



2024/1040

2.4.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/1040

of 27 March 2024

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

THE EUROPEAN COMMISSION

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 30 March 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of polyethylene terephthalate ('PET') originating in the People's Republic of China ('the country concerned' or 'the PRC') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation')⁽¹⁾. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 14 February 2023 by PET Europe ('the complainant'). The complaint was made on behalf of the Union industry of PET in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting threat of injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) As set out in recitals (3) and (4) of the provisional Regulation, the Commission decided not to register imports of PET originating in the PRC pursuant to Article 14(5) and 14(5a) of the basic Regulation.
- (4) In its comments on the provisional disclosure, the complainant argued that, in recital (3) of the provisional Regulation, the Commission confused the decision on registration and retroactive application. As a reason for not imposing registration, the Commission gave the absence of an increase in imports. The complainant argued that this is a criterion relevant for Article 10(4) (retroactive imposition) and not Article 14(5) of the basic Regulation. The Commission has therefore, in the complainant's view, erred in the application of the basic Regulation.
- (5) It is noted that indeed, Article 14(5) of the basic Regulation does not explicitly make reference to Article 10(4) of the basic Regulation. Article 14(5) does, however, clearly indicate that the purpose of registration of imports is that measures may subsequently be applied against those imports. Therefore, to justify registration of imports under Article 14(5), there has to be sufficient evidence that the conditions of Article 10(4) of the basic Regulation may be met. The complainant's claim is therefore rejected.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

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

1.3. Provisional measures

- (6) In accordance with Article 19a of the basic Regulation, on 31 October 2023, the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. No comments on the accuracy of the calculations were received.
- (7) On 27 November 2023, the Commission imposed provisional anti-dumping duties on imports of PET originating in the PRC by Commission Implementing Regulation (EU) 2023/2659 ⁽³⁾ ('the provisional Regulation').

1.4. Subsequent procedure

- (8) Following the disclosure of the essential facts and considerations on the basis of which provisional anti-dumping measures were imposed ('provisional disclosure'), the complainant, exporting producers and their association, users and an unrelated importer submitted comments.
- (9) The parties who so requested were granted an opportunity to be heard. Hearings took place with Svepol and PET Europe.
- (10) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate. In order to have at its disposal more comprehensive data on the Union's sales prices, cost of production, and profitability in the post-investigation period, the sampled Union producers were requested to provide additional data. All sampled Union producers submitted the requested information.
- (11) After provisional disclosure as well as the final disclosure, UNESDA ⁽⁴⁾, a user association, maintained that the Commission should have terminated the investigation once it became clear that the complaint showed no injury and that it is inaccurate and incomplete with the data on recycled PET (rPET) segment.
- (12) It is recalled that the complaint alleged a threat of injury rather than the existence of material injury and the allegations made in the complaint were confirmed by the subsequent investigation. As set out in recital (204) of the provisional Regulation, for the Commission to impose anti-dumping duties, it is sufficient that the investigation concludes that there is a threat of material injury in accordance with Article 3(9) of the basic Regulation. As set out in recital (15) of the provisional Regulation, the Commission considered the estimated data on the rPET industry as sufficient evidence at the stage of the complaint. Therefore, the claims of UNESDA are rejected.

⁽³⁾ COMMISSION IMPLEMENTING REGULATION (EU) 2023/2659 of 27 November 2023 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in People's Republic of China, (OJ L, 28.11.2023, ELI: http://data.europa.eu/eli/reg_impl/2023/2659/oj).

⁽⁴⁾ European Soft Drinks Industry association (UNESDA); Any reference to UNESDA submissions in this Regulation includes submissions made on behalf of its members Natural Mineral Waters Europe (MNWE), Forum Natürliches Mineralwasser (Austria) ; Belgian Federation of Bottled Water and Soft Drinks Producers -FIEB-VIWF- (Belgium) ; Bulgarian Soft Drinks Association (Bulgaria) ; GIUPPH (Croatia); Czech Soft Drinks Association (Czech Rep); Danish Brewer's Association and Bryggeriforeningen (Denmark); BRF, Maison des Eaux Minérales Naturelles -MEMN- ; Syndicat des Eaux des Sources et des Eaux Minérales Naturelles -SESEMN- (France); Verband Deutscher Mineralbrunnen e.V. -VDM- and Wafg (Germany); Greek Natural Mineral Water Association -SEFYMEN- (Greece); Hungarian Mineral Water, Fruit & Juice Association, (Hungary); Irish Beverage Council -IBEC-(Ireland); Italian Natural Mineral Water Association -MINERACQUA- and ASOBIBE (Italy); Federation of the Luxembourgish Industry, Waters and Non-Alcoholic Beverages -FICEB- (Luxembourg); Dutch Association of Soft Drinks, Waters & Juices -FWS- (Netherlands); Krajowa Izba Gospodarcza (KIGPR), Poland; Águas Minerais e de Nascente de Portugal -APIAM- and PROBEB (Portugal); Romanian Mineral Water Association (APEMIN), Romania ; Slovenian Beverages Association (ZIP), Slovenia; Asociación de Aguas Minerales de España (ANEABE) and ANFABRA (Spain) as well as Danone, Nestle, Coca-Cola Europacific Partners, Refresco, Spadel, Fontecelta, Polska Woda, Sp. Z o.o, and Nałęczów Zdrój.

