	
— ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED	

(255) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.

(256) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 35,0 %.

(257) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers.

- (258) The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of Eurostat statistics.
- (259) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted over 96 % of the total imports during the investigation period. On this basis, the Commission decided to establish the dumping margin for non-cooperating exporting producers at the level of the cooperating sampled company with the highest dumping margin.
- (260) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
LB group:	39,7 %
— LB GROUP CO., LTD.	
— HENAN BILLIONS ADVANCED MATERIAL CO., LTD.	
— LB LUFENG TITANIUM INDUSTRY CO., LTD.	
— LB SICHUAN TITANIUM INDUSTRY CO., LTD.	
— LB XIANGYANG TITANIUM INDUSTRY CO., LTD.	
Anhui Gold Star group:	14,4 %
— Anhui Gold Star Titanium Dioxide (Group) Co., Ltd.	
— ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED	
Other cooperating companies	35,0 %
All other companies	39,7 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (261) The like product was manufactured by eleven producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (262) The total Union production during the investigation period was established at around 560 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the macro questionnaire submitted by the complainant. As indicated in recital (8), the three sampled Union producers represented 50 % of the total Union production of the like product.

4.2. Determination of the relevant Union market

- (263) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.
- (264) The Commission found that a small part of the total Union producers' production was destined for the captive market. Only two of all eleven Union producers reported having sold the product captively and due to the business confidential nature of this data, the exact volumes cannot be disclosed in this Regulation. The two producers were not among the sampled producers. The captive market was stable and below 1 % of total Union consumption throughout the period considered.

- (265) The Commission examined certain macroeconomic indicators relating to the Union industry on the basis of data of sales on the free market. These indicators are: sales volume on the Union market and market shares.
- (266) Other macroeconomic indicators could meaningfully be examined only by referring to the whole activity, including the captive use and captive sales of the Union industry. These are: production volumes; capacity; capacity utilisation; employment; productivity; and export sales. They depend on the whole activity, whether the production is captive or sold on the free market.
- (267) Finally, considering that only two non-sampled producers reported very limited amounts of captive sales, those sales are not reflected in the analysis of microeconomic indicators, which are based on data reported by the sampled Union producers.
- (268) Given that only a small part of the Union producers' production was destined for the captive market, the investigation found no meaningful difference between the economic indicators whether examined referring to the whole activity or on the basis of data for the free market.

4.3. Union consumption

- (269) The Commission established the Union consumption on the basis of the Union industry's sales volume to the Union market, sourced from the verified questionnaire replies of the sampled Union producers and the macro-questionnaire submitted by the complainant, and the imports into the Union of the product concerned from third countries based on Eurostat statistics.
- (270) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2020	2021	2022	Investigation period
Total Union consumption	1 220 424	1 267 582	1 125 734	954 998
Index	100	104	92	78

Source: verified questionnaire replies of the sampled Union producers, macro-questionnaire, Eurostat.

- (271) Union consumption increased by 4 percentage points from 2020 to 2021 and was higher than usual in both years. This was mainly because of Covid-19 lockdowns which prompted people to renovate their homes, which resulted in high demand for indoor paints and coatings and, consequently, for TiO₂ as their main raw material. Since Covid-19 pandemic was present throughout the year 2021 (as opposed to only being declared mid-March 2020), it logically follows that the resulting positive effects on demand in the Union market were more pronounced in 2021.
- (272) After such peaking demand, the Union consumption decreased in 2022 by 12 percentage points, and in the investigation period by further 14 percentage points.

4.4. Imports from the country concerned

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

- (273) The Commission established the volume of imports on the basis of Eurostat statistics. The market share of the imports was established on the basis of the import volume and total Union consumption as established in Table 2 above.
- (274) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (tonnes) and market share

	2020	2021	2022	Investigation period
Volume of imports from the country concerned (tonnes)	178 256	169 146	186 885	209 375
<i>Index</i>	100	95	105	117
Market share	15 %	13 %	17 %	22 %
<i>Index</i>	100	91	114	150

Source: Eurostat.

- (275) Chinese imports were present in the Union market from the beginning of the period concerned. Imports show an increasing trend, resulting in an overall 17 % increase from 2020 to the investigation period. In the shrinking market observed in 2022 and the investigation period (see Table 2 above), this resulted in a significant 50 % increase of Chinese market share from 2020 to the investigation period.
- (276) In 2021, there was a temporary reversal of this continuous increase in Chinese import volumes and market share due to extraordinary circumstances of the shipping crisis which was prevalent in 2021. The volume of imports from China and their market share decreased that year by 5 % and 9 %, respectively.
- (277) However, as soon as the shipping crisis began to abate in 2022, Chinese imports started increasing again, gaining 10 percentage points in volume terms in 2022 and additional 12 percentage points in the investigation period.

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

- (278) The Commission established the prices of imports on the basis of Eurostat statistics dividing the total values of Chinese imports by the total volume of those imports. Price undercutting of the imports was established on the basis of verified questionnaire replies of the sampled exporting producers in China.
- (279) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 4

Import prices (EUR/tonne)

	2020	2021	2022	Investigation period
China	1 826	2 507	3 032	2 235
<i>Index</i>	100	137	166	122

Source: Eurostat.

- (280) Import prices from China increased in 2021 and 2022. The complainant claimed that such increase coincided with an increase in global prices of the ilmenite ore, as well as with increased shipping costs experienced in 2021 and 2022. As the shipping costs decreased closer to historic levels by the end of 2022 (i.e., in the beginning of the investigation period), the Chinese prices dropped in tandem, despite the cost of main raw materials remaining high.
- (281) Despite this, Chinese landed prices remained below Union industry's prices throughout the period considered, with the exception in 2021, when container prices from China to the Union reached their peak.

- (282) The Commission determined the price undercutting during the investigation period by comparing:
- (1) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (2) the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese exporting producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.
- (283) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. It showed a weighted average undercutting margin of between 14 % and 15,3 % by the imports from the sampled exporting producers on the Union market. The volume of imports found to be undercutting this way represents around 70 % of total imports from China in the investigation period.
- (284) The Commission furthermore established the existence of price suppression throughout the period considered, and price depression in the investigation period.
- (285) While Chinese import prices were increasing in 2021 and 2022, they were consistently below the Union industry prices, except in 2021 when the shipping costs were at their all-time high. As shown in Table 8 below, the gap between Union industry's sales prices and their costs of production was narrowing in each year of the period considered, demonstrating price suppression.
- (286) Furthermore, in the investigation period the Chinese import prices dropped by more than one quarter compared to 2022, while increasing their volume and market share in the Union market. This caused significant price depression on the Union industry in the investigation period, as the Union industry had to decrease its prices below its cost of production and absorb losses in order to retain some market share, despite the costs of production continuing to increase.

4.5. **Economic situation of the Union industry**

4.5.1. *General remarks*

- (287) 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.
- (288) As mentioned in recital (19), sampling was used for the determination of possible injury suffered by the Union industry.
- (289) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the reply to the macro-questionnaire provided by the complainant and Eurostat data on imports of the product under investigation. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the verified questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (290) 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.
- (291) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2020	2021	2022	Investigation period
Production volume (tonnes)	809 485	843 918	743 733	560 647
<i>Index</i>	100	104	92	69
Production capacity (tonnes)	964 000	934 300	941 900	943 200
<i>Index</i>	100	97	98	98
Capacity utilisation	84 %	90 %	79 %	59 %
<i>Index</i>	100	108	94	71

Source: Macro-questionnaire provided by the complainant.

- (293) The production volume of the Union industry decreased by 31 % between 2020 and the investigation period, closely following the trends observed in sales volume depicted in Table 6 below. This decrease in production volume was more significant than the 22 % decrease in the Union consumption over the period considered. The temporary increase in production volumes observed in 2021 is attributable to the uptick in demand caused, as explained in recital (271) above, by the 'stay-at-home' economy during Covid-19 lockdowns, which the Union industry managed to particularly benefit from due to decrease of Chinese imports that year.
- (294) Total Union capacity fluctuated by 2-3 % throughout the period considered. The drop in capacity observed in 2021 is due to one month stoppage of production for maintenance that one of the producers had to undertake that year, and the closure of Kronos Leverkusen sulphate production line. In 2022 and the investigation period capacity slightly increased, mostly due to completion of projects which resulted in debottlenecking at some of the plants in the Union.
- (295) In addition, one non-sampled Union producer, Venator, closed two of its plants in the Union: Venator Duisburg and Venator Scarlino. The decisions concerning the closure of these plants were taken in June 2023 and in February 2024 and therefore the effect of these plant closures on the volume of production and on production capacity was not yet visible or only visible to a limited extent during in the investigation period.
- (296) The capacity utilisation increase observed in 2021, while indeed prompted by increase in net production volumes due to increased demand during the Covid-19 pandemic, is thus outsized because of the drop in overall capacity. Production volumes and capacity utilisation then drop in 2022 and especially in the investigation period, partly following the trend of the overall decrease in demand, but also due to the loss of market share to Chinese imports, as explained below.

