

**COMMISSION IMPLEMENTING REGULATION (EU) 2022/1924****of 10 October 2022****imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

**1. PROCEDURE****1.1. Previous investigations and measures in force**

- (1) On 19 December 2002, following a complaint logged by the Union industry, the European Commission ('the Commission') initiated an anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China ('the PRC' or 'China') and Indonesia ('the original investigation') <sup>(2)</sup>. By Regulation (EC) No 435/2004 <sup>(3)</sup>, the Council imposed anti-dumping duties on imports of sodium cyclamate, originating in the PRC and Indonesia ('the original measures').
- (2) The original measures were subsequently subject to two expiry reviews <sup>(4)</sup> pursuant to Article 11(2) of the basic Regulation ('the previous expiry reviews') and to a partial interim review <sup>(5)</sup> pursuant to Article 11(3) of the basic Regulation.
- (3) The original measures applied to all imports of sodium cyclamate originating in the PRC and Indonesia, with the exception of imports of sodium cyclamate produced by Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited (the companies belong to the same group and are further referred to as 'Fang Da'). A zero duty rate was originally determined for these companies as no dumping was found <sup>(6)</sup>.
- (4) In line with the WTO Appellate Body report in case Mexico – Definitive Anti-dumping Measures on Beef and Rice <sup>(7)</sup>, Fang Da was not examined in the previous expiry reviews of the measures as imposed by Regulation (EC) No 435/2004 and was not subject to the measures in force following these reviews.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ C 318, 19.12.2002, p. 7).

<sup>(3)</sup> Council Regulation (EC) No 435/2004 of 8 March 2004 imposing a definitive anti-dumping duty and collecting the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ L 72, 11.3.2004, p. 1).

<sup>(4)</sup> Council Implementing Regulation (EU) No 492/2010 of 3 June 2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 140, 8.6.2010, p. 2) ('the first expiry review'). Commission Implementing Regulation (EU) 2016/1160 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 192, 16.7.2016, p. 49) ('the second expiry review').

<sup>(5)</sup> Council Implementing Regulation (EU) No 398/2012 of 7 May 2012 amending Implementing Regulation (EU) No 492/2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in, inter alia, the People's Republic of China (OJ L 124, 11.5.2012, p. 1).

<sup>(6)</sup> Regulation (EC) No 435/2004.

<sup>(7)</sup> WT/DS295/AB/R, 29 November 2005, AB-2005-6.

- (5) On 12 August 2015, following a complaint lodged by the Union industry, the Commission initiated an anti-dumping investigation concerning imports into the Union of sodium cyclamate originating in the PRC, limited to the Fang Da group <sup>(8)</sup>. By Regulation (EU) 2016/1159 <sup>(9)</sup>, the Commission imposed anti-dumping duties on imports of sodium cyclamate originating in the PRC and produced by Fang Da.
- (6) As a result, the rate of the duty applicable for Indonesia ranged from 0,24 EUR/kg to 0,27 EUR/kg and for the PRC from 0,23 EUR/kg to 1,17 EUR/kg ('the measures in force').

### 1.2. Request for an expiry review

- (7) Following the publication of a notice of impending expiry <sup>(10)</sup> the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (8) The request for a review was lodged on 14 April 2021 by Productos Aditivos S.A. ('the applicant'), the sole manufacturer of sodium cyclamate in the Union and thus representing 100 % of the total Union production of sodium cyclamate. The request for the review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping from the PRC and recurrence of dumping from Indonesia as well as continuation of injury to the Union industry <sup>(11)</sup> caused by imports from the PRC and likelihood of recurrence of injury from Indonesia.
- (9) The applicant requests the expiry review of the measures imposed under both, Regulation (EU) 2016/1159 and Regulation (EU) 2016/1160 <sup>(12)</sup>.

### 1.3. Initiation of an expiry review

- (10) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of the expiry review, on 16 July 2021 the Commission initiated the expiry review with regard to imports into the Union of sodium cyclamate originating in the PRC and Indonesia ('the countries concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(13)</sup> ('the Notice of Initiation').

### 1.4. Review investigation period and period considered

- (11) The investigation of continuation or recurrence of dumping covered the period from 1 July 2020 to 30 June 2021 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2018 to the end of the review investigation period ('the period considered').

### 1.5. Interested parties

- (12) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, the known producers in the countries concerned and the authorities of the countries concerned, known importers and users about the initiation of the expiry review and invited them to participate.

<sup>(8)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China, limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited (OJ C 264, 12.8.2015, p. 32).

<sup>(9)</sup> Commission Implementing Regulation (EU) 2016/1159 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and produced by Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited (OJ L 192, 16.7.2016, p. 23).

<sup>(10)</sup> OJ C 344, 16.10.2020, p. 16.

<sup>(11)</sup> Due to the fact that there is only one producer of sodium cyclamate in the Union, some of the data in this Regulation are presented in ranges or in index form to preserve the confidentiality of the data of the Union producer.

<sup>(12)</sup> Implementing Regulation (EU) 2016/1160.

<sup>(13)</sup> Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ C 284, 16.7.2021, p. 4).

- (13) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Parties did not request a hearing.

#### 1.6. Comments on initiation

- (14) The Commission received comments on initiation from the Government of Indonesia ('GOI'). The GOI claimed that as the anti-dumping duties have been in force since 2004, any injury caused by the imports of the product under review has been fully remedied. Furthermore, it was stated that in case the Union industry was still injured, other factors than imports of the product under review injured the Union industry, including self-inflicted injury, such as mismanagement or consumer preference, which could determine users to prefer imported rather than domestic product and the Commission should investigate these factors.
- (15) The Commission notes that the GOI did not submit any evidence in support of its claim and therefore it was rejected as being unsubstantiated. Thus, the Commission considered that the request provided sufficient evidence that the expiry of the measures would likely result in a continuation and recurrence of dumping and continuation and recurrence of injury, thereby satisfying the requirements set out in Article 11(2) of the basic Regulation. Furthermore, the claims put forward by the GOI, whilst unsubstantiated, were examined in detail in the course of the investigation and are further addressed below.

#### 1.7. Sampling

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

##### 1.7.1. Sampling of importers

- (17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (18) Since only one unrelated importer came forward with the requested information, it was not necessary to sample unrelated importers.

##### 1.7.2. Sampling of exporting producers in the countries concerned

- (19) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC and Indonesia to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Missions of the PRC and Indonesia to the European Union respectively to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (20) None of the exporting producers in the countries concerned provided the requested information and agreed to be included in the sample.

#### 1.8. Replies to the questionnaire

- (21) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC, within the meaning of Article 2(6a)(b) of the basic Regulation, to the Government of the PRC ('GOC').
- (22) The Commission sent links to the questionnaires to the sole Union producer and the unrelated importer that provided the information requested in the Notice of Initiation. The same questionnaires had also been made available online <sup>(14)</sup> on the day of initiation.
- (23) Questionnaire replies were received from the sole Union producer, one unrelated importer and two Union users.

---

<sup>(14)</sup> [https://trade.ec.europa.eu/tdi/case\\_details.cfm?id=2533](https://trade.ec.europa.eu/tdi/case_details.cfm?id=2533)

### 1.9. Verification

- (24) The Commission sought and verified all the information it deemed necessary for the determination of likelihood of continuation and recurrence of dumping and injury and of the Union interest. Verification visits, pursuant to Article 16 of the basic Regulation, were carried out at the premises of the following companies:

#### *Union producer*

— Productos Aditivos S.A., Montcada i Reixac, Spain.

## 2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product under review

- (25) The product under review is the same as in the original investigation and previous expiry reviews, namely sodium cyclamate, currently falling under CN code ex 2929 90 00 (TARIC code 2929 90 00 10) ('the product under review').
- (26) Sodium cyclamate is a commodity product used as a food additive and is widely used as a sweetener by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.
- (27) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. The content of the impurities, determined by the Union legislation, defines the quality of sodium cyclamate. Sodium cyclamate can be found in two different forms: hydrated (HC), with 15 % of moisture; and anhydrous (AC), with a content of up to 1 % of moisture. These two forms of sodium cyclamate have the same main characteristics and uses; they only vary in their degree of sweetness; the HC type is less sweet due to the water content. Prices vary due to the same reason. The AC type is more expensive than the HC form. Both forms should be therefore considered as one product for the purposes of this proceeding.

### 2.2. Product concerned

- (28) Product concerned by this investigation is the product under review originating in the PRC and Indonesia.

### 2.3. Like product

- (29) Similarly to what was established in the original investigation, as well as in the previous expiry reviews, this expiry review investigation confirmed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned;
  - the product produced and sold on the domestic market of the countries concerned; and
  - the product produced and sold in the Union by the Union industry.
- (30) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 3.1. The PRC

#### 3.1.1. Preliminary remarks

- (31) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.