- (13) UNESDA claimed that the provisional Regulation was adopted in breach of the due procedural rights. UNESDA referred to the fact that the injury data was changed in October 2023 and the decision to impose provisional duties was taken when interested parties could no longer provide comments. UNESDA stated that the users were denied an opportunity to provide comments following the submission of the injury data by the complainant in October 2023. UNESDA reiterated its argument in the response to the final disclosure.
- (14) First, it is noted that the final injury data on macro-economic indicators was only provided in October 2023, as the Commission did a supplementary analysis of the rPET segment, which is very dynamic and concerns more than 50 producers of varying sizes and with frequently changing capacities, processed a series of submissions made by interested parties and conducted an extensive deficiency process with the complainant to arrive at objectively set and representative macro-economic indicators for the entire PET industry, including the rPET segment. Furthermore, users and other interested parties alike were granted ample opportunities to duly exercise their procedural rights throughout the proceedings, including by way of a hearing with the Commission services, numerous written submissions made as late as October 2023 and comments to the provisional Regulation. Moreover, the injury data submitted in October 2023 was reflected in the provisional disclosure, on which all interested parties were requested to comment. Indeed, UNESDA provided comments on this data. The allegation that UNESDA was denied an opportunity to provide comments was therefore considered wrong and unsubstantiated.
- (15) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of PET originating in the PRC ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (16) Parties who so requested were also granted an opportunity to be heard following the final disclosure. Hearing took place with Svepol on 29 February 2024.
- (17) Svepol claimed in its response to the final disclosure that two aspects of the Commission's conduct in this investigation infringed upon Svepol's, and other interested parties', rights of defence.
- (18) First, Svepol contested the release of the General Disclosure Document (GDD) on the evening before the start of the Chinese New Year holiday, despite there being no immediate and pressing procedural time constraint to do so. According to Svepol, the Chinese public holiday period significantly interfered with and limited the ability of Svepol and the exporting producers to exercise their right to be heard and to submit written evidence on the GDD within the timeframe provided by the Commission.
- (19) The Commission recalled that the investigations initiated under Article 5 of the basic Regulation need to be completed within strict legal deadlines prescribed by the basic Regulation which also entail a number of internal and external procedural steps. The Commission observed that in the case at hand the minimum 10 days deadline for making comments on the final disclosure provided for in Article 20(5) of the basic Regulation was duly respected. At the same time, pursuant to the same Article, the deadline shall be set 'due consideration being given to the urgency of the matter'. The setting of the deadline for replies to the GDD by the interested parties has to be viewed against this background.
- (20) Furthermore, the circumstances in which the interested parties might face constraints in respecting deadlines set by the Commission are duly accounted for and extensions to the deadlines, where duly justified, are granted. This was explained in point 9 of the Notice of Investigation which provides that "[r]egarding time limits for the submission of other information specified in the Notice of Initiation, extensions will be limited to 3 days unless exceptional circumstances are demonstrated".⁽⁵⁾ In the present case, Svepol was granted 3-day extension on the basis of the justification provided and in the absence of exceptional circumstances. The Commission proceeded fully in line with the Notice of Initiation and its standard practice. Therefore, the claim that the Commission would have infringed the rights of defence of Svepol or other interested parties was unfounded and had to be rejected.

⁽⁵⁾ OJ C 115, 30.3.2023, p.5.