4.5.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2020	2021	2022	Investigation period
Sales volume on the Union market (tonnes)	604 643	680 395	559 502	451 583
<i>Index</i>	100	113	93	75
Market share	49 %	53 %	49 %	47 %
<i>Index</i>	100	108	100	95

Source: Macro questionnaire provided by the complainant and Eurostat.

(298) Union industry sales volume increased in 2021 by 13 percentage points compared to 2020, mainly due to the aforementioned increase in demand prompted by 'stay-at-home' economy during Covid-19 lockdowns and the decrease in pressure exerted by dumped Chinese imports in that year. As already explained above, the demand for TiO₂ started decreasing in 2022 after the high demand in 2021. As the shipping crisis was abating at the same time, the Chinese imports started increasing, both in absolute terms and in market shares, which resulted in the precipitous drop of Union sales volumes.

(299) Market shares also reflect such market reality. In the absence of Chinese dumped imports during the surge in demand in 2021, the Union industry gained 4 percentage points in market share. In the shrinking market of 2022 and the investigation period, with ever increasing volumes of dumped imports from China, the Union industry first lost 4 percentage points in market share in 2022, and further 2 percentage points in the investigation period.

4.5.2.3. Growth

(300) As explained above, due to special circumstances caused by Covid-19 pandemic ('stay-at-home' economy due to lockdowns in part of 2020 and in 2021, and the shipping crisis in 2021), Union industry was able to profit from peak demand in 2021 with Chinese imports decreasing that year. This temporarily slowed the decline of the Union industry which, albeit in the shrinking market of 2022 and the investigation period, lost significant market share in favour of Chinese imports.

4.5.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2020	2021	2022	Investigation period
Number of employees	5 105	4 915	4 838	4 787
<i>Index</i>	100	96	95	94
Productivity (tonne/FTE)	159	172	154	117
<i>Index</i>	100	108	97	74

Source: Macro-questionnaire provided by the complainant.

(302) Union industry steadily decreased its workforce throughout the period considered, as its production and sales volumes decreased.

(303) Productivity developed in line with the changes in production and employment. It decreased by 26 % over the period considered, with a temporary increase in 2021, thanks to the increase in Union industry's production and sales due to above mentioned exceptionally favourable conditions in that year.

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

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

(305) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

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

Table 8

Sales prices in the Union

	2020	2021	2022	Investigation period
Average unit sales price in the Union on the free market (EUR/tonne)	2 277	2 432	3 076	2 990
<i>Index</i>	100	107	135	131
Unit cost of production (EUR/tonne)	2 010	2 203	3 025	3 442
<i>Index</i>	100	110	151	171

Source: Verified questionnaire replies of the sampled Union producers.

(307) Table 8 above shows that the period of 2021 onwards was a period of continuous costs increases, driven mainly by increasing costs of the principal raw materials and energy. This was particularly pronounced in 2022 and the investigation period, when global inflationary pressures increased significantly. The complainant claimed that, even though the Russian invasion of Ukraine in February 2022 caused a large increase in energy costs in the Union, the main factor which influenced the increase in costs of production is the rise in costs of the main raw material, titanium ores.

(308) This observed increase in cost of production was thus met by an increase in prices in 2021 and 2022, when the Union industry was still able to keep their sales prices above their costs of production. As the Table 8 above shows, however, the gap between the cost of production and the sales price was narrowing more and more each year. Finally, in the investigation period, despite further significant cost increase compared to 2022, the Union producers could not only no longer keep their sales prices above their cost of production, but even had to decrease their prices compared to 2022 to retain some market share.

(309) Despite the demand for TiO₂ being indeed the lowest in the investigation period, imports from several sources (such as UK and Mexico, see Table 12 below) managed to increase their prices compared to 2022, while the prices of imports from other sources decreased only slightly. The most pronounced drop in prices, and at the same time the most pronounced increase in market shares came from Chinese imports, which thus clearly exerted significant pressure on the Union industry to decrease their own prices.

4.5.3.2. Labour costs

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

Table 9

Average labour costs per employee

	2020	2021	2022	Investigation period
Average labour costs (EUR/FTE)	63 811	67 261	68 562	67 756
<i>Index</i>	100	105	107	106

Source: Verified questionnaire replies of the sampled Union producers.

(311) Average labour cost per employee increased by 6 % over the period considered.

4.5.3.3. Inventories

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

Table 10

Inventories

	2020	2021	2022	Investigation period
Closing stocks (tonnes)	74 928	49 858	60 945	49 762
<i>Index</i>	100	67	81	66
Closing stocks as a percentage of production	9,3	5,9	8,2	8,9
<i>Index</i>	100	64	89	96

Source: Verified questionnaire replies of the sampled Union producers.

(313) The level of inventories in absolute terms and as a percentage of production decreased by 33 % and 36 %, respectively, in 2021 due to favourable conditions where the Union industry was able to increase their sales volumes and market share. As the market began shrinking in 2022, volume of inventories increased again and not all the foreseen production was sold. In the investigation period the inventories decreased again as the production volumes were being reduced too. Since sales volumes were decreasing with the shrinking market in both 2022 and the investigation period, inventories as percentage of production began increasing again, reaching in the investigation period almost the same level that they were at in 2020.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2020	2021	2022	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	7,9 %	9,8 %	5,1 %	- 11,7 %
<i>Index</i>	100	125	65	- 148
Cash flow (EUR)	92 461 606	124 892 941	3 767 112	- 4 293 138
<i>Index</i>	100	135	4	- 46
Investments (EUR)	37 870 922	36 314 534	39 542 712	43 030 210
<i>Index</i>	100	96	104	114
Return on investments	53 %	41 %	2 %	- 67 %
<i>Index</i>	100	79	5	- 127

Source: Verified questionnaire replies of the sampled Union producers.

- (315) The Commission established the profitability of the three 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.
- (316) As shown in Table 8 above, the gap between Union industry's sales prices and their costs of production was narrowing in each year of the period considered, whereas in the investigation period the Union industry even had to decrease their sales prices below the increasing cost of production. This shows that while price suppression was present during the period considered, it turned into price depression in the investigation period.
- (317) The imbalance of the increasing cost and suppressed prices translated into the erosion in profitability over the period considered, with year 2021 again being the exception, as explained below.
- (318) The increase in profitability in 2021 is furthermore explained by the fact that, even though net profit on a unit sale in 2021 (EUR 229, the difference between unit sales price and unit cost of production) was lower than net profit on a unit sale in 2020 (EUR 268), the cash flow still rose because of an increase in sales volumes.
- (319) As the Union industry's sales were decreasing in 2022 and the investigation period, and its prices kept being suppressed in 2022 and depressed in the investigation period, its profitability fell by 4,8 percentage points in 2022 and by further 16,8 percentage points in the investigation period, turning sharply to the negative.
- (320) Investments decreased by -4 % in 2021, before apparently increasing by +8 % in 2022 and further +10 % in the investigation period. However, this trend of increase is misleading, and the Commission was able to verify that this apparent increase in 2022 and the investigation period can be squarely attributed to one investment of around 10 million EUR for capacity expansion, spread across 2022 and the investigation period, which one Union producer had previously committed to make and could not reasonably cancel. As the producer demonstrated, the planning, groundwork, and ordering of equipment was all made before the period concerned. Once the equipment was delivered, it had to be installed, because it would have been more expensive to leave it unused and exposed to the elements. Without this investment, the overall investment figures of the sampled Union producers would be showing a declining trend similar to other main injury indicators.

(321) The return on investments is the profit in percentage of the net book value of investments. In light of the developments described above, it was continuously decreasing throughout the period considered, falling from a healthy +53 % in 2020 to a deep negative -67 % in the investigation period.

(322) The ability of the Union industry to raise capital had been severely affected by the erosion of the profitability as well as of the cash flow incurred over the period considered.