- (32) During the review investigation period, imports of sodium cyclamate from the PRC continued at high levels. According to Comext <sup>(15)</sup>, imports of sodium cyclamate from the PRC accounted for [51 % – 66 %] of the Union market in the review investigation period compared to between 38 % and 45 % on the Union market during the previous expiry review, while for Indonesia between 0 % and 2 % of the Union market in the review investigation period compared to 0 % and 1 % of the Union market during the previous expiry review. In absolute terms, the volumes of dumped imports from the PRC (excluding the imports from the exporter Fang Da) and Indonesia were at similar levels in the current expiry review as compared to the previous expiry review.
- (33) As mentioned in recital 23, none of the exporters/producers from the PRC cooperated in the investigation. Therefore, on 31 August 2021 the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission may apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (34) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping from the PRC were based on facts available, in particular information in the request for review, information obtained from cooperating parties in the course of the investigation (namely, the applicant) and information from other publicly available sources, in particular the Global Trade Atlas ('GTA') <sup>(16)</sup>.
- 3.1.2. *Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of sodium cyclamate originating in the PRC*
- (35) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (36) 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. 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*.
- (37) No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, on 10 June 2022 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.
- (38) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, Thailand could be a possible 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. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a)(a) of the basic Regulation.
- (39) On 8 March 2022, 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 sodium cyclamate. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Argentina, Malaysia and Thailand as possible appropriate representative countries. The Commission received no comments on the First Note.

<sup>(15)</sup> Comext is Eurostat's reference database for detailed statistics on international trade in goods.

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

- (40) On 5 May 2022, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In the Second note, the Commission identified Malaysia as the appropriate representative country and it also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on data of the company Ajinomoto (Malaysia) Berhad ('Ajinomoto Malaysia'), a manufacturer of food, seasoning and synthetic sweeteners in Malaysia. No comments were received.

### 3.1.3. Normal value

- (41) 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'.
- (42) 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'.
- (43) 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 Chinese producers, the application of Article 2(6a) of the basic Regulation was appropriate.

#### 3.1.3.1. Existence of significant distortions

- (44) In the recent investigation concerning acesulfame potassium <sup>(17)</sup> originating in the PRC, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present in the chemical and petrochemical sectors in the PRC. The Commission concluded in that investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.
- (45) In that investigation, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles <sup>(18)</sup>.
- (46) In particular, in the acesulfame potassium investigation the Commission concluded that a substantial degree of ownership by the GOC persisted in the sense of Article 2(6a)(b), first indent of the basic Regulation <sup>(19)</sup>.
- (47) Furthermore, the Commission established that the GOC was also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation <sup>(20)</sup>.

<sup>(17)</sup> Commission Implementing Regulation (EU) 2022/116 of 27 January 2022 imposing a definitive anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 19, 28.1.2021, p. 22).

<sup>(18)</sup> Regulation (EU) 2022/116, recitals 82-88 and 121-122

<sup>(19)</sup> Regulation (EU) 2022/116, recitals 91-92

<sup>(20)</sup> Regulation (EU) 2022/116, recitals 93-94, 96. 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, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. 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. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of sodium cyclamate and the suppliers of their inputs.

- (48) The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs, have an additional distorting effect on the market. The system of planning in the PRC also results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces <sup>(21)</sup>.
- (49) Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC <sup>(22)</sup>.
- (50) In the same vein, the Commission found distortions of wage costs in the chemical sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation <sup>(23)</sup>, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for companies in the PRC <sup>(24)</sup>.
- (51) As in previous investigations concerning the chemical sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review.
- (52) The Commission carried out the analysis on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Commission's report on significant distortions in China <sup>(25)</sup> ('Report'), which relies on publicly available sources.
- (53) The request in this case referred to the Report, in particular to Chapter 16 describing the Chinese chemical sector.
- (54) The Commission further supplemented the information contained in the request with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (55) In the chemical sector, a significant degree of ownership and control by the GOC persists <sup>(26)</sup> in the sense of Article 2(6a)(b), first indent of the basic Regulation. Since there was no cooperation from any Chinese exporters of the product under review, the exact ratio of private and State-owned sodium cyclamate producers could not be further determined.
- (56) However, the Commission established that a number of Chinese sodium cyclamate producers are state-owned, such as the Tianjin North Food Co. Ltd., which is 100 % controlled by the state-owned Tianjin Bohai Light Industry Investment Group Co <sup>(27)</sup>.
- (57) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, during the investigation the Commission established the existence of personal connections between the Chinese Communist Party ('CCP') and companies manufacturing the product under review. To provide an example, in the abovementioned Tianjin North Food Co. Ltd., the Chairman of the Board of Directors simultaneously holds the position of the Secretary of the Company's Party organization <sup>(28)</sup>.

<sup>(21)</sup> Regulation (EU) 2022/116, recitals 97-100.

<sup>(22)</sup> Regulation (EU) 2022/116, recitals 101-104.

<sup>(23)</sup> Regulation (EU) 2022/116, recitals 105-106.

<sup>(24)</sup> Regulation (EU) 2022/116, recitals 107-117.

<sup>(25)</sup> Commission staff working document SWD(2017) 483 final/2, 20.12.2017, available at: [https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

<sup>(26)</sup> See Section 16.2.5 of the Report.

<sup>(27)</sup> See the company's website at: [www.tjbfsp.com](http://www.tjbfsp.com) (accessed on 18 May 2022).

<sup>(28)</sup> See at: [www.news.enorth.com.cn/system/2019/05/13/037219775.shtml](http://www.news.enorth.com.cn/system/2019/05/13/037219775.shtml) (accessed on 18 May 2022).

- (58) Both public and privately owned enterprises in the chemical sector are also subject to policy supervision and guidance. As in any other sector in the PRC, these producers are constrained to host Party-building activities and maintain a close affiliation to the CCP and its ideology. The following examples illustrate the trend of an increasing level of intervention by the GOC also in the sodium cyclamate sector.
- (59) First, the investigation revealed Party-building activities in the Tianjin Bohai Light Industry Group. The company's website, referring to an April 2021 meeting of the Group's Disciplinary Committee, states that 'the Group Company's Disciplinary Committee organized a meeting of the coordination group for the building of Party style, clean government and anti-corruption work, to promote feedback from central inspection and rectification of, to thoroughly implement the key tasks of the Municipal Disciplinary Committee and of the Disciplinary Inspection and Supervision Team of the Municipal SASAC Party Committee in 2021 and to listen to the relevant responsible comrades of the Group Company's Strategic Development Department, Financial Management Department, Operations Management Department, and Compliance Management Department as regards the implementation of the mixed-ownership reform of state-owned enterprises' <sup>(29)</sup>.
- (60) Allegiance to the CCP leadership is confirmed also by the following reference related to the celebrations of the Party's 100<sup>th</sup> anniversary within the Group in July 2021: 'Everyone expressed that it is necessary to unwaveringly listen to the Party's words, be grateful to the Party's, and follow the Party. "I listened to the important speech of the General Secretary at the celebration meeting, and I was very excited. I will always pass on the great spirit of the founding the Party, implement the original intention, shoulder the mission bravely, so as to bring my due contribution to promoting the high-quality development of the Group" said Gao Lei, an outstanding Communist Party member of Boqing Group and deputy director of the Group's Compliance Management Department.' <sup>(30)</sup>
- (61) CCP interferences are not limited to state-owned companies. The investigation has shown that the Party's supervising role and policy guidance role extends also to private companies. An example provides an article published by the administration of the Jianan district <sup>(31)</sup>, concerning the National Xuchang Economic and Technological Development Zone <sup>(32)</sup>: 'The Secretary of the Municipal Party Committee, went to the National Xuchang Economic and Technological Development Zone to investigate the construction of key projects [...] [He] inquired in detail about orders, parts procurement, etc. [...] At the project site of Ruida Food Additives Co., Ltd. with an annual output of 15 000 tons of sodium cyclamate, investors from Tianjin Pharmaceutical Group (SOE) repeatedly praised Xuchang for its good business environment. [The Secretary of the Municipal Party Committee] expressed the hope that Tianjin Pharmaceutical Group will strengthen its investment confidence and take Xuchang as the supporting point. [...] As an advanced manufacturing agglomeration area and a regional economic growth pole, the National Xuchang Economic and Technological Development Zone must thoroughly implement Xi Jinping's economic thought for a new era of socialist economic with Chinese characteristics, fully and accurately implement the new development concept, keep a clear head at all times, and enhance the sense of responsibility and crisis. Based on the new development pattern of "dual circulation", strengthen the planning of key industries and focus on enhancing the development potential.' The direct reference to the privately owned sodium cyclamate producer Xuchang Ruida Food additives, 100 % owned by Ruida Bio-Technology <sup>(33)</sup> <sup>(34)</sup> in the context of CCP's industrial policies which the industrial zone is expected to follow aptly demonstrates the influence of the Party over the business conduct of individual economic operators, irrespective of ownership type.

<sup>(29)</sup> See article on the Group's holding company website: [www.bhqgtz.com/jituanxinwen/jituanxinwen/2021/0412/983.html](http://www.bhqgtz.com/jituanxinwen/jituanxinwen/2021/0412/983.html) (accessed on 18 May 2022).