- (21) Second, Svepol took issue with the fact that meaningful non-confidential summaries of the Union producers' post-IP questionnaires were only made available to interested parties following Svepol's request and 2 months following the submission of the applicable sensitive data by the Union producers. Furthermore, according to Svepol, the fact that interested parties were only provided with the meaningful non-confidential summaries of the sensitive information – which was relied upon and referred to by the Commission in the GDD – four days after the publication of the GDD, necessarily affected interested parties' ability to submit evidence and to comment on the GDD within the timeframe provided by the Commission.
- (22) It is observed that, first, the GDD provided the accurate aggregate data of the sampled Union producers on sales price, cost of production and profitability whereas the meaningful non-confidential summaries of the questionnaire replies only contained indices or ranges on this sensitive and company-specific information. Second, as stated by Svepol, the absence of meaningful summaries was remedied four days after the disclosure of the GDD, leaving Svepol 9 days to consider it and include the relevant observations in their comments on the final disclosure. Third, as set out in recital (20), Svepol was granted a 3-day extension for a reply to the final disclosure. Therefore, since this procedural aspect was remedied without delay, it is not liable to affect the procedural rights of the interested parties in this case and Svepol's arguments had to be rejected accordingly.

1.5. Sampling

- (23) No comments were received concerning sampling. Therefore, the conclusions in recitals (18) to (27) of the provisional Regulation were confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (24) Recital (33) of the provisional Regulation set out the definition of the product concerned. The product under investigation is polyethylene terephthalate ('PET'), having a viscosity of 78 ml/g or higher, according to ISO Standard 1628-5. Further to the determination of viscosity, the viscosity number of PET is measured on a solution of PET in a certain solvent. The ISO standard specifies five different combinations of solvents that can be used for the measurement:
- (a) phenol/1,2-dichlorobenzene (50/50);
 - (b) phenol/1,1,2,2-tetrachloroethane (50/50);
 - (c) phenol/1,1,2,2-tetrachloroethane (60/40);
 - (d) o-chlorophenol;
 - (e) dichloroacetic acid.
- (25) While each of the solvents used might deliver a slightly different viscosity number, mathematical formulas can be used to convert the viscosity number obtained in one solvent to the viscosity number that would have been obtained using another solvent.
- (26) It is noted that under the previously applicable standard DIN 53728, replaced by ISO 1628-5, reference was made solely to the solvent phenol/1,2-dichlorobenzene (50/50), listed under (a) in recital (24) above.
- (27) Therefore, for the sake of clarity, uniform application by the customs authorities of the Member States and consistency with the previous industrial standard, it is further clarified for the purposes of these proceedings that the viscosity of PET shall be measured in or converted to the solvent phenol/1,2-dichlorobenzene (50/50).
- (28) With respect to the product scope, in response to the provisional disclosure, the exporting producer Ceville, supported by the exporting producer INCOM Resources Recovery (Tianjin) Co., Ltd, reiterated its request for exclusion of rPET from the product scope of the investigation, as set out in recital (38) of the provisional Regulation. Both interested parties referred to a different pricing for rPET compared to virgin PET ('vPET'), to the Union sustainability objectives linked to an increase in rPET use and to the fact that there are currently no imports of rPET from the PRC into the Union.

- (29) The product concerned as defined by the Commission covered both imports of vPET and rPET from the PRC, which compete with vPET and rPET produced by the Union industry. The fact that two product types might have different pricing does not justify an exclusion from the scope of an investigation. The Commission found that both types have the same physical, technical and chemical characteristics, that they compete with one another and that there is a degree of interchangeability between vPET and rPET (see, for example, recitals (254) and (293) of the provisional Regulation). These findings are not called into question by a difference in pricing. Therefore, it would be inappropriate and ineffective to exclude rPET from the scope of the investigation. In addition, the allegation that there were no imports of rPET is incorrect. Even if during the investigation period imports of rPET from the PRC were limited, they were present. In any event, as noted above, the Commission concluded that both product types were in competition. Thus, dumped imports of PET from the PRC, irrespective of being rPET or vPET, were found to lead to a threat of injury to the Union PET producers.
- (30) In the absence of any other comments regarding the product scope and the like product, the conclusions reached in recitals (33) to (39) of the provisional Regulation were confirmed.

3. DUMPING

- (31) Following provisional disclosure, one sampled exporting producer, Sanfame Group, and one importer, Svepol, commented on the provisional dumping findings.

3.1. Normal value

- (32) The details of the calculation of the normal value were set out in recitals (40) to (138) of the provisional Regulation.