4.5.4. Conclusion on injury

(323) All the main injury indicators showed a negative trend during the period considered and, although the situation of the Union industry temporarily improved in 2021, the injury indicators declined in 2022 and then sharply declined in the investigation period.

(324) The production volume of the Union industry decreased by 31 % and its sales volume decreased by 25 % between 2020 and the investigation period. This decrease was more significant than the decrease of the Union consumption, which decreased by 22 % during the period considered. Consequently, the market share of the Union industry dropped from 49 % in 2020 to 47 % in the investigation period with a temporary increase in 2021 and beginning of 2022.

(325) At the same time, Chinese imports increased in volume by 17 % during the period considered and the Chinese market share increased from 15 % in 2020 to 22 % in the investigation period. Imports from China temporarily dropped by 5 % in volume due to the shipping crisis between 2020 and 2021. Being temporarily shielded from cheap imports from China, and with increasing demand during the Covid-19 pandemic, the Union industry could increase its sales quantities and sales prices, achieving unexpectedly high profits in 2021. However, this positive trend was due to exceptional circumstances, and it was reversed by the investigation period, when the sales quantities of the Union industry dropped significantly (by 38 percentage points between 2021 and the investigation period) and its profitability plummeted (from 10 % in 2021 to -12 % in the investigation period).

(326) In addition, the Union industry was faced with a significant increase in the cost of production, which rose by 71 % over the period considered. The increase in cost was driven mainly by higher costs of the principal raw materials and energy. The Union industry, however, could not increase their sales prices sufficiently to offset this major cost increase. Their sales prices increased only by 31 % over the period considered. The prices peaked in 2022, but markedly decreased in the investigation period, despite the costs of production continuing to rise. As a result, the Union industry became loss making in the investigation period. Similar negative effects are seen in cash flow and return on investment.

(327) As already explained in recital (316) above, the Commission concluded that Chinese dumped imports were exerting price suppression on the Union industry throughout the period considered, and price depression in the investigation period.

(328) In conclusion, although the extraordinary circumstances in 2021 allowed the Union industry to perform well, in the shrinking market of 2022 and the investigation period, Chinese imports were increasing and gaining market share, suppressing the Union industry's prices, while its costs of production was increasing. This is particularly evident in the investigation period, when the prices of Chinese imports decreased by one quarter compared to 2022.

4.5.4.1. Comments by the parties

(329) Several parties contested the existence of injury to the Union industry.

(330) China National Coatings Industry Association ('CNCIA'), an association representing exporting producers, claimed that there was no injury to the Union industry, citing certain segments of annual reports of several Union producers, notably Cinkarna, one of the non-sampled Union producers. CNCIA thus claimed that: (i) Cinkarna maintained maximum production levels according to its 2022 annual report, (ii) Kronos and Cinkarna increased their total value of sales in 2021 and 2022, (iii) Cinkarna, Tronox, and Venator reported increases in prices and/or revenue in 2022 compared to prior years, (iv) Cinkarna reported increasing profit and EBITDA in 2022 compared to 2021, and (v) Cinkarna planned to double its level of investments in 2023.

- (331) The Commission noted on the outset that, while different producers might be performing better or worse to a varying degree, performance of one producer (Cinkarna), highlighted in points (i), (iv), and (v) above, is not necessarily indicative of the performance of the whole Union industry. This is precisely the reason why the Commission selects a representative sample of the Union producers, to draw conclusion on the microeconomic indicators on the basis of this sample. Moreover, the Commission's analysis is focused solely on the economic indicators related to the product under investigation which requires a more granular analysis than simply looking at the general figures in the annual report of the Union producer. If an interested party would be of the opinion that the proposed sample would not have been representative for the Union industry as a whole because one of the companies included in the sample is performing much worse than the rest due to any specific circumstances, or vice versa, such party should express its opposition to the proposed sample of Union producers at the start of the investigation, which CNCIA did not do.
- (332) Similarly, the Commission noted that the assessment under points (ii) and (iii) above are partial, taking into account only some of the injury indicators without considering them in the context of the total situation of the Union industry and the Union market, as the Commission does when reaching its conclusions in anti-dumping investigations. As demonstrated in Table 8 above, average unit sales prices of the Union industry did increase both in 2021 and in 2022. This increase in prices was, however, prompted by the need to maintain profitability in light of production costs rising in tandem. Furthermore, the Commission indeed found that the overall value of sales of the Union industry did increase in 2022 compared to 2021. This does not equate, however, to improved performance on the market as CNCIA suggested, since total sales volumes were decreasing. Examining in isolation the total value of sales in a given year is thus not informative.
- (333) The Commission thus concluded that the elements highlighted by CNCIA, listed in recital (330) above, albeit factually true, do not invalidate the Commission's conclusions on the situation of the Union industry as a whole.
- (334) CNCIA further pointed out that in its decision on terminating the anti-dumping investigation on imports of tartaric acid originating in China ⁽¹⁰¹⁾, the Commission found no injury even though the Union industry's market share in that case fell by 21 %, compared to only 2 percentage point drop in this case. As stated in recital (332) above, the Commission considers all the injury indicators holistically, in the context of the overall situation of the Union industry and the Union market, which are naturally different in each investigation, so final conclusions are made on the case-by-case basis. The Commission noted in that regard that CNCIA is focussing only on one element of the aforementioned investigation, while the decision to terminate was actually predicated on multiple factors, most notably the profitability of the Union producers ⁽¹⁰²⁾. In any case, the specific circumstances of that case have no bearing on the circumstances in the present investigation.
- (335) CNCIA additionally claimed that the drop in production observed after 2021 can be attributed to the closure of plants described in recitals (294) and (295) above. As is evident from the macro-questionnaire submitted by the complainant, however, almost all of the Union producers' production volumes decreased both in 2021 and 2022 year-on-year, and not just in those three plants. The Commission thus rejected this claim as unfounded.
- (336) A user, PPG Industries Europe Sarl ('PPG'), further claimed that there is no price suppression, because Venator decided to increase prices globally, including in the Union, at the beginning of 2024 due to the need to 'start the process of recovering margins to sustainable levels', citing Venator's press release from February 2024 ⁽¹⁰³⁾. This is, however, not relevant in the context of the above analysis, as these claims by Venator were made after the investigation period, whereas all the above analysis and assessments are backward-looking, into the investigation period and the three prior years. Furthermore, no conclusion on price suppression can be drawn from the mere fact that one Union producer announced price increases. The Commission thus rejected this claim.

⁽¹⁰¹⁾ Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd (OJ L 33, 10.2.2016, p. 14).

⁽¹⁰²⁾ *Ibid.*, recitals (140) and (141).

⁽¹⁰³⁾ Venator Press Release, 'Venator Announces Transformative Business Plan and Intends to Shut Down TiO₂ Production in Duisburg, Germany', 1 February 2024, available at: <https://www.venatorcorp.com/%7E/media/Files/V/Venator/press-releases/press-release-fv-eng.pdf> (last visited on 29 May 2024).

- (337) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (338) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from other third countries, export performance of the Union producers, and other factors, like global decline in consumption following the Covid-19 pandemic, forecasted improvement in market conditions, rising cost of production, and ban on the use of food-grade TiO₂ in the Union.