<sup>(30)</sup> See article on the Group's holding company website at: [www.bhqgtz.com/jituanxinwen/jituanxinwen/2021/0705/1055.html](http://www.bhqgtz.com/jituanxinwen/jituanxinwen/2021/0705/1055.html) (accessed on 18 May 2022).

<sup>(31)</sup> See at: [www.jianan.gov.cn/jrja/001006/20181228/936cda63-979e-4778-8be8-64fd8e5de48d.html](http://www.jianan.gov.cn/jrja/001006/20181228/936cda63-979e-4778-8be8-64fd8e5de48d.html) (accessed on 19 May 2022).

<sup>(32)</sup> See at: [www.gjxcjkq.xuchang.gov.cn/dwzwn/044006/20120222/052f3659-8118-4505-9ad9-9eeb5f565f28.html](http://www.gjxcjkq.xuchang.gov.cn/dwzwn/044006/20120222/052f3659-8118-4505-9ad9-9eeb5f565f28.html)

<sup>(33)</sup> See at: [www.qixin.com/company/0987a693-1b64-40c5-abb2-f8a59f211ab3](http://www.qixin.com/company/0987a693-1b64-40c5-abb2-f8a59f211ab3) (accessed on 19 May 2022).

<sup>(34)</sup> See at: <https://www.strategic-electrical.com/h020190916/c7d31162-874d-4712-8d55-fe6bc6d2f30b.html> (accessed on 19 May 2022)



- (62) Further, it was established that policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sodium cyclamate sector. Food additives, such as the product under review, are considered essential for food safety policy and are accordingly reflected in the 13<sup>th</sup> Five Years Plan on Food Technological Innovation<sup>(35)</sup>. Chemical synthetic sweeteners are further listed in the 2019 version of the Guiding Catalogue for industry structural adjustment<sup>(36)</sup> and are therefore subject to the respective government policies in place.
- (63) The State interferes also in markets of inputs used for the production of sodium cyclamate, in particular the electricity markets. While electricity is one of the main inputs in the manufacture of sodium cyclamate, the prices of electricity are not market-based in the PRC and are also affected by significant distortions (through central price-setting, price differentiation and in direct power purchase practices), as established in the Report<sup>(37)</sup>.
- (64) While the energy market in China has undergone a number of changes and reforms, some prices relevant for the energy system are still not market-based. The government recognises that the prices are still largely controlled by the State: 'The current electricity price management is still based on government prices. Price adjustments often lag behind changes in costs and it is difficult to timely and reasonably reflect the electricity usage costs [...] An effective competitive mechanism for the sale of electricity has not yet been established, market transactions between electricity generation enterprises and users are limited and it is difficult to involve the decisive role of the market in the allocation of resources'<sup>(38)</sup>.
- (65) This State-induced market weakness is at the origin of further attempts to manage the market, which is reflected in a number of subsequent administrative documents. For example, in November 2020, the NDRC released the *Notice on promoting the signing of mid to long-term 2021 electricity contracts*<sup>(39)</sup>.
- (66) The document instructs 'the competent departments of local governments [...] to strive to ensure that the contracted electricity volume is not lower than 80 % of the average volume over the past three years', and with regard to pricing to 'establish a deviation settlement mechanism [...] in the local market regulations to deal with deviations between the contracted power volume and the actual implementation' and to '[i]mprove the medium and long-term transaction price mechanism. All localities shall strictly implement the power transmission and distribution prices as approved by the government.'
- (67) The Notice contains also specific provisions on implementation, notably through the establishment of a tracking mechanism for the contract signing progress, or by strengthening contracts monitoring, disclosure and enforcement<sup>(40)</sup>.
- (68) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the chemical sector referred to above in recital 49 would not affect the manufacturers of the product under review.

<sup>(35)</sup> Section IV.3.1 of the plan. See at: [www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzc/gfxwj/gfxwj2017/201706/t20170602\\_133347.html](http://www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzc/gfxwj/gfxwj2017/201706/t20170602_133347.html) (accessed on 19 May 2022).

<sup>(36)</sup> See Section 12 – Light Industry; available at: [www.gov.cn/xinwen/2019-11/06/content\\_5449193.htm](http://www.gov.cn/xinwen/2019-11/06/content_5449193.htm) (accessed on 19 May 2022).

<sup>(37)</sup> Report, Chapter 10, p. 221-230.

<sup>(38)</sup> *Opinions on further deepening the reform of the electric power system*, issued 15 March 2015 by the CCP Central Committee and the State Council (ZhongFa [2015] no. 9 <https://chinaenergyportal.org/en/opinions-of-the-cpc-central-committee-and-the-state-council-on-further-deepening-the-reform-of-the-electric-power-system-zhongfa-2015-no-9/>) (accessed on 8 April 2022).

<sup>(39)</sup> [https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201202\\_1252094.html](https://www.ndrc.gov.cn/xxgk/zcfb/tz/202012/t20201202_1252094.html) (accessed on 8 April 2022)

<sup>(40)</sup> Notably: 'Local government departments shall, in coordination with the National Energy Administration's seconded entity, report to the National Development and Reform Commission and the State Energy Administration in a timely manner on the signing of medium- and long-term contracts as well as on relevant issues, and ensure the connection of medium- and long-term contracts signature with the spot power.'

- (69) The chemical sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital 50. Those distortion affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).
- (70) Moreover, no evidence was submitted in the present investigation demonstrating that the chemical sector 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, as also referred to above in recital 50. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (71) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of the product under review purchase or contract for these inputs, the prices paid (and which are recorded as their costs) are 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; and they are subject to the planning system that applies across all levels of government and sectors.
- (72) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report.
- (73) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (74) No evidence or argument to the contrary has been submitted by the GOC or the producers in the present investigation.
- (75) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed.
- (76) On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (77) 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.

### 3.1.3.2. Representative country

#### 3.1.3.2.1. General remarks

- (78) 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 <sup>(41)</sup>.

<sup>(41)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

- Production of the product under review in that country <sup>(42)</sup>.
- Availability of relevant public data in the representative country.
- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

(79) As explained in recitals 39 and 40, the Commission issued two notes for the file on the sources for the determination of the normal value: the first note on factors of production of 8 March 2022 and the second note on the factors of production of 5 May 2022. These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case, if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

#### 3.1.3.2.2. A level of economic development similar to the PRC

- (80) In the First Note on factors of production, the Commission explained that sodium cyclamate did not appear to be produced in any of the countries with a level of economic development similar to the PRC in accordance with the criteria mentioned in recital 78. It was only produced in the PRC, Indonesia and in the EU.
- (81) As a result, the Commission considered whether there was production of a product in the same general category and/or sector as the product under review. The Commission consequently indicated that it would consider production of sweeteners, flavourings and food additives, which were products in the same general category as sodium cyclamate, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation.
- (82) In the First Note on factors of production, the Commission identified Argentina, Malaysia and Thailand as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of products in the same general category was known to take place.

#### 3.1.3.2.3. Availability of relevant public data in the representative country

- (83) In the First Note the Commission identified one company in Argentina, one company in Malaysia and four companies in Thailand for which financial information for products in the same general category as the product under review was readily available in the Dun and Bradstreet database <sup>(43)</sup> or company's website.
- (84) With regard to Argentina, the Commission found readily available financial information for one producer of products in the same general category as the product under review, Laboratorios Argentinos Farnesa, of products in the same general category as sodium cyclamate, in the Dun and Bradstreet database for 2020 but did not find published financial statements.
- (85) With regard to Malaysia, the Commission found readily available published financial statements for one producer of products in the same general category as the product under review, Ajinomoto Malaysia, for the financial years ending on 31 March 2018, 2019, 2020 and 2021 <sup>(44)</sup> as well as readily available financial data for that company in the Dun and Bradstreet database.
- (86) With regard to Thailand, the Commission found readily available financial data for three producers of products in the same general category, as the product under review, in the Dun and Bradstreet database for one of them the financial year ended on 31 December 2020 and for the other two the financial year ended on 31 March 2021. Furthermore, the Commission also found readily available data for financial year ending on 31 March 2021 for Ajinomoto

<sup>(42)</sup> If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

<sup>(43)</sup> <https://globalfinancials.com/index-admin.html>

<sup>(44)</sup> <https://www.ajinomoto.com.my/investors/annual-reports>

Company (Thailand) Ltd. However, the financial information of Ajinomoto Company (Thailand) Ltd was incorporated in the annual report of the Ajinomoto Group without any separate declaration for the Ajinomoto Company (Thailand). The data for the other three Thai companies was not used as their data either did not cover much of the RIP and or did not make its full audited accounts available on their websites.