3.1.1. Existence of significant distortions

- (33) Following the publication of the provisional measures, the Sanfame Group submitted comments on the application of Article 2(6a) of the basic Regulation in the current investigation. Sanfame Group argued that some factors of production to produce PET were partially imported from third countries other than the PRC which are not affected by distortions and that the Commission therefore should have used the actual import prices paid by the producer for the imported raw materials instead of applying a benchmark to such costs, since the actual costs reflected prices that are not distorted as they are driven by market forces.
- (34) The Commission rejected this argument. Although Sanfame group indicated in its questionnaire reply that it imported some of the raw materials used to produce PET from other countries than the PRC, it did not clearly and consistently indicate which part of these costs are sourced from outside the PRC and which of these costs are not subject to distortions. Thus, Sanfame group did not substantiate its claim to take into account actual prices for certain amounts of raw material imported under market conditions by providing the appropriate evidence. Therefore, in the absence of evidence that the imported raw material was used to produce PET for imports to the Union, the Commission decided to use benchmark prices for the entire quantities of raw materials used in the production of the PET and rejected the claim of the company.

3.1.2. Sources used to establish the undistorted SG&A and profit

- (35) Following the publication of the provisional measures, the Sanfame Group and Svepol submitted comments on the Commission's choice to use the data of the company MPI Polyester Industries ("MPI") to determine the benchmark for SG&A and profit in the representative country Malaysia.
- (36) The Sanfame Group and Svepol reiterated their comments to the second note on the sources used for the determination of the normal value. Further to the previous arguments, the Sanfame Group and Svepol argued that the integrated nature of Recron's production made it a more representative proxy than MPI. Svepol also claimed that Recron started its production from paraxylene, similarly to the sampled Chinese producers thereby making Recron's SG&A indicative of that of the Chinese producers.

- (37) In addition, Svepol claimed that the Commission had not substantiated why MPI and Recron's financial data should be treated differently. Svepol argued that contrary to the Commission's provisional conclusions, there was no indication from Recron's website that its main focus was complex derivative polyester products. Furthermore, apart from indicating production capacity, MPI's website did not indicate that its main business in terms of value or cost was PET resin. Rather, the website stated that both the resin plant and the spinning mill were actively managed together. Svepol further argued that it had never heard of MPI before this investigation, whereas Recron was a well-known producer in the industry.
- (38) Further, Svepol claimed that by provisionally concluding that the level of Recron's profit and SG&A was not reasonable, the Commission did not assess the data objectively.
- (39) As the Sanfame Group admitted in its submission, Recron's publicly available information did not allow to precisely determine the relevance of PET compared to the total company turnover. In other words, the readily available data was not specific to the PET business. The Commission sought for the closest readily available proxy, including consolidated information of producer(s) active in, among others, the business covering the product under investigation. While Recron is indeed a large-scale company, it indicated on its website ⁽⁶⁾ to be amongst the world's largest integrated polyester and textile companies with a focus on complex derivative polyester products. MPI, on the other hand, is mainly focused on PET resin manufacturing, as indicated on its website ⁽⁷⁾. The Commission therefore concluded that MPI was the closest readily available proxy and decided not to use the data of Recron. The new argument that the integrated nature of Recron was closer to the nature of the Chinese sampled exporting producers did not change this assessment. As already described, the integration extends also to complex derivative products which are the focus of Recron's activities and which are not part of the product under investigation and therefore the integrated production structure was not of a comparable nature to that of a PET resin manufacturer.
- (40) The Commission therefore confirmed its decision to use the data of MPI for the determination of a reasonable amount of SG&A and profit and its calculation of the normal value.

3.1.3. *Export price*

- (41) The details of the calculation of the export price were set out in recitals (139) to (140) of the provisional Regulation. Since no comments were received, the Commission confirmed its provisional findings.

3.1.4. *Comparison*

- (42) The details concerning the comparison of the normal value and the export price were set out in recitals (141) to (142) of the provisional Regulation. Since no comments were received, the Commission confirmed its provisional findings.

3.1.5. *Dumping margins*

- (43) Having rejected the claims described in recitals (33) and (35) above, the Commission confirmed the dumping margin calculation as detailed in recital (144) of the provisional Regulation.

⁽⁶⁾ <https://www.recronmalaysia.com/>, "Recron Malaysia offers a wide range of innovative products that include polyester, fibers, yarns, fabrics and also top quality PET chips. The extensive textile facility includes knitting, weaving, dyeing and finishing."