5.1. Effects of the dumped imports

- (339) As explained in recital (271) above, Union consumption increased during the Covid-19 pandemic, whereby the lockdowns in the Union prompted people to renovate their homes, which resulted in increased demand for TiO₂ in 2020 and especially in 2021. Such pronounced demand uptake was followed by an equally pronounced drop in demand observed in 2022 and the investigation period. While this drop was mainly driven by de-stocking following bulging demand in 2020 and 2021, it was further exacerbated by the general inflationary pressures which started in 2022 and likely the fears of market instability caused by Russian invasion of Ukraine.
- (340) As shown in Table 3, Chinese imports maintained a strong presence in the Union within such market and increased in volume by 17 % from 2020 to the investigation period. Even in the shrinking market observed in 2022 and the investigation period, this resulted in a significant 50 % increase of Chinese market share from 2020 to the investigation period. This trend was only temporarily reversed in 2021: the volume of imports from China and their market share decreased that year by 5 % and 9 %, respectively, which can be attributed to the shipping crisis, reducing volumes of goods coming from China. Coupled with the peaking demand in 2021, this provided a brief respite to the Union industry allowing it to significantly increase its sales volumes and temporarily regain market share (see Table 6 above).
- (341) However, as soon as the shipping crisis began to abate in 2022, Chinese imports started increasing again, increasing by 10 % in volume terms in 2022 and additional 12 % in the investigation period, to the detriment of Union producers, and of imports from other third countries (see Table 12 below). This is clearly reflected in market shares, where the increasing market share of Chinese imports coincides perfectly with the market share of Union producers and third country imports both going down both in 2022 and in the investigation period.
- (342) Import prices from China also reflect the above market realities. Chinese landed prices remained below Union industry's prices throughout the period considered, except in 2021 when the shipping crisis and cost of shipping from China to Europe reached their peak. Furthermore, Chinese landed prices were even below Union industry's average cost of production both in 2020 and the investigation period, while in 2022 they were basically at the same level. Had the shipping costs not exploded in 2021 and 2022, Chinese landed prices could have easily remained below Union industry's unit cost of production throughout the period considered.
- (343) Even as they were, the Chinese prices clearly caused price suppression to Union industry prices throughout the period considered (see recital (284)) and price depression in the investigation period (see recital (286)).
- (344) In addition, as already mentioned in recitals (282) and (283), the Commission established a weighted average undercutting margin of between 14 % and 15,3 % by the imports from the sampled exporting producers on the Union market in the investigation period, coinciding in time with the increasingly deteriorating situation of the Union industry.

- (345) The analysis of the injury indicators in recitals (269) to (337) shows that the economic situation of the Union industry worsened especially towards the end of the period considered and this coincided with a significant increase of dumped imports from the country concerned, which were found to undercut the Union industry prices during the investigation period. Those imports, in any event, caused significant price suppression throughout the period considered and price depression in the investigation period, as the Union industry was not able to increase its prices in line with the increase of cost of production, and even had to decrease the prices below the cost of production in the investigation period.
- (346) In view of the above considerations, the Commission provisionally established that there is a causal link between the material injury suffered by the Union industry and the dumped imports from China within the meaning of Article 3(6) of the basic Regulation. Such injury had both volume and price effects.

5.2. Effects of other factors

- (347) Several interested parties claimed that any injury to the Union industry during the period considered was not caused by the Chinese exports but by other factors. These include global decline in consumption following the Covid-19 pandemic, rising cost of production, and ban of the use of food-grade TiO₂ in the Union.
- (348) The Commission analysed if and to what extent those factors contributed to the injury.

5.2.1. Cyclicality of the TiO₂ market

- (349) Several parties claimed that the drop in demand observed in 2022 and the investigation period was nothing more than the result of the usual downturn in the cyclical TiO₂ market.
- (350) First, to support this claim, one user provided the Commission with TZMI market intelligence data ⁽¹⁰⁴⁾ from November 2021 with both historical trends and predictions for the future.
- (351) The Commission noted in that regard that the market intelligence data mentioned in recital (350) concerns aggregate global consumption trends, so it might not accurately reflect the demand situation on the Union market specifically. This conclusion is reinforced by the fact that, as was already shown in the complaint, Union demand showed stable growth in 2020 and 2021, with an increase of 4 % year-on-year in each of the years. In addition, as the Table 2 above shows, the Union demand, while indeed dropping by 12 % in 2022, had a more pronounced drop of further 14 % in the investigation period. Neither of these developments are fully in line with TZMI global forecasts mentioned in recital (350).
- (352) Second, two users, Munksjö and Felix, similarly claimed in their questionnaire replies that the TiO₂ market is highly cyclical, and that the alleged injury to the Union industry is merely a result of the shrinking market in the investigation period. Munksjö submitted a data sheet from three different market intelligence sources (ICIS, EUWID, and TZMI), showing the evolution of TiO₂ prices in the Union market for the last fifteen years, and claiming that this shows that the Union TiO₂ market has gone through three cycles of shrinkage and expansion since 2008 until Q4 2023.
- (353) The Commission noted that this data indeed shows that the TiO₂ prices on the Union market had three peaks in the past fifteen years, in Q1 2012, Q2 2018, and Q2 of 2022. Each of those periods of higher prices was of slightly different length and was naturally followed by a decline in prices. The overall trend, however, is one of price increase.
- (354) With all the above in mind, and having analysed all the information at its disposal, the Commission made the following conclusions on the situation on the Union TiO₂ market.
- (355) First, while there indeed might be global cyclicality in TiO₂ demand, there is no evidence to suggest that it is unique to the TiO₂ market and would merit special consideration as all markets regularly go through phases of contraction and expansion.
- (356) Second, even if TZMI's global demand predictions may have been generally accurate, these have shown not to be fully in line with actual developments observed in the Union market, at least for the period considered.

⁽¹⁰⁴⁾ TZMI report November 2021, available upon subscription.

- (357) Third, from all the data available to the Commission, one cannot draw a pattern showing with utter certainty when an upturn or a downturn will take place in the Union market and consequently conclude that contraction was bound to happen in 2023.
- (358) The Commission thus concluded that, even if the global market trends broadly accurately predicted there would be an increase in Union demand in 2020 and 2021 and a later decrease, the Union TiO₂ market was affected by specific and extraordinary circumstances during the period considered, which dictated the evolution of demand. As already mentioned in recital (271) above, the Commission concluded that the 'stay-at-home' economy prompted by Covid-19 lockdowns led to an increase in demand for TiO₂ in 2020, and especially 2021. Thus, even if there was going to be an increase in Union demand in 2020, the Covid-19 pandemic amplified it, and caused the demand to rise in 2021 as well. After such a big demand uptick, any drop in consumption that follows would naturally also be pronounced, while this drop (in 2022 and the investigation period) was further exacerbated by (a) the general inflationary pressures which started showing in 2022 and were present throughout the investigation period and likely by (b) the fears of market instabilities caused by Russian invasion of Ukraine in February 2022.

5.2.2. Demand in the Union market

- (359) On the other hand, some parties claimed that the deteriorating situation of the Union industry was due precisely to significantly decreased demand in the aftermath of Covid-19 pandemic and inflationary pressures of 2022 identified above.
- (360) The Commission noted in that regard that the Union market did experience a pronounced decrease in demand, driven by both de-stocking after the high demand period during the Covid-19 pandemic and general inflationary pressures (see in recital (358)). Such shrinking market would have surely resulted in decrease of sales volumes of the Union industry, regardless of the existence of dumped imports from China.
- (361) However, under normal conditions of competition, in such a shrinking market sales volumes of all the market participants would have all gone down more-less equally. Yet, in the present case, imports from all other third countries (excluding China) and the Union industry's sales (as shown in tables 6 and 12 above) are almost all decreasing both in 2022 and the investigation period, while only the Chinese imports are increasing in those years (as shown in Table 3 above), pointing again to the conclusion that, just as the shipping prices started going down in 2022, Chinese producers were able to continue selling their product in the Union market at dumped prices, gaining market share to the detriment of other players.
- (362) With regard to the decrease in consumption, CNCIA pointed out that in the Commission Decision of 27 June 2012 regarding imports of certain concentrated soy protein products originating in the PRC⁽¹⁰⁵⁾, the Commission found an 8 % decrease in consumption as sufficient to break the causal link. They submitted that, considering the 14 percentage points drop in consumption in the investigation period compared to 2022, the Commission should now reach the same conclusion.
- (363) The Commission pointed out in that regard that the referenced case was not terminated because a decrease in demand attenuated the causal link between established dumping and material injury, but rather because no material injury was found in the first place. The argument was therefore dismissed as void⁽¹⁰⁶⁾.
- (364) CNCIA furthermore claimed that the decrease in sales in 2022 can also be explained by the Union's decision to ban in that year the use of TiO₂ in food for human consumption (additive E171)⁽¹⁰⁷⁾, pointing to Tronox' 2022 annual report that references this as one cause for the decrease in sales.
- (365) According to the information available to the Commission, specialty applications of TiO₂ make up around 4 % of the total market, and applications in food for human consumption are an even smaller part of that share. The Commission thus concluded that any effect that this ban may have had on sales of the Union producers was negligible.

⁽¹⁰⁵⁾ Commission Decision of 27 June 2012 terminating the anti-dumping proceeding concerning imports of certain concentrated soy protein products originating in the People's Republic of China (OJ L 168, 28.6.2012, p. 38).

⁽¹⁰⁶⁾ *Ibid.*, recitals (129)–(139).

⁽¹⁰⁷⁾ Commission Regulation (EU) 2022/63 of 14 January 2022 amending Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the food additive titanium dioxide (E 171) (OJ L 11, 18.1.2022, p. 1).