- (87) In view of the above, the Commission considers that the financial information available for the Malaysian company Ajinomoto Malaysia would be the most appropriate source to establish the SG&A and profits for the construction of the normal value. The audited financial statements overlapping the review period by 9 months are readily available for Ajinomoto Malaysia and allows a reliable calculation of the SGA and profit margin for the construction of the normal value. Furthermore, Ajinomoto Malaysia is a large company and has significant production of products in the same general category as the product under review. On the other hand, as explained above, the information for Ajinomoto Company (Thailand) was consolidated at group level without any separate declaration of the financial data for Ajinomoto Thailand.
- (88) Therefore, the Commission concluded that the financial data of Ajinomoto Malaysia, which included flavourings and food additives, was appropriate for the purpose of this review.
- (89) The Commission also analysed the imports of the main factors of production into Argentina, Malaysia and Thailand. It was noted that for certain factors of production of sodium cyclamate, significant percentage of the imports into Argentina, Malaysia and Thailand of raw materials originated from China. Chinese quantities were significant for activated carbon for all three countries. For sulfamic acid, the quantities were significant for Argentina and Thailand. For cyclohexylamine quantities were significant for Malaysia and Thailand. In addition to this, quantities are significant for hydrochloric acid for Thailand. This was also the case for other possible representative countries such as Brazil, the Philippines, Peru, Russia, Kazakhstan, Turkey and South Africa for which the Commission was not able to find producers of similar products with readily available financial information. Mexico and Colombia reported reasonable volume of imports of these factors of production from other countries. However, the Commission was not able to find producers of similar products with readily available financial information in these countries.
- (90) Therefore, while the high volume of imports from the PRC for the factors of production mentioned above could have a distorting effect on the price of the imports from other countries, considering that the current investigation is an expiry review pursuant to Article 11(2) on the basic Regulation which does not require a precise dumping margin calculation, but rather to establish the likelihood of continuation or recurrence of dumping, the Commission considered that in this case it can use the import price from other countries following the methodology stated in recital 100 despite the high volume of imports from the PRC.
- (91) In the light of the above considerations, the Commission informed the interested parties with the Second Note that it intends to use Malaysia as an appropriate representative country and the Ajinomoto (Malaysia) Berhad, in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (92) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country and of Ajinomoto (Malaysia) Berhad as producer in the representative country. No comments were received.

#### 3.1.3.2.4. Level of social and environmental protection

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

## 3.1.3.2.5. Conclusion

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

## 3.1.3.3. Sources used to establish undistorted costs

- (95) 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 review 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.
- (96) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Institute of Labour Market Information and Analysis (ILMIA) <sup>(45)</sup> for establishing undistorted costs of labour, electricity price information published by the electricity company Tenaga Nasional Berhad (TNB) in its website <sup>(46)</sup> for electricity costs. For gas price statistics it would use data published by the Malaysian Energy Commission (Suruhanjaya Tenaga) in its website <sup>(47)</sup> in its regular press releases.

## 3.1.3.3.1. Undistorted costs and benchmarks

## 3.1.3.3.1.1. Factors of production

- (97) Considering all the information based on the request and subsequent information submitted by the applicant and collected during the verification visit, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

**Factors of production of sodium cyclamate**

Factor of Production	Commodity Code in Malaysia	Undistorted value	Unit of measurement
<b>Raw materials</b>			
Hydrochloric Acid	28061000 28061010 28061020	3,29 CNY	kg
Sulfamic Acid	28111920	7,09 CNY	kg
Cyclohexylamine	29213000	26,97 CNY	kg
Sodium Hydroxide	28151200	1,15 CNY	kg
Activated Charcoal (Carbon)	38021000	18,89 CNY	kg
<b>Labour</b>			
Direct and indirect labour in the manufacturing sector	[N/A]	53,6 CNY	Per hours
<b>Energy</b>			
Electricity	[N/A]	0,54 CNY	kWh electricity
Gas	[N/A]	0,13 CNY	kWh gas

<sup>(45)</sup> <https://www.ilmia.gov.my/index.php/my/labour-cost>

<sup>(46)</sup> <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>  
[https://www.tnb.com.my/assets/files/Tariff\\_Rate\\_Final\\_01.Jan.2014.pdf](https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf)

<sup>(47)</sup> <https://www.st.gov.my>

- (98) The Commission also included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The methodology to establish this amount is duly explained in recital 106.

#### **Raw materials**

- (99) The cost structure of sodium cyclamate is mainly determined by the costs of the raw materials, i.e. various chemicals, as well as energy.
- (100) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council <sup>(48)</sup>. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recitals 44-77 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the PRC as well as non-WTO Members, the imports from other third countries remained representative.
- (101) Normally, domestic transport prices should also be added to these import prices. However, considering the finding in recital 114 as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence of the dumping margin.

#### **Labour**

- (102) The Commission used the statistics published by the Institute of Labour Market Information and Analysis (ILMIA) <sup>(49)</sup> in Malaysia to determine the wages in Malaysia by using the information for average labour cost per employee in the manufacturing sector for the investigation period.

#### **Electricity**

- (103) Prices for electricity for companies (industrial users) in Malaysia are published by the electricity company Tenaga Nasional Berhad (TNB) on its website <sup>(50)</sup>. The most recent rates were published on 1 January 2014 and were still applicable in the RIP. In order to establish the electricity cost per kWh, the Commission used the rate of tariff E1 applicable to medium voltage general industrial tariff, which was considered to be appropriate for the sodium cyclamate industry.

#### **Natural gas**

- (104) The price of natural gas for companies (industrial users) in Malaysia is published by Malaysian Energy Commission (Suruhanjaya Tenaga) on its website <sup>(51)</sup> in its regular press releases. The Commission used the data of the average industrial gas prices converted to kWh covering the RIP.

<sup>(48)</sup> 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).

<sup>(49)</sup> <https://www.ilmia.gov.my/index.php/my/labour-cost>

<sup>(50)</sup> <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>  
[https://www.tnb.com.my/assets/files/Tariff\\_Rate\\_Final\\_01.Jan.2014.pdf](https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf)

<sup>(51)</sup> <https://www.st.gov.my>

#### 3.1.3.3.1.2. Manufacturing overhead costs, SG&A, profits and depreciation

- (105) 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.
- (106) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data included in the review request, the Commission established the ratio of manufacturing overheads to the total manufacturing costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.
- (107) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial year data ending on 31 March 2020 for Ajinomoto Malaysia. The Commission made this data available to interested parties in the Second Note.

#### 3.1.3.4. Calculation of the normal value

- (108) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (109) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of sodium cyclamate. These consumption ratios provided by the applicant were verified during the verification. The Commission multiplied the consumption ratios by the undistorted costs per unit observed in the representative country Malaysia.
- (110) Once the undistorted manufacturing costs were established, the Commission added the manufacturing overheads, SG&A and profit. Manufacturing overheads were determined based on data provided by the applicant in the review request. SG&A and profit were determined based on the financial statements of Ajinomoto Malaysia) for the year ended March 2021 as reported in the company's audited accounts <sup>(32)</sup>. The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total [2 % – 4 %] of the direct costs of manufacturing,
  - SG&A, which accounted for 34,7 % of the Costs of Goods Sold ('COGS') of Ajinomoto Malaysia, and
  - Profits, which amounted to 19,8 % of the COGS as achieved by Ajinomoto Malaysia.
- (111) 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.

#### 3.1.4. Export price

- (112) In the absence of cooperation by Chinese producers, the export price was determined based on CIF Comext database (Eurostat) adjusted to ex-works level. Thus, the CIF price was reduced by the (sea) freight, insurance cost and domestic transport cost.

#### 3.1.5. Comparison

- (113) The Commission compared the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation with the export price as established above.

---

<sup>(32)</sup> [www.ajinomoto.com.my](http://www.ajinomoto.com.my).

### 3.1.6. *Dumping margin*

- (114) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, was higher than 100 %. It was therefore concluded that dumping continued during the review investigation period.

## 3.2. **Indonesia**

### 3.2.1. *Preliminary remarks*

- (115) During the review investigation period, imports of sodium cyclamate from Indonesia virtually disappeared and therefore this negligible volume could not form the basis for the findings of a continuation of dumping. The Commission analysed the likelihood of recurrence of dumping in the next section.

## 4. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

### 4.1. **The PRC**

- (116) Further to the finding of the existence of dumping during the review investigation period as stated in recital 114, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping should the measures be repealed with regard to imports from the PRC.
- (117) As a consequence of the non-cooperation of exporting producers/producers in the PRC, the Commission based its assessment on the facts available in accordance with Article 18 of the basic Regulation, namely on findings of the previous expiry review mentioned in recital 5, on information provided in the request for review, readily available information, and GTA. The following elements were analysed: the production capacity and spare capacity in the PRC, the attractiveness of the Union market, export prices to third country markets, and possible absorption capacity of third country markets.

#### 4.1.1. *Production capacity and spare capacity in the PRC*

- (118) In the absence of cooperation from the Chinese exporters/producers, the Commission had to resort to its own research, the data collected in the previous expiry reviews, data available in the request for the review and to the statistics. The Chinese production capacity has been maintained at 75 000-80 000 tonnes per year in the last 10 years <sup>(53)</sup>.
- (119) The Commission was not able to find readily available information regarding the demand in the PRC of sodium cyclamate. Based on GTA, Chinese exports to third countries amounted to around 23 000 tonnes per year during the review investigation period. The spare capacity of the cooperating exporting producer in the anti-dumping investigation carried out in 2016 <sup>(54)</sup> was [5 % -15 %]. This is a conservative approach as it is unlikely that country-wide capacity utilisation would be this high. Based on this, in the absence of any other available information, even if Chinese capacity utilisation would be this high, the Commission considered that the Chinese spare capacity was [5 % - 15 %] or [3 750 - 12 000] which is [1,05 - 2,5] times higher than the total demand in the Union.