⁽⁷⁾ <http://www.mpipi.com.my/profile.htm>, "Products: We offer the best in PET Resin Manufacturing as well as Spinning Mill products. Our PET Resin Plant currently holds an annual capacity of 38 000 MT of quality chips, Co - PET and Homo - PET Resins for making pre-forms and bottles, along with A - PET Resin for all types of rigid packaging such as trays, lids and covers."

- (44) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

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

4. INJURY

4.1. Definition of the Union industry and Union production

- (45) In the absence of any comments with respect to the definition of the Union industry and Union production, the conclusions set out in recitals (150) to (151) of the provisional Regulation were confirmed.

4.2. Union consumption

- (46) In the absence of any comments with respect to the Union consumption, the conclusions set out in recitals (152) to (155) of the provisional Regulation were confirmed.

4.3. Imports from the country concerned

- (47) In the absence of any comments with respect to the volume, market share and price of the imports from the country concerned, the Commission confirmed its conclusions set out in recitals (156) to (164) of the provisional Regulation on these points.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (48) No comments concerning this part of the provisional Regulation were received.

4.4.2. Macroeconomic indicators

- (49) Following the provisional disclosure, the complainant provided a revised version of the macroeconomic data for the first quarter of 2023 (Table 14 of the provisional Regulation), reflecting the updates made to the underlying data on rPET production from Wood Mackenzie industry experts, from which rPET sales figures were extrapolated. This modification led to a decrease in figures representing the Union industry's PET production by around 33 700 tonnes and a decline in figures representing the Union industry's PET sales volume by over 32 100 tonnes in Q1 2023. This in turn resulted in a corresponding decrease in figures representing the Union consumption in that

quarter, presented in Table 14 of the provisional Regulation. This modification however did not change the trends that were observed and therefore did not affect the outcome of the Commission's assessment. Indeed, following the update in the import figures for Q1 2023 by Eurostat (from 134 604 tonnes to 127 608 tonnes), the Union industry's market share decreased approximately 1 percentage point in the first quarter of 2023 (from 63 % to 62 %), while the market share of Chinese imports remained at the same level.

- (50) According to UNESDA, the data provided by the complainant in October 2023 ('October data') and used by the Commission for the provisional injury determination disregarded the data on the file, provided by UNESDA. UNESDA pointed to significant differences in data provided by the complainant over the course of the investigation.
- (51) First, the October data provided by the complainant represented the final complainant's response to the Commission questionnaire on macro indicators, which followed a number of requests addressed to the complainant to rectify the deficiencies in the data identified by the Commission. It is stressed that the deficiency requests stemmed from further fact-finding by the Commission and various submissions made over the course of investigation by interested parties, principally by UNESDA.
- (52) Second, the October data reflected verified data with respect to the cooperating companies and the best available and well-founded data regarding the Union rPET producers. UNESDA failed to substantiate on what grounds the October data should be considered incorrect or unrepresentative. It failed to explain why the Commission should resort to the use of other data instead, or to what extent the data referred to by UNESDA was more detailed or precise than the October data.
- (53) Following the provisional as well as the final disclosure, UNESDA called into question the revisions made to the macro-economic data and indicated that the complainant underestimated Union sales, production and consumption by using information from various sources, doubling captive use and mixing data for vPET and rPET to that end.
- (54) UNESDA's allegations of data manipulation were unfounded. The Commission went to great lengths in addressing the deficiencies found in the macro-economic data, mainly with respect to rPET. All interested parties provided their views and data and the Commission decided to use data from Wood Mackenzie and PRE (Plastic Recyclers Europe – an umbrella association of rPET producers) respectively for reasons set out in recitals (56)-(57) below. The corrections which resulted in the October update were requested by the Commission to ensure that the data used reflected the standing replies and/or verified data of the sampled Union producers.
- (55) Furthermore, UNESDA referred to the PET Market Report 2022 and the operating rate of rPET producers included therein as a basis for estimation of production and contested the use of Wood Mackenzie data for estimating rPET production.
- (56) The Commission duly considered the various existing sources, seeking to identify the most reliable and objective proxy in the absence of precise data on rPET. The use of the PET Market Report 2022 was found to be inappropriate for two reasons: it used only 2020 as the reference year for establishing the operating capacity, and included data for the United Kingdom, Switzerland and Norway. On the other hand, the Wood Mackenzie data included annual figures for flake consumption (i.e. rPET production) and concerned specifically Union industry's production. Wood Mackenzie even distinguished between food grade, non-food grade rPET production, and chemical recycling and thus overall was deemed a more reliable and well-founded source of information. In any event, even if the PET Market Report were used for an estimation of the rPET production, the impact on the indicators would be minimal ⁽⁸⁾ and would not alter the conclusions drawn by the Commission for the purposes of determining injurious threat in this case.