5.2.3. Imports from third countries

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

Table 12
Imports from third countries

Country		2020	2021	2022	Investigation period
United Kingdom	Volume (tonnes)	187 211	108 085	140 773	101 465
	<i>Index</i>	100	58	75	54
	Market share	15 %	9 %	13 %	11 %
	Average price	2 238	2 542	3 104	3 114
	<i>Index</i>	100	114	139	139
Mexico	Volume (tonnes)	93 747	120 213	102 347	73 036
	<i>Index</i>	100	128	109	78
	Market share	8 %	9 %	9 %	8 %
	Average price	1 504	1 514	1 869	2 388
	<i>Index</i>	100	101	124	159
USA	Volume (tonnes)	63 383	99 464	81 215	59 948
	<i>Index</i>	100	157	128	95
	Market share	5 %	8 %	7 %	6 %
	Average price	2 146	2 321	2 954	2 925
	<i>Index</i>	100	108	138	136
Other third countries (except China)	Volume (tonnes)	97 372	94 045	59 516	65 654
	<i>Index</i>	100	97	61	67
	Market share	8 %	7 %	5 %	7 %
	Average price	1 935	2 201	2 892	2 781
	<i>Index</i>	100	114	149	144
Total of all third countries except China	Volume (tonnes)	441 713	421 807	383 850	300 102
	<i>Index</i>	100	95	87	68
	Market share	36 %	33 %	34 %	31 %
	Average price	2 002	2 121	2 710	2 827
	<i>Index</i>	100	106	135	141

Source: Eurostat and verified questionnaire of the sampled Union producers.

- (367) The Commission noted on the outset that, even though imports from United Kingdom represented the biggest share of imports into the Union from another third country (after China), according to the information available to the Commission, the only producers in the United Kingdom are two facilities owned by the Union industry. These imports are therefore not in competition with the Union industry on the Union market and also their price is higher than the Chinese import prices. Therefore, these imports do not contribute to the injury of the Union industry.
- (368) Volume of imports from all other third countries has been declining throughout the period considered at an increasing rate: 5 % decrease in 2021, 8 % in 2022 and 9 % in the investigation period.
- (369) Import volumes from notably USA and Mexico can be seen to be following the same trends as described for Union industry sales – an increase in imports in exceptionally high demand year of 2021, and then subsequently decreasing in 2022 and the investigation period. At the same time, both USA's and Mexico's market shares, after temporarily rising in 2021, began decreasing in 2022 and the investigation period. Imports from all other third countries also lost market share in the investigation period compared to 2022.
- (370) Interested parties claimed that the reason for injury to Union industry were low priced Mexican imports, rather than Chinese imports. The Commission established above a weighted average undercutting margin of between 14 % and 15,3 % by the imports from the sampled exporting producers on the Union market in the investigation period. The Commission observed that the import price from Mexico were indeed low. However, they increased significantly during the investigation period in comparison with previous years and were higher than the import prices from China.
- (371) By contrast, the Commission established that the landed prices of totality of Chinese imports decreased significantly, that is by 25 % between 2022 and the investigation period and undercut the Union industry's prices by 18,2 % in the investigation period.
- (372) The Commission then examined the significance of imports from China and Mexico in the total Union market. As tables 3 and 12 above show, the total volume of imports from China in the investigation period are three times larger than those from Mexico. Furthermore, Mexican imports lost market share in the investigation period, compared to 2022, as did the totality of imports from all other third countries (excluding China). In contrast, Chinese imports are the only ones that gained market share in the investigation period.
- (373) The Commission therefore concluded that imports from Mexico as well as from any other third country did not attenuate the causal link established between the dumped Chinese imports and the injury suffered by the Union industry.

5.2.4. *Export performance of the Union industry*

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

Table 13

Export performance of the Union producers

	2020	2021	2022	Investigation period
Export volume (tonnes)	223 194	225 958	177 595	151 869
<i>Index</i>	100	101	80	68
Average price (EUR/tonne)	2 371	2 514	3 396	3 092
<i>Index</i>	100	106	143	130

Source: Macro questionnaire provided by the complainant for export volume and verified questionnaire replies of the sampled Union producers for average price

- (375) Similarly to production volumes and domestic sales, export volumes of the Union industry increased in 2021, although this increase was less pronounced than for domestic sales, before dropping significantly in 2022 and the investigation period. Export prices also followed the same trend as prices on the Union market, increasing in 2021 and 2022 before falling in the investigation period, but remaining significantly above 2021 levels.
- (376) Union industry achieved higher prices on the export markets than in the Union market throughout the period considered. However, even despite this, the Union industry was not able to keep the export price of their product above their cost of production in the investigation period and had to decrease export prices in that year too.
- (377) The complainant has claimed that unfair trade practices of the Chinese exporting producers in all markets are making it hard to compete also in the export markets and are the reason for such suboptimal export performance. Other interested parties retorted that there is no evidence to substantiate that claim.
- (378) The complaint contained evidence of announcement of the closure of Chemours plant in Taiwan in 2023 and the complainant submitted additional evidence during the investigation, showing that two TiO₂ producers in Japan, Sakai Chemicals and Ishihara Sangyo, announced plant closures in 2026 and 2027, respectively. All those facilities are in close geographical proximity to China, making it likely that Chinese exports have had undue influence on their performance in their domestic or regional markets. Furthermore, relevant authorities in Brazil have initiated their own antidumping investigation against Chinese TiO₂. The Commission thus found that it cannot be excluded that Chinese exports are hindering Union industry's competitive position in other markets similarly to the Union market.
- (379) Furthermore, the Commission has found that the profitability of export sales followed the development of profitability of the Union sales almost to the same percentage point throughout the period considered while export sales make around 25 % of total sales of the sampled Union producers.
- (380) The Commission thus concluded that export performance was not the cause of injury to the Union industry.

5.2.5. *Rising cost of production*

- (381) Several parties have claimed that rising cost of production are the cause of injury to the Union industry.
- (382) While Union industry's costs of production were increasing in 2021, and particularly 2022 and the investigation period, Union industry was able to increase its prices in 2021 and 2022 to maintain profitability. It was only forced to decrease prices below their COP in the investigation period, when, in the shrinking market, the Chinese imports dropped in prices significantly while increasing in volume, thus gaining market shares in the Union.
- (383) Interested parties again pointed to the case Soy Protein from China, where the increase in main raw material broke the causal link. The Commission pointed out however, that in the case at hand, the increase in cost of production was global due to global inflationary pressures and affected all the market players to a similar extent, as evidenced by the fact that prices of imports from all other third countries (except China) increased significantly in 2022 and even further in the investigation period. Notably, the prices of the main raw material, ilmenite ore, which represents around one third of the total cost of production, increased globally by around 80 % in 2022 compared to 2020 levels, and only slightly decreased in the investigation period.
- (384) The Commission thus concluded that the rising costs of production did not contribute to the injury suffered by the Union industry in the investigation period.

5.2.6. *Market intelligence predicting recovery*

- (385) On 3 April 2024, AkzoNobel submitted further claims on lack of causality, relying on the report on the global situation of the TiO₂ market, published in February 2024 by a market intelligence agency, TZMI. The report suggests that TiO₂ market is recovering and predicts price increases in the Union market and increases in profitability of Union producers.

- (386) The Commission noted in that regard that, even though the report suggests improvement in market conditions in Europe, the report still labels them as weak across several metrics it analyses. Furthermore, as concerns prices in Europe and predictions of improved profitability of Union producers in their domestic market, the report itself acknowledges that its projections on price levels that Union industry will be able to achieve are, at least partially, made under the assumption of the positive outcome of this investigation.
- (387) Thus, even if this report would predict future performance of the Union industry with full accuracy, it is, essentially, making that prediction in the scenario of the restored level playing field on the Union market, and cannot be thus used as a counterargument for the Commission not to take a decision on which that prediction is itself, at least partially, based.