#### 4.1.2. *Attractiveness of the Union market and export prices to third country markets*

- (120) The attractiveness of the Union market for Chinese exports was apparent given their continuing and massive presence even with anti-dumping measures – reaching [51 % - 66 %] of the Union market share during the RIP as mentioned in table 3.
- (121) Furthermore, the Commission examined whether it is likely that Chinese exporting producers would increase even more their export sales to the Union at dumped prices should measures be allowed to lapse. Therefore, the Commission examined the price levels of the Chinese exporting producers to the Union as compared to other third country markets.

<sup>(53)</sup> Fine Chemicals Industry N.4 report, Sinolink Securities 18 December 2019 P.12. <http://www.invest-data.com/eWebEditor/uploadfile/2019122015272136364446.pdf>

<sup>(54)</sup> Implementing Regulation (EU) 2016/1159.



(122) In the absence of cooperation, the Commission used GTA. It was found that the average sales price of the Union industry ([1 807 – 2 650] EUR/tonne) was higher than the average export price from the PRC to third countries during the review investigation period (1 373 EUR/tonne). Therefore, there would be an economic incentive for the Chinese exporting producers to shift exports from third countries to the Union, should the measures lapse, as the Union market is attractive. In such case the Chinese producers would be able to export to the Union at prices higher than those to other third country markets but still below the Union industry's prices.

#### 4.1.3. Possible absorption capacity of third country markets

(123) As already indicated in the Regulation (EU) 2016/1160, sodium cyclamate is prohibited for use in food, beverage and pharmaceutical products in a number of large third country markets, including United States. There were no indications in the file that point towards an expected growth of other third country markets for sodium cyclamate, nor was there any indication in the file of the size of the Chinese domestic market and the expected growth thereof.

(124) Therefore, it is estimated that the absorption capacity of markets other than the Union market is rather low and hence, the Union would be an attractive market, should the measures be allowed to lapse.

#### 4.1.4. Conclusion on the likelihood of continuation of dumping

(125) Based on the above-mentioned spare capacity in the PRC, the attractiveness of the Union market for the Chinese exporting producers as evidence by the third country export prices and the low absorption capacity of other markets, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of dumped exports.

(126) In view of its findings on the continuation of dumping during the RIP and on the likely development of exports should the measures lapse as explained in recital 125, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from the PRC would result in the continuation of dumping.

## 4.2. Indonesia

(127) The Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of recurrence of dumping, should the measures be repealed. The following elements were analysed: the production capacity and spare capacity in Indonesia, attractiveness of the Union market and export prices to third country markets, as well as possible absorption capacity of third country markets.

(128) As mentioned in recital 20, none of the producers from Indonesia cooperated in the investigation. Therefore, the Commission informed the authorities of Indonesia that due to the absence of cooperation, the Commission may apply Article 18 of the basic Regulation concerning the findings with regard to the exporting producers in Indonesia. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.

(129) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of recurrence of dumping were based on facts available, including information in the request for the review, information obtained from cooperating parties in the course of the review investigation, import-export statistics and other readily available information.

#### 4.2.1. Production capacity and spare capacity in Indonesia

(130) In the absence of cooperation from Indonesia, the Commission had to resort to the data collected in the previous expiry reviews, data available in the request for the review and GTA. Based on the information available for one Indonesian exporting producer, the Indonesian capacity was estimated in the second expiry review to be at least 10 000 tonnes<sup>(55)</sup>. According to the request for the review, production capacity in Indonesia remains the same.

<sup>(55)</sup> Implementing Regulation (EU) 2016/1160, recital 61.

Based on GTA, it could be established that Indonesian exports to third countries amounted to around 2 500 tonnes during the review investigation period. On this basis, the free capacity of Indonesia for its domestic market and the Union market can be estimated at 7 500 tonnes. This estimate can be assumed to be conservative given that in the first expiry review, the total Indonesian capacity was estimated to be 18 000 tonnes in 2008.

- (131) As there is no data available regarding domestic sales by the Indonesian producers, the free (available) capacity that could be directed towards the Union market can only be roughly estimated. In the second expiry review, domestic sales by the Indonesian companies were estimated at 2 000 tonnes<sup>(56)</sup>, which on the current capacity estimate of the Indonesian producers would still leave a free capacity of 5 500 tonnes for the Union market. This would account for more than [115 % – 154 %] of the Union consumption during the review investigation period. Therefore, it can be concluded that there is a substantial spare capacity in Indonesia to increase sales to the Union market significantly in the event that the measures in force are allowed to expire.

#### 4.2.2. *Attractiveness of the Union market and export prices to third country markets*

- (132) Based on the questionnaire reply of the Union producer and the GTA statistics, the average sales price of the Union industry ([1 807 – 2 650] EUR/tonne) was higher than the average export price from Indonesia to third countries during the review investigation period (1 526 EUR/tonne). Therefore, there would be an economic incentive for the Indonesian exporting producers to shift exports from third countries to the Union, should the measures lapse. In such case they would be able to export to the Union at prices higher than those to other third country markets but still below the Union industry's prices.
- (133) Furthermore, in order to have an indication of the likely prices to the Union in the absence of measures, the Commission also compared the Indonesian export price to third countries with the Indonesian normal value.
- (134) In the absence of cooperation from Indonesia, the Commission determined the normal value based on the information provided in the request for the expiry review and other readily available information. In the request, the normal value was constructed on the basis of the cost components of the Union producer such as raw materials, labour, energy and water, maintenance, depreciation and overheads. The total costs thus calculated were increased by a profit. The Commission adjusted the cost components for inflation between the period of reference used in the request for the review (i.e. 2020) and the review investigation period. In addition, the Commission adjusted raw material and labour costs based on readily available information.
- (135) In the absence of cooperation by exporting producers from Indonesia, the Commission used other information available to establish the export price. Indonesian export statistics available in GTA were used to establish export prices. The average export price to all third countries was used. The FOB price from the GTA was reduced by the domestic transport cost<sup>(57)</sup> to adjust it to the ex-works level.
- (136) The Commission compared the constructed normal value and the export price on an ex-works basis.
- (137) On this basis, the price difference found as a percentage of the CIF frontier price, was 29,6 %, which was higher than the highest dumping margin established in the original investigation (18,1 %).
- (138) This suggest that if the measures lapse the dumping margin would likely be higher than in the original investigation.

<sup>(56)</sup> Implementing Regulation (EU) 2016/1160, recital 62.

<sup>(57)</sup> In the absence of more precise information, this adjustment was made using the same ratio between the FOB and EXW prices as in the last expiry review.

#### 4.2.3. Possible absorption capacity of third country markets

- (139) As mentioned in recital 131, the estimated free capacity of sodium cyclamate in Indonesia is 5 500 tonnes, more than twice the total volume of exports from Indonesia to third countries during the review investigation period. Throughout the period considered export to third countries decreased by 25 % and there were no indications pointing towards an expected growth of third country markets for sodium cyclamate (nor was there any indication of the expected growth of the Indonesian domestic market). In this respect it should also be noted that, as mentioned in recital 123, sodium cyclamate is prohibited for use in several large third country markets. On this basis, it is considered that the absorption capacity of third country markets is rather low and hence, the Union would be an attractive market, should measures be repealed.

#### 4.2.4. Conclusion

- (140) In view of the assessment made in recitals 130 to 139, in particular the significant spare capacity of Indonesian exporters, the low absorption capacity of third country markets and high sales prices in the Union compared to third markets, the Commission concluded that dumped imports from Indonesia are likely to recur if the measures in force were allowed to lapse.

### 5. INJURY

#### 5.1. Definition of the Union industry and Union production

- (141) The like product was manufactured by one producer in the Union during the period considered. This producer constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (142) The total Union production during the review investigation period was established at [1 462 – 1 827] tonnes.

#### 5.2. Union consumption

- (143) Sodium cyclamate is produced only in the Union, the PRC and Indonesia. The Commission established the Union consumption on the basis of the Union industry's sales volume on the Union market plus the volume of imports from the PRC and Indonesia, based on Eurostat.
- (144) Union consumption developed as follows:

Table 2

#### Union consumption (tonnes)

	2018	2019	2020	Review Investigation period
Total Union consumption	[3 629 – 4 838]	[3 564 – 4 752]	[4 001 – 5 335]	[3 583 – 4 778]
<i>Index (FY2018 = 100)</i>	100	98	110	99
Captive market	[22 – 29]	[23 – 30]	[13 – 17]	[16 – 22]
<i>Index (FY2018 = 100)</i>	100	104	59	76
Free market	[3 607 – 4 809]	[3 541 – 4 722]	[3 988 – 5 318]	[3 567 – 4 756]
<i>Index (FY2018 = 100)</i>	100	98	111	99
Captive consumption v free market consumption	0,60 %	0,64 %	0,32 %	0,46 %

Source: Eurostat and Questionnaire reply of the Union producer

- (145) The Union consumption of sodium cyclamate on the free market was rather stable between 2018 and 2019. It increased during 2020 due to COVID-19 which caused companies to increase their stocks, in particular during the first half of the year. During the review investigation period, Union consumption returned to the level of 2018.
- (146) There is also a very small captive consumption in the Union representing less than 0,7 % of the consumption of the free market during the entire period considered. The captive consumption decreased by 24 % over the period considered.