⁽⁸⁾ For illustration, the difference at the overall level of PET production in 2022 would be around 2%.

- (57) Moreover, UNESDA submitted that the Commission did not consider detailed information on rPET producers in the Union, including identification of the companies and their production capacity for the period considered. UNESDA however contradicted itself by maintaining that the aggregated yearly information on production capacity in the Union that PRE ⁽⁹⁾ provided, and that was ultimately used by the Commission in its assessment, matched exactly the data provided by the users. As set out previously, the Commission evaluated various sources and decided to use the one that was deemed to be the most reliable – which in the case of rPET production capacity was the data of an umbrella association representing the rPET producers (PRE).
- (58) In the absence of other comments, the conclusions set out in recitals (170) to (182) of the provisional Regulation were confirmed.

4.4.3. Microeconomic indicators

- (59) In the absence of comments on microeconomic indicators, the conclusions set out in recitals (183) to (198) of the provisional Regulation were confirmed.

4.4.4. Developments in the investigation period and in the post-investigation period

- (60) Further to the assessment described in recital (197) of the provisional Regulation, the Commission analysed post-investigation period ('post-IP') data, as outlined in the Table 1 below (Union sales prices, Union cost of production, Union profitability, and Chinese import volumes and prices for the second and third quarter of 2023).

Table 1

Q2-Q3 2023 Union sales prices/cost of production/profitability and Chinese import volumes/prices

	Union sales price (EUR/tonne)	Union cost of production (EUR/tonne)	Union profitability (%)	Chinese imports (tonnes)	Chinese import prices including common customs duty of 6,5 % (EUR)
Q2 2023	1 111	1 140	- 11 %	88 952 (including [10 000 - 15 000] tonnes of UI imports)	1 067
Q3 2023	1 008	1 122	- 13 %	20 294 (data on UI imports unavailable)	1 033

Source: Questionnaire reply of sampled Union producers, Eurostat.

- (61) Moreover, in response to the arguments of the interested parties (most notably outlined in recitals (82), (93) and (125)) the Commission outlined data on microeconomic indicators (Union sales price as well as the Union cost of production) at a more granular, quarterly level, for the investigation period in the Table 2 below.

⁽⁹⁾ Plastic Recyclers Europe – an umbrella association of rPET producers.

Table 2

Sales prices and cost of production in the Union over the investigation period and in Q1 2023

	Q1 2022	Q2 2022	Q3 2022	Q4 2022	Q1 2023
Average unit sales price in the Union (EUR/ tonne)	1 350	1 511	1 538	1 347	1 114
Index	100	112	114	100	83
Unit cost of production (EUR/ tonne)	1 198	1 383	1 408	1 460	1 209
Index	100	115	118	122	101

Source: Questionnaire reply of sampled Union producers

4.4.5. *Conclusion on injury*

- (62) The Commission definitively concluded that the Union industry was negatively affected by imports from the PRC, especially at the end of the investigation period, but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation.
- (63) The Commission therefore proceeded with the analysis of a threat of material injury in accordance with Article 3(9) of the basic Regulation.

5. THREAT OF INJURY**5.1. Introduction**

- (64) As indicated in recital (197) of the provisional Regulation, the Commission continued its prospective analysis after the imposition of the provisional measures, by collecting data from the second and third quarters of 2023, notably for the profitability of the Union producers, for the sales prices and cost of production of the sampled Union producers as compared against the import prices from the PRC (see Table 1). The Commission then analysed whether these additional data would confirm or invalidate the findings based on the data from the investigation period and the first quarter of 2023 (see in particular recitals (96), (79), (96), (119) and (126) for more details on the findings made).
- (65) In section 5.3, the Commission addresses all comments received after the imposition of provisional anti-dumping measures that were still pertinent after the reviews and additional analysis conducted during the definitive stage.

5.2. Definitive assessment5.2.1. *Update of post-IP data on Chinese imports*

- (66) As set out in recital (210) of the provisional Regulation, imports from the country concerned significantly increased from 192 941 to 305 055 tonnes between 2019 and the investigation period.
- (67) The available data for the additional period July to September 2023 showed that the Chinese dumped imports started to decrease as compared to the investigation period ('IP') and the post-IP period until June 2023, when expressed on the basis of monthly averages.