5.3. Conclusion on causation

- (388) As the parties rightly point out, several factors made the situation of the Union industry challenging. First, 2022 and the investigation period were marked by an exceptional decrease in demand for TiO₂ on the Union market. Second, both of those years saw a significant increase in costs of energy on the Union market and cost of ilmenite increased globally. Third, import prices from Mexico were lower than Chinese prices in the first three years of the period considered.
- (389) None of this invalidates the fact however, that (i) as opposed to other third countries, imports from China were increasing in volume throughout the period considered (with a temporary slowdown due to exceptional circumstances in 2021, (ii) Chinese imports were coming into Europe at dumped prices, (iii) in the shrinking market of 2022 and the investigation period, Chinese imports were gaining market shares at the expense of the market share of the Union industry and of other third countries' imports, and (iv) in the investigation period, when the prices of imports from all other countries were broadly staying the same as in 2022, the price of Chinese imports decreased dramatically, by one quarter of what they were in 2022, exerting significant price suppression and depression to the Union industry.
- (390) In that vein, the Commission considered the arguments made by the parties on factory closures in the Union. In the complaint, the complainant claimed that the three TiO₂ plants were closed in the Union due to pressure exerted by Chinese imports and that more closures could have been expected without exceptionally favourable conditions of Covid-19 pandemic. Several interested parties retorted against this, claiming that there was no evidence supporting this conclusion, and that the closures were due to other circumstances and not attributable to alleged dumped imports from China. The parties pointed to the public statements made by the companies, which attribute the curtailment of production or plant closures to unfavourable conditions on the market, such as reduced demand, rising costs of production, and generally poor economic conditions, while Venator's (one of non-sampled Union producers) Scarlino plant specifically was facing issues in obtaining regulatory approvals.
- (391) In a similar vein, the interested parties highlighted further statements from business reports of Union producers (Kronos, Police, Venator, Cinkarna), which recognised the decrease in demand and increase in cost of production as reasons for the challenging situation the Union industry finds itself in. Parties claimed that that this proves that imports from China cannot overall be held responsible for the injury suffered by the union industry.

- (392) The Commission notes in that regard that, while Venator Scarlino plant was indeed prevented from operating at full capacity due to pending regulatory approvals, from the cited statements of both Kronos and Venator, it is apparent that the decisions on the level and continuation of production are being made in consideration of generally challenging market conditions. As the entire above analysis shows, these clearly include the dumped imports from China exerting pressure on the market, while a number of the cited reports themselves reference also the presence of cheap imports from China as one of the challenges ⁽¹⁰⁸⁾.
- (393) 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 shrinking demand, rising cost of production, and imports from other third countries, notably Mexico, on the Union industry's negative developments in terms of sales volumes, prices, and profitability was only partial.
- (394) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury consists mainly of loss of market share, price undercutting and suppression and falling profitability, return on investment and cash flow.

6. LEVEL OF MEASURES

- (395) The complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation in the complaint.
- (396) Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation.
- (397) Then it examined whether the dumping margin of sampled exporting producers would be higher than their injury margin.

6.1. Injury margin

- (398) 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.
- (399) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country concerned, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (400) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition.

⁽¹⁰⁸⁾ See, for example, Unaudited Business Report of Cinkarne Celje in the period January-September 2023, p. 16, available at: https://www.cinkarna.si/uploads/Objave/2023/Unaudited_Business_Report_Of_Cinkarne_Celje_for_The_Period_Jan_Sep_2023.pdf (last visited on 28 May 2024); Consolidated quarterly report of the Grupa Azoty Zakłady Chemiczne Police Group for Q1 2023, p. 56, available at: https://zchpolice.grupaazoty.com/upload/4/files/2023/Grupa_Azoty_Police_Skonsolidowany_Raport_za%20I_kwartal_2023_clean.docx_f...pdf (last visited on 28 May 2024); Consolidated quarterly report of the Grupa Azoty Zakłady Chemiczne Police Group for Q3 2023, p. 58, available at: https://zchpolice.grupaazoty.com/upload/4/files/2023/IR/3Q/EN/Grupa_Azoty_Police_Skonsolidowany_Raport_za%20III_kwartal_2023_clean...pdf (last visited on 28 May 2024).

- (401) PPG and CNCIA both opposed the target profit proposed in the complaint (10,2 %) as too high. PPG claimed that none of the years during the investigation period were adequate to establish basic profit, due to exceptional economic situation in every year, recalling Commission's own conclusions in the anti-dumping investigation on imports of certain polyethylene terephthalate originating in China ⁽¹⁰⁹⁾. They further claimed that, since the Union industry was able to sell at prices above their cost of production throughout the period considered, basic profit should be established as an average profit of all four years. CNCIA further claimed that the Commission should apply the same basic profit it applied in the anti-dumping investigation on imports of electrolytic manganese dioxides originating in China ⁽¹¹⁰⁾, since EMD is an inorganic compound, just like TiO₂.
- (402) The Commission noted that the claim about Union producers' sales prices may have been accurate for the period considered used in the complaint, but it was no longer relevant in the investigation period used by the Commission. As demonstrated above, Union industry's sales prices were well below their cost of production in the investigation period. Any profitability which would be established taking account Union industry's performance in that year would thus not reflect the profitability needed to recover full costs.
- (403) As concerns the claim by CNCIA, just because EMD and TiO₂ are both inorganic chemicals does not mean that their producers operate in similar markets or that their performance would be comparable and no evidence was provided to the Commission to suggest that they would be.
- (404) The Commission noted that, during the period considered, the market share of Chinese imports was the lowest in 2021 and profitability and cash flow were the most positive in that year. However, the decrease in Chinese imports observed in that year was, as explained above, due to exceptional circumstances of the shipping crisis. Coupled with soaring demand prompted by Covid-19 lockdowns, the performance of the Union industry was exceptionally positive in this year. The Commission thus concluded that 2021 would not qualify as a representative year for providing a basic profit in accordance with Article 7(2c) of the basic Regulation.
- (405) Furthermore, just like 2021, the year 2020 was also affected by the favourable circumstances of increased consumption due to the 'stay-at-home' economy during Covid-19 lockdowns, even if to a lesser extent. On the basis of the information available at this stage, the Commission concluded that 2020 would not qualify as a representative year for providing a basic profit in accordance with Article 7(2c) of the basic Regulation either.
- (406) Finally, the rise in imports from China and the sharp downturn of the Union industry which started in 2022 and continued in the investigation period would not qualify either of those years as representative for providing a basic profit in accordance with Article 7(2c) of the basic Regulation.
- (407) In search of a period where normal conditions of competition would prevail, the Commission intended to examine the profitability achieved during the last ten years. The sampled Union producers provided data on the profitability for three years prior to the period considered. However, the Commission did not receive data on profitability relating only to the sales of TiO₂ to unrelated customers in the Union from all three sampled Union producers for those years. It was therefore not possible to establish a profitability that would relate to the sales of the product under investigation to unrelated customers in the Union on the basis of the information currently available to the Commission.
- (408) Since there is no evidence that a profitability higher than 6 % could be achieved under normal conditions of competition, the Commission set the basic profit at 6 %, in accordance with Article 7(2c) of the basic Regulation.

⁽¹⁰⁹⁾ 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 (OJ L, 2023/2659, 28.11.2023, ELI: http://data.europa.eu/eli/reg_impl/2023/2659/oj), recital 275.

⁽¹¹⁰⁾ Commission Implementing Regulation (EU) 2023/2120 of 12 October 2023 imposing a provisional anti-dumping duty on imports of electrolytic manganese dioxides originating in the People's Republic of China (OJ L, 2023/2120, 13.10.2023, ELI: http://data.europa.eu/eli/reg_impl/2023/2120/oj).

- (409) Two Union producers provided evidence that their level of investments, research and development ('R&D') and innovation during the period considered would have been higher under normal conditions of competition. The Commission verified this information based on investment plans and refused and postponed projects, demonstrating that these investments were genuinely planned. Indeed, the claims of both Union producers were found to be warranted. To reflect this in the target profit, the Commission calculated the difference between investments, R&D and innovation ('IRI') expenses under normal conditions of competition, as provided by the Union industry and verified by the Commission, with actual IRI expenses over the period considered. Such difference, expressed as a percentage of turnover, was 0,09 %.
- (410) Such IRI differential of 0,09 % was added to the basic profit of 6 % mentioned in the recital (398), leading to a target profit of 6,09 %.
- (411) In accordance with article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available, the Commission established an additional cost of 60,68 EUR/t.
- (412) On this basis, the Commission calculated a non-injurious prices of [3 400–3 800] EUR/t and [3 600–4 000] EUR/t for the like product of the Union industry by adding the above-mentioned target profit margin (see recital (410) above) to the cost of production of the three Union producers during the investigation period and then adding the adjustments under Article 7(2d) on a type-by-type basis.
- (413) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the three 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.
- (414) 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 recitals (255)–(259)).