### 5.3. Imports from the countries concerned

#### 5.3.1. Volume and market share of the imports from the countries concerned

- (147) The Commission established the volume of imports on the basis of Eurostat. The market share of the imports was established on the basis of the Eurostat and data provided by the Union industry.
- (148) Imports into the Union from the countries concerned developed as follows:

Table 3

#### Import volume (tonnes) and market share

	2018	2019	2020	Review Investigation period
Volume of imports from the PRC (tonnes)	1 371	1 472	2 402	2 370
<i>Index (FY2018 = 100)</i>	100	107	175	173
Market share	[29 % – 38 %]	[32 % – 41 %]	[46 % – 60 %]	[51 % – 66 %]
<i>Index (FY2018 = 100)</i>	100	109	158	175
Volume of imports from Indonesia (tonnes)	113	19	24	5
<i>Index (FY2018 = 100)</i>	100	17	21	4
Market share	[2,3 % – 3,1 %]	[0,4 % – 0,5 %]	[0,4 % – 0,6 %]	[0,11 % – 0,14 %]
<i>Index (FY2018 = 100)</i>	100	17	19	4

Source: Eurostat and Questionnaire reply of the Union producer

- (149) The volume of imports from the PRC increased significantly by 73 % in the review investigation period as compared to the beginning of the period considered.
- (150) The volume of imports from Indonesia decreased significantly in the review investigation period as compared to the beginning of the period considered and were negligible in the review investigation period.
- (151) The market share of imports from the PRC increased by 75 % in the review investigation period as compared to the beginning of the period considered. The Commission observed that the market share of the imports from the PRC increased at the expense of the sales volume and market share of the Union industry as described in recitals 168 to 170.

#### 5.3.2. Inward processing system

- (152) Sodium cyclamate was imported from the PRC under the normal regime as well as under the inward processing system. As concerns Indonesia, sodium cyclamate was imported only under the normal regime.

(153) The imports from the PRC under the normal regime and under inward processing system developed as follows:

Table 4

**Import volume (tonnes) from the PRC under the normal regime and inward processing system**

	2018	2019	2020	Review Investigation period
Volume of imports from the PRC under the normal regime	1 206	1 204	2 157	2 116
<i>Index (FY2018 = 100)</i>	100	100	179	175
Market share	[26 % – 33 %]	[26 % – 34 %]	[41 % – 54 %]	[45 % – 59 %]
<i>Index (FY2018 = 100)</i>	100	102	162	177
Volume of imports from the PRC under the inward processing regime	166	268	246	254
<i>Index (FY2018 = 100)</i>	100	162	148	153
Market share	[2 % – 6 %]	[3 % – 10 %]	[3 % – 8 %]	[3 % – 10 %]
<i>Index (FY2018 = 100)</i>	100	165	134	155

Source: Eurostat and Questionnaire reply of the Union producer

(154) 12 % of total imports from the PRC were imported via inward processing system in the review investigation period. Their volume increased by 53 % over the period considered.

5.3.3. *Prices of the imports from the countries concerned and price undercutting*

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

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

Table 5

**Import prices (EUR/tonne)**

	2018	2019	2020	Review Investigation period
The PRC	1 901	1 889	1 678	1 608
<i>Index (FY2018 = 100)</i>	100	99	88	85
Indonesia	1 907	1 864	1 750	2 012
<i>Index (FY2018 = 100)</i>	100	98	92	105

Source: Eurostat (without imports under inward processing)

(157) The import price from the PRC had a decreasing trend of the period considered and decreased by 15 % in the review investigation period as compared to the beginning of the period considered.

(158) The import price from Indonesia decreased by 8 % between 2018 and 2020. For the review investigation period, the Commission notes that the volume of imports from Indonesia were negligible, and therefore, their price cannot be considered representative.

- (159) In view of the non-cooperation of the Chinese and Indonesian exporting producers as stated in recitals 33 and 128, the Commission determined the price undercutting during the review investigation period by comparing the weighted average sales price of the sole Union producer charged to unrelated customers in the Union market, adjusted to an ex-works level and the weighted average export prices from 14(6) database, including the anti-dumping duty, with appropriate adjustments for the post-importation costs. Regarding the imports from the PRC, the price of the volumes of sodium cyclamate imported under the inward processing system were not taken into account as these volumes are not released in free circulation into the Union market.
- (160) The result of the comparison was expressed as a percentage of the sole Union producers' turnover during the review investigation period. For the PRC, it showed undercutting margin of [17 % – 26 %].
- (161) As explained in recital 150, the volume of imports from Indonesia were negligible and therefore no undercutting margin was calculated for Indonesia.

#### 5.4. Imports from third countries other than the PRC and Indonesia

- (162) The imports of sodium cyclamate from third countries other than the PRC and Indonesia represent a market share of 1 to 8 % over the period considered. As sodium cyclamate is produced only in the PRC, in Indonesia and in the Union, the Commission considered that these imports were wrongly classified as sodium cyclamate, or their origin was wrongly declared. For this reason, the Commission did not consider these imports further in its injury analysis.

#### 5.5. Economic situation of the Union industry

##### 5.5.1. General remarks

- (163) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

##### 5.5.2. Production, production capacity and capacity utilisation

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

Table 6

#### Production, production capacity and capacity utilisation

	2018	2019	2020	Review Investigation period
Production volume (tonnes)	[2 343 – 2 928]	[2 184 – 2 730]	[2 147 – 2 684]	[1 462 – 1 827]
<i>Index (FY2018 = 100)</i>	100	93	92	62
Production capacity (tonnes)	[4 000 – 5 000]	[4 000 – 5 000]	[4 000 – 5 000]	[4 000 – 5 000]
<i>Index (FY2018 = 100)</i>	100	100	100	100
Capacity utilisation	[44 % – 70 %]	[41 % – 66 %]	[40 % – 64 %]	[27 % – 44 %]
<i>Index (FY2018 = 100)</i>	100	93	92	62

Source: Questionnaire reply of the Union producer

- (165) The production volume of the Union industry decreased significantly by 38 % during the period considered, in line with the decrease in sales described in recitals 168 to 170.

- (166) In view of decreasing sales, the Union industry had no incentive to expand capacity. Therefore, the production capacity of the Union industry was maintained at the same level during the period considered.
- (167) The capacity utilisation decreased in line with decrease of the annual production volume described in recital 165, by 38 %.

#### 5.5.3. Sales volume and market share

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

Table 7

#### Sales volume (tonnes) and market share

	2018	2019	2020	Review Investigation period
Total sales volume on the Union market	[2 145 – 2 776]	[2 077 – 2 689]	[1 705 – 2 206]	[1 350 – 1 747]
Index (FY2018 = 100)	100	97	79	63
Market share	[57 % – 66 %]	[56 % – 65 %]	[41 % – 48 %]	[36 % – 42 %]
Index (FY2018 = 100)	100	99	72	64

Source: Questionnaire reply of the Union producer

- (169) The sales volume of the Union industry had a decreasing trend during the whole period considered. Overall, the sales volume decreased significantly by 37 %.
- (170) The market share of the Union industry also decreased significantly by 36 % during the period considered in the favour of the Chinese imports as described in recital 149.

#### 5.5.4. Growth

- (171) As stated above, while the Union consumption in the free market remained stable over the period considered, the sales volume of the Union industry decreased significantly, by 37 %, which translated into a loss of market share of 36 %.

#### 5.5.5. Employment and productivity

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

Table 8

#### Employment and productivity

	2018	2019	2020	Review Investigation period
Number of employees	[15 – 22]	[15 – 22]	[15 – 22]	[15 – 22]
Index (FY2018 = 100)	100	100	100	100
Productivity (tonnes/employee)	[119 – 152]	[111 – 141]	[109 – 139]	[74 – 95]
Index (FY2018 = 100)	100	93	92	62

Source: Questionnaire reply of the Union producer

- (173) From 2018 to the end of the investigation period, the Union industry maintained constant its number of employees.
- (174) At the same time, in line with the decrease in production volume, the productivity decreased by 38 % of the same period.

#### 5.5.6. Magnitude of the dumping margin and recovery from past dumping

- (175) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the continued imports of significant volume of sodium cyclamate at dumped prices of imports from Chinese producers.
- (176) Continuous unfair pricing by exporters from the PRC made it also impossible for the Union industry to recover from the past dumping practices.