Table 3

Chinese import volumes in the post-investigation period

Volume of Chinese imports (tonne)	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023	July 2023	August 2023	September 2023
	35 842	42 619	49 148	31 579	39 561	17 813	11 703	4 955	3 636

Source: Eurostat.

- (68) The Commission thus found that the trend of increasing volumes had stopped following the second quarter of 2023. However, when assessing the significance and the reliability of these figures for confirming or invalidating the threat of injury analysis, the Commission also observed that the decrease in the average monthly Chinese import volumes from July to September 2023 (compared to 2022) could be attributed to the chilling effect of (i) the initiation of the current proceeding on 30 March 2023 with a distinct possibility of adoption of provisional measures within the period of at most 8 months and (ii) the request for registration by the complainant filed on 31 May 2023. In other words, the post-investigation period data up until June 2023, right after the request for registration of imports was filed by the complainant, confirms the significant rate of increase of dumped imports observed during the period considered. The significant decrease in volume of imports from June 2023 does not negate this conclusion as it is a likely effect of the request for registration of imports with the view of retroactive application of the duties. Such request, especially considering that at that point there was no indication as to the level of potential duties that may be imposed, had an inevitable chilling effect on the volume of imports. It follows that the significant rate of increase of imports from 2021 onwards, as confirmed by the post-investigation period data, indicates the likelihood of substantially increased imports within the meaning of Article 3(9)(a) of the basic Regulation.
- (69) In their response to the final disclosure, UNESDA claimed that based on Eurostat data, imports from China decreased by 20% in 2023 and there is no reason to assume that they will go to the levels of 2022. As outlined in recital (68), while the trend of increasing volumes of Chinese imports had stopped following the second quarter of 2023, the initiation of this investigation as well as the request for registration had an inevitable chilling effect on the volume of imports. Therefore, UNESDA's claim was dismissed.
- (70) Following the final disclosure, CPCIF also raised the following arguments with respect to the 'chilling effect' established by the Commission in recital (68).
- (71) CPCIF claimed that the significant drop in imports in Q4 of the IP underscores that the downturn in Chinese import volumes was already underway before any alleged "chilling effect" could have taken hold. The Commission noted that the existence of a chilling effect referred to the period following the IP and that a temporary decrease in imports during the last quarter of the IP does not affect the validity of the conclusion reached in recital (68). In fact, the Chinese imports had significantly increased over the full period considered and the drop in imports in Q4 2022 succeeded a continuous and steep increase in dumped imports in the quarters before followed by a further increase in the first quarter following the investigation period. Thus, such a drop in Q4 2022 could not invalidate the Commission's findings as to further import increases in the near future, should measures not be adopted.
- (72) Furthermore, CPCIF argued in relation to the 'chilling effect' of the present investigation that the Commission's reasoning must be substantiated by concrete evidence rather than mere conjecture. According to CPCIF, the mere conclusion that a decrease in volume of imports is a 'likely effect' of the initiation of an investigation or request for registration does not constitute positive evidence or an objective examination.