Country	Company	Dumping margin (%)	Injury margin (%)
The People's Republic of China	LB group	39,7	53,4
	Anhui Gold Star group	14,4	53,0
	Other cooperating companies	35,0	53,3
	All other companies	39,7	53,4

- (415) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. Then it examined whether the dumping margin of sampled exporting producers would be higher than their injury margin (see recitals (417)–(418) below).

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

- (416) As explained in the Notice of Initiation, the complainant provided the Commission sufficient evidence that there are raw material distortions in the country concerned regarding the product under investigation. According to the evidence in the complaint, ilmenite, which accounts for 25 % of the cost of production of the product under investigation, is subject to captive mining in China. In addition, there is no VAT export refund for ilmenite in China. Both of those measures are listed in Article 7(2a), 2nd subparagraph of the basic Regulation as raw material distortions. Therefore, in accordance with Article 7(2a) of the basic Regulation, this investigation examined the alleged distortions to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury.
- (417) However, as the margins adequate to remove injury are higher than the dumping margins, the Commission considered that, at this stage, it was not necessary to address this aspect.
- (418) Following the above assessment, the Commission concluded that it is appropriate to determine the amount of provisional duties in accordance with Article 7(2) of the basic Regulation.

6.3. Conclusion on the level of measures

- (419) 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
LB group	39,7 %
Anhui Gold Star group	14,4 %
Other cooperating companies	35,0 %
All other companies	39,7 %

7. UNION INTEREST

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

7.1. Interest of the Union industry

- (422) It is recalled that the Union industry consists of eleven producers, whose sales and profitability deteriorated significantly during the second half of the period considered, with a consequent negative impact on its market share, inventory level, investments, return on investment and cash flow. The Commission concluded at this stage that the Union industry suffered material injury caused by the dumped imports from the country concerned (see recital (337) above).
- (423) If provisional measures are not imposed it is likely that, as a result of the price pressure from the dumped imports, the weak profitability and other financial indicators will force the Union industry to cease production of TiO₂. However, following the imposition of anti-dumping provisional measures, it is expected that the sales volumes and prices of the Union industry on the Union market will rise, thus improving profitability and other financial indicators of this industry and preventing closure.
- (424) It is therefore clear that provisional anti-dumping measures would be in the interests of the Union industry.

7.2. Interest of unrelated importers and traders

- (425) The unrelated importer mentioned in recital (10) eventually did not submit a questionnaire reply. The Commission received no questionnaire replies from importers and traders.
- (426) On this basis, the Commission has provisionally concluded that the imposition of anti-dumping measures is not likely to have a negative effect on the situation of importers and traders in the Union.

7.3. Interest of users

- (427) In total 23 users and user associations participated in this investigation opposing the imposition of duties. Out of those, six users submitted questionnaire replies. The rest submitted comments.
- (428) The main use of TiO₂ is for the paints and coatings sector, representing above 60 % of the market, with architectural and industrial paints making for around 55 % of total demand, and industrial inks for around 5 %. The second largest segment of the market is plastics industry at around 25 %, then paper at 12 % and specialty applications at 4 %. Questionnaire replies were received from the users active in paint and coating, graphic inks, laminate paper, and plastics sectors. All six replies were verified on spot at the premises of the users.

7.3.1. Users who submitted questionnaire replies

- (429) The likely effects of the measures would be different on users, depending on the segment of the downstream market in which they operate. The Commission analysed separately the situation of users of TiO₂ for more special applications like laminate paper and graphic inks (these users also submitted product scope claims) and users of TiO₂ in its main application in paints, coatings, and plastics.
- (430) First, out of the six users whose questionnaire replies the Commission verified, the laminate paper producers will be the most affected by potential measures. TiO₂ represents around [25–35] % in their total cost of production, and they source around [10–40] % of their TiO₂ from China. Both users also demonstrated that they were operating with low or negative profitability in the investigation period. The Commission estimated that if duties are imposed, and all other things remaining equal, their profitability would decrease by about [2–3] percentage points. As indicated in recital (52) above, however, these two users source a large majority of their TiO₂ from other sources than China and the Commission thus concluded that the two users have sufficient alternative sources of supply.
- (431) Second, Flint Group, a graphic inks producer, provided evidence demonstrating that products containing TiO₂ generate only a limited part of its total turnover, while Chinese TiO₂ represents only a partial share in the costs of production of those products. Due to the complexity of Flint's corporate structure and the fact they produce a large number of ink formulas which contain some TiO₂ in a number of plants in the Union, Flint could not provide accurate figures of the profitability of its TiO₂-related business segment. Flint did demonstrate, however, a healthy profitability at the level of the total company in the investigation period.
- (432) Based on the information available, the Commission concluded that, if anti-dumping duties were imposed, and all other things remaining equal, its profitability in the TiO₂-related segment of the business would likely decrease by less than one percentage point,⁽¹¹¹⁾ given the low share of TiO₂ in total turnover and cost of production. In addition, the company would remain profitable. The Commission could not determine the impact on the overall group profitability, but the effect would be even less pronounced. The Commission therefore concluded that Flint Group would not be significantly affected by the duties.

⁽¹¹¹⁾ The Commission calculated a proxy profitability for the TiO₂-related business segment on the basis of the difference between Flint's reported cost of production and revenue of the products containing TiO₂. The Commission then simulated the increase in those costs of production by increasing the value of TiO₂ sourced from China by the average anti-dumping margin and calculated a new proxy profit on that basis. The percentage difference of the two proxy profits was applied to the actual reported profitability in TiO₂ segment of the business to estimate the impact of the duties on the profit.

- (433) Third, two other users, AkzoNobel and Sherwin-Williams Italy SRL ('Sherwin-Williams'), are two of the big paints and coating manufacturers. Paints and coating manufacturers are the biggest users of TiO₂ in terms of volume. The impact of duties on the performance of this category of users would be much less pronounced. AkzoNobel filled in the questionnaire at the level of all entities present in the Union. Chinese TiO₂ represents a negligible share in their total cost of production, and they were profitable in the investigation period. Sherwin-Williams provided the questionnaire reply for two entities which would be the most affected by the duties, and for the entire Union business. Chinese TiO₂ represents only a minor share of total cost of production of these two entities combined. While profitability on their products containing TiO₂ was low in the investigation period, both Sherwin-Williams entities demonstrated a healthy overall profitability. The total turnover of those two plants represents a small share of total Union turnover of Sherwin-Williams, which was profitable in the investigation period. The Commission thus concluded that both users, even if they would not be able to pass such cost increase to consumers, would be able to absorb the measures.
- (434) Finally, Schulman Plastics, a large Union producer of plastics and related materials, provided the questionnaire reply for one of its plants, focused on production of MW, which will be the most affected by the duties out of the companies assessed in this section. This plant sources only a part of their TiO₂ from China, but TiO₂ represents a vast majority of its total cost of production. Its profitability in the MW business in the investigation period was healthy, while the total plant was performing even better than just the MW business. While its profitability will surely be the most affected of all users due to its cost structure, the Commission estimated that, even if it would not be able to pass such cost increase to its customers, it would still remain profitable.
- (435) As shown in this section, majority of the users that provided questionnaire replies would remain profitable even when taking into account the provisional anti-dumping duties. Moreover, other sources of supply were available to them. The Commission thus concluded that users will overall not be disproportionately adversely affected by the measures. Two users (Felix and Sherwin-Williams) were operating at a loss in the TiO₂ segment of the business in the investigation period, together employing around 1 000 people. However, for the reasons explained in recitals (430) and (433) above, the Commission did not consider that their situation will be seriously deteriorated by the imposition of measures. Conversely, if Union producers go out of business, this will eliminate a large part of supply for all the users.