#### 5.5.7. Prices and factors affecting prices

- (177) The weighted average unit sales prices of the sole Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 9

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

	2018	2019	2020	Review Investigation period
Average unit sales price in the Union	[1 749 – 2 565]	[1 797 – 2 636]	[1 817 – 2 664]	[1 807 – 2 650]
Index (FY2018 = 100)	100	103	104	103
Unit cost of production Index (FY2018 = 100)	100	106	97	115

Source: Questionnaire reply of the Union producer

- (178) The Union industry's average unit sales price to unrelated customers slightly increased by 3 % over the period considered.
- (179) The cost of production fluctuated during the period considered. It first increased by 6 % between 2018 and 2019, and then decreased by 3 % in 2020 as compared to 2018, due to the decrease in the price of several main raw materials. Throughout the review investigation period, the unit cost of production increased by 15 % due to the fixed costs following the significant decrease in the production volume as stated in recital 165.

#### 5.5.8. Labour costs

- (180) The average labour costs of the sole Union producer developed over the period considered as follows:

Table 10

#### Average labour costs per employee

	2018	2019	2020	Review Investigation period
Average labour costs per employee (EUR)	[28 234 – 41 409]	[33 039 – 48 457]	[32 903 – 48 258]	[31 458 – 46 138]
Index (FY2018 = 100)	100	117	117	111

Source: Questionnaire reply of the Union producer



- (181) The Union industry labour costs followed the Spanish law requirements. The average labour costs per employee increased by 11 % over the period considered.

#### 5.5.9. Inventories

- (182) Stock levels of the sole Union producer developed over the period considered as follows:

Table 11

#### Inventories

	2018	2019	2020	Review Investigation period
Closing stocks (tonnes)	[165 – 238]	[115 – 166]	[419 – 606]	[157 – 227]
Index (FY2018 = 100)	100	70	255	95
Closing stocks as a percentage of production	[6 % – 9 %]	[5 % – 7 %]	[17 % – 25 %]	[10 % – 14 %]
Index (FY2018 = 100)	100	75	278	153

Source: Questionnaire reply of the Union producer

- (183) Inventories fluctuated over the period considered. It first decreased by 30 % between 2019 and 2018 and then increased by 155 % in 2020 as compared to 2018. This increased in inventories was due to the fact that the Union industry kept its production volume at almost the same level of the previous year despite the loss in sales volume in order to take advantage of the decrease in the price of raw materials and produce at lower cost of production. Overall, the stocks levels decreased by 5 % over the period considered.

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

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

Table 12

#### Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover) Index (FY2018 = 100)	- 100	- 196	230	- 440
Cash flow (EUR)	[- 203 365; - 67 788]	[- 332 146; - 110 715]	[8 815 – 2 938]	[- 838 886; - 279 629]
Index (FY2018 = 100)	- 100	- 163	104	- 413
Investments (EUR)	[0 – 50 000]	[0 – 50 000]	[0 – 50 000]	[0 – 50 000]
Index (FY2018 = 100)	100	100	100	100
Return on investments	[- 41 %; - 14 %]	[- 90 %; - 30 %]	[22 %; 65 %]	[- 139 %; - 46 %]
Index (FY2018 = 100)	- 100	- 221	261	- 344

Source: Questionnaire reply of the Union producer

- (185) The Commission established the profitability of the sole Union producer 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. Over the period considered the Union industry was loss making, with the exception of 2020 when the unit cost of production temporarily decreased due to the decrease in the price of several raw materials. However, in the RIP the unit cost of production increased to even higher levels than the previous years.
- (186) The net cash flow is the ability of the Union producer to self-finance its activities. The cash flow was negative during the period considered with the exception of 2020 in line with the profitability. The sale of sodium cyclamate does not generate sufficient cash. In order to be able to maintain production of sodium cyclamate on the Union market the sole Union producer is financing its sodium cyclamate activity from the sale of other products.
- (187) In view of the losses incurred during almost the whole period considered and the negative cash flow, the Union industry made low investments.
- (188) The return on investments is the profit in percentage of the net book value of investments. It followed the same trend as the profitability.

#### 5.6. Conclusion on injury

- (189) Despite the measures in force, the dumped imports mainly from China continued in significant volume and increasing trend.
- (190) The Union industry is in a difficult financial situation. Almost all of the indicators showed a negative trend.
- (191) Despite the measures in force, the Union industry lost sales in favour of the Chinese imports at dumped prices, which increased their market share and forced the Union industry to register losses almost the whole period considered.
- (192) Based on the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

### 6. CAUSATION

- (193) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries 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 countries concerned was not attributed to the dumped imports. These factors are: effects of dumped imports, import from third countries, export performance of the Union industry and consumption.

#### 6.1. Effects of the dumped imports

- (194) Regarding the PRC, the investigation revealed that the volume of imports remained significantly above *de minimis* levels during the entire period considered. These imports were found to undercut the Union industry prices by [17 % – 26 %] with anti-dumping duties and [27 % – 36 %] without the anti-dumping duty. Furthermore, as the Union industry is loss-making and given the target profit of 10 % as established during the original investigation <sup>(58)</sup>, Chinese imports are clearly entering the Union at injurious and decreasing prices. Furthermore, the Chinese imports increase their market share significantly to the loss of the Union industry.
- (195) As regards Indonesia, the investigation revealed that the imports were negligible between 2019 and the review investigation period.

<sup>(58)</sup> Commission Regulation (EC) No 1627/2003 of 17 September 2003 imposing a provisional anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ L 232, 18.9.2003, p. 12).

- (196) Considering the above, the Commission concluded that the material injury suffered by the Union industry was caused by the imports from the PRC and it could not have been caused by the imports from Indonesia due to their low volumes.

## 6.2. Effects of other factors

### 6.2.1. Imports from third countries

- (197) As stated in recital 162, sodium cyclamate is produced only in the PRC, in Indonesia and in the Union and therefore there were no imports of sodium cyclamate from other third countries into the Union during the period considered.

### 6.2.2. Export performance of the Union industry

- (198) The volume of exports of the sole Union producer developed over the period considered as follows:

Table 13

#### Export performance of the Union producer

	2018	2019	2020	Review Investigation period
Export volume (tonnes)	[35 – 51]	[32 – 47]	[43 – 64]	[44 – 64]
<i>Index (FY2018 = 100)</i>	100	92	124	126
Average price (EUR/tonne)	[2 739 – 3 652]	[2 695 – 3 593]	[2 797 – 3 729]	[2 684 – 3 579]
<i>Index (FY2018 = 100)</i>	100	98	102	98

Source: Questionnaire reply of the Union producer

- (199) The export volume increased by 26 % over the period considered. However, they remained at low volumes due to the low prices of the Chinese and Indonesian exporters on other markets.
- (200) The average sales prices to third countries were above the average sales prices on the Union market.

### 6.2.3. Consumption

- (201) Despite a stable Union consumption as stated in recital 145, the Chinese imports managed to increase their market share to the detriment of the Union industry.

## 6.3. Conclusion on causation

- (202) Considering the above, the Commission concluded that the material injury suffered by the Union industry was caused by the imports from the PRC.

## 7. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

### 7.1. Likelihood of continuation of injury from the PRC

- (203) The Commission concluded in recital 192 that the Union industry suffered material injury by the dumped imports from the PRC during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by those imports if the measures were allowed to lapse.

- (204) In this respect the following elements were analysed by the Commission: the production volume and spare capacity in PRC, the attractiveness of the Union market for Chinese exporting producers, the likely price levels of imports from the PRC in the absence of anti-dumping measures, and their impact on the Union industry.
- (205) As explained in recitals 116 to 124, based on the spare capacity in the PRC and the high attractiveness of the Union market for Chinese exporting producers, there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of exports.
- (206) Regarding the likely effect of such imports, the Commission examined their likely price levels should measures be allowed to lapse. In this regard, the Commission considered the import price levels during the review investigation period without anti-dumping duty a reasonable indication. On this basis, the Commission established significant undercutting of the Union industry prices of [27 % – 36 %].
- (207) Indeed, Chinese imports have entered the Union at injurious prices throughout the period considered, preventing the Union industry from achieving an appropriate level of profit (10 %) and, in fact, making the industry loss making throughout almost the entire period considered, as noted in recital 185. Those imports not only exerted price pressure on Union prices but also took over volumes from the Union industry by significantly increasing Chinese exporting producers' market share to the detriment of the Union industry.
- (208) Therefore, the Commission concluded that the situation of the Union industry, which was already of material injury, would further deteriorate should the measures be allowed to lapse. Indeed, in the absence of measures, Chinese dumped imports at injurious prices would likely exert further downward pressure on the sales prices in the Union market. The Union industry would very likely be obliged to decrease its sales prices which would lead to further loss of profitability and, in all likelihood, significant losses in the short term.
- (209) Alternatively, any attempt to increase its sales prices to profitable levels on the side of the Union industry would very likely lead to a loss of sales volumes and market share to the low-priced imports. Given the spare capacity in the PRC, Chinese exporting producers would be able to increase their exports in the short term and further gain market share at the expense of the Union industry. The Union industry would very likely lose economies of scale, which would lead to an increase of the unit production cost and consequently cause further decreases in profitability to the Union industry. As a consequence, the viability of the Union industry would be at serious risk.
- (210) In view of the above, the Commission concluded that allowing measures to lapse would in all likelihood result in a significant increase of dumped imports from the PRC at injurious price levels, and therefore further aggravating the injury suffered by the Union industry. As a consequence, the viability of the Union industry would be at serious risk.