7.3.2. *Other users*

- (436) Several users, user associations and CNCIA made written submissions, in which they claimed that imposition of duties would be against Union interest.
- (437) First, the users claimed that there is a limited number of TiO₂ producers in the Union and their capacities are not sufficient to fulfil the Union demand. Therefore, diverse sources of supply are needed and the presence of Chinese TiO₂ imports on the market is necessary to allow for normal functioning of the market. One user claimed that downstream industries often face periods of extreme shortage of TiO₂, where they were all put under allocation and could receive only limited amount of their demand for TiO₂ from the Union producers. On top of that, it was claimed that Chinese imports will become an essential source of supply to the Union due to plant closures in the Union. They furthermore claimed that anti-dumping duties would eliminate supplies from China and make the users even more vulnerable to supply shortages experienced in 2021/2022.
- (438) The Commission reminded in that regard that the purpose of anti-dumping duties is not to close off the Union market to imports from the country concerned, but rather to tackle unfair market practices and restore the level playing field, precisely allowing for the normal functioning of the market. Even if imports from China would disappear completely, however, there are multiple sources of supply from numerous other third countries, guaranteeing stability of supply. Furthermore, the Union producers demonstrated during the investigation that several investments aimed at capacity expansion are planned, pending normalisation in the market conditions. As concerns supply shortages in 2021 and 2022, the Commission noted that supply issues in those years were caused precisely by the length of supply chains, which were thus heavily disrupted by the shipping crisis. Consequently, it is the loss of capacity in the Union that would potentially worsen any similar supply shortages caused by the shocks to the global economy in the future. The Commission thus dismissed the above arguments as unfounded.

- (439) Second, certain interested parties claimed that price increases of TiO₂ would be bad for general inflation in the Union, and particularly damaging to the important construction sector, as it is a key downstream industry for producers of paints and varnishes. The users claimed that costs in construction sector remain on the rise, and it is hard hit by the economic crisis as it is.
- (440) The Commission noted in that regard that no participants from the construction sector registered as interested parties in this investigation to object to the imposition of duties. Furthermore, no evidence was provided to quantify the effect the imposition of duties would have on the construction sector. The Commission thus dismissed this argument as unfounded.
- (441) Third, several interested parties claimed that users and downstream industries cannot pass on further cost increases to their customers, without providing any supporting evidence. The Commission was thus unable to verify the veracity of this claim. It seems unlikely, however, that in a general inflationary environment, where prices are increasing across the board, users could not increase their prices to offset the minor impact that the anti-dumping duties might have on their cost of production. The Commission thus dismissed this claim.
- (442) Fourth, a number of users have further claimed that they export most of their production (such as ceramics) and, as they rely heavily on TiO₂ in their production, any increase in the cost of TiO₂ resulting from this investigation will put them in a competitive disadvantage compared to their competitors operating outside the Union and increase the risk of offshoring downstream production.
- (443) These users did not, however, provide supporting verifiable information (such as questionnaire replies) which would allow the Commission to determine the weight of Chinese TiO₂ in their cost structure and accurately assess the impact on their performance in the Union. The Commission thus rejected this claim.
- (444) Fifth, several other users, producers of masterbatches, claimed that competitors outside the Union will be able to get Chinese TiO₂ at much lower cost and will be able to sell their products to the Union more competitively. Their product contains over [75–80] % TiO₂, so they claimed that a 50 % price differential will render them totally uncompetitive and may force them to shut down facilities in the Union. Downstream industries will also become less competitive in domestic and export markets.
- (445) The Commission noted in that regard that USA already has anti-dumping duties in place against Chinese TiO₂, while Brazil has initiated an anti-dumping investigation of its own in April 2024. Other markets, therefore, are already taking measures to correct the distortive practices of Chinese dumped imports. The Commission also considered that, even if diversion of trade of TiO₂ from China to other third markets would take place and would make downstream industries less competitive, this would still have a less negative effect on those industries than disappearance of the Union TiO₂ producers, exposing downstream industries to supply shortages and worse supply shocks.

7.4. Conclusion on Union interest

- (446) On the basis of the above, the Commission concluded that there were no compelling reasons to conclude that it was not in the Union interest to impose provisional measures on imports of TiO₂ originating in China at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (447) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (448) Provisional anti-dumping measures should be imposed on imports of TiO₂ originating in country concerned, in accordance with Article 7(2) of the basic Regulation. The Commission concluded that the appropriate level to remove injury should be the dumping margin.
- (449) 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
LB group	39,7 %
Anhui Gold Star group	14,4 %
Other cooperating companies	35,0 %
All other companies	39,7 %

- (450) 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.
- (451) 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.
- (452) 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'.
- (453) 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.
- (454) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, *inter alia*, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

9. REGISTRATION

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

10. INFORMATION AT PROVISIONAL STAGE

- (457) 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 ('pre-disclosure').

(458) One of the sampled exporting producers submitted a comment referring to the method of establishing of the SG&A of a related trader. Contrary to what is suggested by the exporting producer and in line with the Commission standing practice, SG&A of a related trader does not include expenses such as 'Carriage and Duty', 'Warehousing' and 'Insurance' in relation to the dumping calculations for the said exporting producer. In addition, three users, Plastika Kritis SA, Felix, and Munksjö submitted comments on pre-disclosure. The Commission observed that none of those comments concerned the accuracy of the calculations and will therefore consider them together with all other submissions after the publication of the provisional measures.

11. FINAL PROVISIONS

(459) 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.

(460) 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 titanium dioxide, having the chemical formula TiO_2 , in all forms, as titanium oxides or in pigments and preparations based on titanium dioxide, containing a minimum of 80 % by weight of titanium dioxide calculated on the dry matter, having all types of particle sizes, classified under the Chemical Abstracts Service Registry Number (CAS RN) 12065-65-5 and 13463-67-7, currently falling under CN codes ex 2823 00 00 and 3206 11 00 (TARIC codes 2823 00 00 10 and 2823 00 00 30) and originating in 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
LB group:	39,7 %	89CB
— LB GROUP CO., LTD.		
— HENAN BILLIONS ADVANCED MATERIAL CO., LTD.		
— LB LUFENG TITANIUM INDUSTRY CO., LTD.		
— LB SICHUAN TITANIUM INDUSTRY CO., LTD.		
— LB XIANGYANG TITANIUM INDUSTRY CO., LTD.		
Anhui Gold Star group:	14,4 %	89CC
— Anhui Gold Star Titanium Dioxide (Group) Co., Ltd.		
— ANHUI GOLD STAR TITANIUM DIOXIDE TRADING COMPANY LIMITED		
Other cooperating companies listed in Annex	35,0 %	see Annex
All other imports originating in the PRC	39,7 %	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

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2024/1617.
2. Data collected regarding products which entered the EU for consumption not more than 90 days prior to the date of the entry into force of this Regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

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

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, 10 July 2024.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

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

Country	Name	TARIC additional code
People's Republic of China	ANHUI ANNADA TITANIUM INDUSTRY CO., LTD.	89CO
People's Republic of China	CITIC TITANIUM INDUSTRY CO., LTD.	89CP
People's Republic of China	Chongqing Titanium Industry Co., Ltd. of Pangang Group	89CQ
People's Republic of China	GUANGXI BLUESTAR DAHUA CHEMICAL CO., LTD.	89CR
People's Republic of China	GUANGXI JINMAO TITANIUM CO., LTD	89CS
People's Republic of China	GUANGDONG HUIYUN TITANIUM INDUSTRY CORPORATION LIMITED	89CT
People's Republic of China	Guangfeng Titanium Co., Ltd.	89CU
People's Republic of China	Hebei Milson Titanium Dioxide Co., Ltd	89CV
People's Republic of China	Jinan Yuxing Chemical Co., Ltd	89CW
People's Republic of China	KUNMING DONGHAO TITANIUM CO., LTD.	89CX
People's Republic of China	Nanjing Titanium Dioxide Chemical Co., Ltd.	89CY
People's Republic of China	NINGBO XINFU TITANIUM DIOXIDE CO., LTD	89CZ
People's Republic of China	PANZHIHUA DARUI TECHNOLOGY CO., LTD.	89DA
People's Republic of China	PANZHIHUA DONGFANG TITANIUM INDUSTRY CO., LTD.	89DB
People's Republic of China	PANZHIHUA KAIHAO TECHNOLOGY CO., LTD.	89DC
People's Republic of China	Pangang Group Titanium Industry Co., Ltd	89DD
People's Republic of China	SHANDONG XIANGHAI TITANIUM CO., LTD.	89DE
People's Republic of China	SHANDONG DAWN TITANIUM INDUSTRY CO., LTD.	89DF
People's Republic of China	SHANDONG DOGUIDE GROUP CO., LTD.	89DG
People's Republic of China	SHANDONG JINHAI TITANIUM RESOURCES TECHNOLOGY CO., LTD.	89DH
People's Republic of China	Xuzhou Titanium Dioxide Chemical Co., Ltd.	89DI
People's Republic of China	Yibin Tianyuan Haifeng Hetai Co., Ltd	89DJ
People's Republic of China	YUNNAN DAHUTONG TITANIUM INDUSTRY CO., LTD	89DK