## **7.2. Likelihood of recurrence of injury from Indonesia**

- (211) The Commission concluded in recital 192 that the Union industry suffered material injury during the review investigation period. The Commission also concluded in recital 196 that the injury to the Union industry observed during the review investigation period could not have been caused by imports from Indonesia due to their very limited volume present on the Union market. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the dumped imports from Indonesia if the measures against were allowed to lapse.
- (212) In this regard, the Commission examined the production capacity and spare capacity in Indonesia, the attractiveness of the Union market for the Indonesian exporting producers, the likely price levels of imports from Indonesia in the absence of anti-dumping measures, and their impact on the Union industry.

- (213) As explained in recitals 130 to 132, based on the substantial excess capacity of the Indonesian producers, the export prices and the attractiveness of the Union market for Indonesian exporting producers, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of exports.
- (214) The Commission examined the likely price levels of Indonesian imports should measures be allowed to lapse based on Indonesian import price levels during the review investigation period to third countries and their effect on the situation of the Union industry. The Indonesian export price to third countries undercut the Union industry prices by more than 50 %. This shows that, should the measures be allowed to lapse, Indonesian producers would have an incentive to export to the Union and at injurious price levels, increasing the price pressure on the Union industry that would then either lose sales volume or be obliged to decrease their price levels.
- (215) In view of the above findings, namely the presence of spare capacity in Indonesia, the level of Indonesian export prices, the attractiveness of the Union market and the expected price levels of imports from Indonesia in the absence of anti-dumping measures and their impact on the Union industry, is the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from Indonesia at injurious prices and injury caused thereby would be likely to recur.

## 8. UNION INTEREST

- (216) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers/traders and users.
- (217) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (218) On this basis the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and injury for the PRC and of recurrence of dumping and injury for Indonesia, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

### 8.1. Interest of the Union industry

- (219) The investigation established that during almost the whole period considered, despite the existing measures against Indonesia and the PRC, the Union industry remained loss-making and lost production, sales volume and market share in the Union market. During the same period, imports from the PRC remained significant and undercut the Union industry's prices. As explained above, should measures be allowed to lapse, there is a high likelihood that Chinese imports would further increase and Indonesian imports would resume at dumped prices. This would likely lead to further deterioration of the already precarious situation of the Union industry and could ultimately force it to cease the production of sodium cyclamate altogether, resulting in loss of employment and alternative sources of supply in the Union.
- (220) Should measures be maintained, it is expected that the Union industry would be able to increase its prices, production and volume and gradually return to profit.
- (221) The Commission therefore concluded that maintaining the measures in force against the PRC and Indonesia would be in the interest of the Union industry.

### 8.2. Interest of unrelated importers/traders

- (222) One importer submitted a questionnaire reply. It claimed that in view of the limited size of the sodium cyclamate business in its total turnover, it did not have a firm position on the continuation of the anti-dumping measures. It was also stated that main decisive factor for its activity was to have access to a reliable source of supply which could guarantee a high product quality standard. The total activity of this importer was overall profitable.

- (223) In the previous expiry review the importers did not cooperate and it was concluded that given the non-cooperation of the importers, it was reasonable to assume that sodium cyclamate did not represent a major proportion of the importers/traders' turnover and that there were no factors suggesting that importers/traders would be disproportionately affected if measures were to be maintained.
- (224) On these grounds, the Commission concluded that should measures be maintained, the impact on the economic situation of the importers is likely not to be significant.

### 8.3. Interest of users

- (225) Two users only partially cooperated in this investigation. One of these users was buying from both the Union industry and the Chinese exporters and the other only from the Union industry. Both users were profitable and only one of them stated that it was against the continuation of measures.
- (226) In the previous investigation, it was established that in general sodium cyclamate accounted for a low proportion of the cost of production of users and for this reason, the effect of the imposition of the anti-dumping measure was not significant.
- (227) In view of the above observation that in the absence of measures, the Union industry may be forced to cease the production of sodium cyclamate and in view of the existence of only a few producers of sodium cyclamate globally, the measures are likely to benefit users in so far as they preserve the production of sodium cyclamate in the Union and the choice for users to source sodium cyclamate produced by different competing producers.
- (228) On these grounds, the Commission concluded that should the measures be maintained, the impact on the economic situation of these operators is likely not to be significant.

### 8.4. Conclusion on Union interest

- (229) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of sodium cyclamate originating in the PRC and Indonesia.

## 9. ANTI-DUMPING MEASURES

- (230) On the basis of the conclusions reached by the Commission on the likelihood of continuation of dumping and injury for the PRC and the likelihood of recurrence of dumping and injury for Indonesia as well as Union interest, the anti-dumping measures on sodium cyclamate from the PRC and Indonesia should be maintained.
- (231) To minimize 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'.
- (232) 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.
- (233) 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.

- (234) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and Indonesia and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (235) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission <sup>(59)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (236) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(60)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (237) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. Comments were received from the GOI.
- (238) In their comments following disclosure, the GOI claimed that as the measures have been in place since 2004 it revealed that the applicant was seeking for over protection from the Commission and if the applicant was still suffering material injury it meant that the duties were ineffective and therefore irrelevant for the protection of the applicant.
- (239) In response to this claim it is noted that no time limits restrict the duration of the measures as long as the conditions for their imposition or maintenance of the measures are met. Also, in the case at hand the measures are justified as the findings confirmed likelihood of continuation of dumping and injury for the PRC and recurrence of dumping and injury for Indonesia as stated in recitals 116 to 140 and 203 to 215. Furthermore, in the current investigation carried out pursuant to Article 11(2) of the basic Regulation, the Commission cannot change the level of measures and therefore whether the measures in force are effective or ineffective is irrelevant. Therefore, the claims were rejected.
- (240) The GOI also claimed that the use of anti-dumping measures is only justified to provide remedy to the Union industry when it suffers material injury which is caused by dumped imports from the PRC which were significant and not from Indonesia which were negligible.
- (241) The Commission disagrees with this claim. Even if the imports from Indonesia were negligible and therefore could not cause material injury to the Union industry as stated in recital 196, the investigation concluded likelihood of recurrence of dumping and injury from Indonesia as stated in recitals 127 to 140 and 211 to 215. Pursuant to Article 11(2) of the basic Regulation, the measures in force can be extended when the investigation concludes likelihood of recurrence of dumping and injury as well. Therefore, the claim was rejected.

<sup>(59)</sup> European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

<sup>(60)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (242) Furthermore, the GOI stated that as the imports from Indonesia were negligible, it questioned the Commission's decision of the likelihood of recurrence of injury from Indonesia and the Commission's decision to maintain the anti-dumping measures in force for the imports from Indonesia.
- (243) The Commission notes that the GOI did not comment on any element of the analysis of recurrence of dumping and injury presented in recitals 127 to 140 and 211 to 215. Therefore, the claim was rejected as being unsubstantiated.
- (244) The GOI also stated that the Indonesia exporting producers did not cooperate in the current investigation as they were disappointed with the Commission's decision in the first expiry review investigation in 2010 <sup>(61)</sup> when even if the Commission found no dumping for PT Golden Sari it still concluded that dumping continued for a significant part of the Indonesian producers and the Commission still decided to apply anti-dumping measures to this company.
- (245) In an investigation carried out pursuant to Article 11(2) of the basic Regulation, the Commission can only conclude on the continuation or termination of the measures. In such investigation, the Commission cannot change the level of measures even if no dumping is found for one exporter. Therefore, the claim was rejected.
- (246) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of sodium cyclamate, currently falling under CN code ex 2929 90 00 (TARIC code 2929 90 00 10) and originating in the People's Republic of China and in Indonesia.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR per kilogramme)	TARIC additional code
The People's Republic of China	Golden Time Enterprise (Shenzhen) Co. Ltd, Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, People's Republic of China; Golden Time Chemical (Jiangsu) Co., Ltd, No 88 Panyao Road, Nanjing Chemical Industry Park, Nanjing, Jiangsu Province, People's Republic of China	0,23	A473
The People's Republic of China	Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, People's Republic of China	1,17	A471
The People's Republic of China	Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, People's Republic of China	1,17	A472
The People's Republic of China	All other companies	0,26	A999

<sup>(61)</sup> Implementing Regulation (EU) No 492/2010.



Indonesia	PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1- D2, Jalan Pakin No 1, Sunda Kelapa, Jakarta 14440, Indonesia	0,24	A502
Indonesia	All other companies	0,27	A999

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

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 <sup>(62)</sup> the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

#### *Article 2*

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

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

Done at Brussels, 10 October 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

---

<sup>(62)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).