- (73) First, as it clearly transpires from recital (68) considered in its entirety, the Commission established a chilling effect of the initiation of the current proceeding as well as of the request for registration on the volume of imports. Second, the conclusion reached is based on an objective assessment of positive, affirmative and verifiable information on imports published by Eurostat. It is only logical that the initiation of an investigation, followed by a possibility of registration of imports with a view to retroactive imposition of potential duties of unknown magnitude would have a chilling effect on importers of PET in the Union. That effect is clearly observed in the import statistics. Moreover, as explained below, no other valid explanation for significantly lower import volumes following the initiation of the investigation and the request for registration of imports were provided by the interested parties. This claim was therefore rejected.
- (74) Lastly, CPCIF submitted that past import trends (referring to decline in Chinese PET imports in the course of 2018 or 2021) show that sustained decreases in imports are unrelated to the initiation of anti-dumping investigations; therefore, according to CPCIF, assertion of a 'chilling effect' stemming from the initiation of the current investigation and the registration request is unfounded. It was not contested that while it is not excluded that other factors, unrelated to the anti-dumping investigation (such as dramatic rise in shipping rates observed in 2021) have led to a decline in imports in the past. However, for the post-IP period CPCIF failed to submit any evidence showing that other factors would have been responsible for the decline in the case at hand and that the latter is not attributable to the initiation of this investigation and to the filing of a registration request, as explained in recital (68) and. Therefore. the claims made by CPCIF were dismissed.
- (75) Following final disclosure, Svepol argued that any decline in import volumes first perceived in June 2023 by the Commission must necessarily be the reflection of a commercial trend that commenced several months prior to the initiation of the present investigation, namely the return of container shipping costs to normal levels leading to discontinuation of breakbulk shipments. In this context, Svepol referred to the considerable time-lag between the negotiation of the sale, i.e., the time the product is ordered from the PRC, and the import into the Union. Svepol further recalled that the average time from placing an order for a breakbulk shipment to its arrival in the EU ranged between 4 and 6 months.
- (76) As set out in recital (68), it was already the initiation of the current proceeding on 30 March 2023 that had a chilling effect on Chinese imports in the post-IP period. Moreover, while the transit time might be longer for breakbulk shipments, these were discontinued following the normalisation of shipping rates and in the post-IP period. Typical shipping times for standard container shipments would not be more than 2-3 months⁽¹⁰⁾ and hence, even after accounting for the time-lag between the negotiation of the sale and the actual import, and even when considering that the last breakbulk shipment arrived in March 2023 (see recital (103)), shipments in standard containers would be responsible for high import volumes in the Q2 2023. It follows that the decline in imports in June 2023 would be caused by events of April 2023. Therefore, the decrease of Chinese import volumes in June 2023 can be explained by the chilling effect of the initiation of the investigation at the end of March 2023, rather than by the switch from breakbulk shipments to normal containers. Significant volumes of imports from China continued arriving by containers in April and May 2023, i.e. following the last bulk shipment in March, and hence the decrease of the volume of imports from China from June 2023 onwards could not have been caused by that switch.
- (77) With regards to the significance of breakbulk shipping and its relation to the container shipping, in their comments on the final disclosure, Svepol argued that a factually correct analysis would have shown that the increase in 2022 was the result of China being the only exporting country, following the surge in container shipping costs, that was able to make breakbulk shipments to the EU, thereby obtaining a competitive advantage over other PET exporting countries. Once container shipping costs returned to normal levels, China lost this advantage which logically led to a decline in import volumes from China and an increase in imports from other sources. According to this reasoning, pre-crisis import volumes from the other PET exporting countries would have been captured (to an extent) by China in 2022, due to its breakbulk shipping capabilities, and then recaptured by the third countries in question after the crisis was over and after China lost its competitive advantage. This analysis is not supported by the facts of the case. As evidenced by Table 16 in the Provisional Regulation, and uncontested by Svepol, the main

⁽¹⁰⁾ As confirmed by the complaint, para.226. See also <https://www.maersk.com/logistics-explained/transportation-and-freight/2023/09/27/sea-freight-guide-for-container-ship-transit-times-from-china-to-europe>.

PET exporting countries, Egypt, Türkiye and Vietnam all gained rather than lost market shares in 2022. Thereby a theory whereby China is losing the effects of its competitive advantage in shipping in the third quarter of 2023 and market previously taken from third countries is being retaken is misguided. China never took market share from these countries. As demonstrated in Table 14 of the Provisional Regulation the only significant loser of market share between the first quarter of 2022 and the first quarter of 2023 was the Union Industry, which lost 11 percentage point of market share during that period. It follows that the decrease of imports of Chinese PET from June 2023 onwards was not caused by other PET exporting countries regaining market shares they never lost in 2022, but by the initiation of the anti-dumping investigation against imports from China three months prior.

5.2.2. *Other elements: profitability and other economic indicators*

- (78) As set out in recitals (230), (231) and (233) as well as in Table 14 of the provisional Regulation, the profitability of the sampled Union producers reached unsustainable levels of - 12 % and - 11% in the fourth quarter of 2022 and in the first quarter of 2023 respectively, when Chinese price pressure was felt most after the continuous increase in imports.
- (79) The additional information collected for the post-IP period established the continuation of the negative profitability trend of the Union producers (see Table 1), with loss-making levels established at - 11% and - 13% in the second and third quarter of 2023 respectively.
- (80) According to Svepol, the fact that imports from the PRC did not cause the Union industry's declined profitability in Q4 2022 and Q1 2023 was confirmed by the fact that the Union producer's profitability continued declining in 2023, even though the import volume from the PRC decreased significantly from June 2023.
- (81) The Commission disagrees with Svepol's reading of the facts. The Commission found (based on explanations provided by the interested parties) that there is a considerable time-lag between the negotiation of the sale, i.e. the time the product is ordered from the PRC, and the import into the Union. It is at the point in time when the sale is negotiated that the Chinese sales and Union sales compete. Moreover, as explained in recital (68), the significant drop in the volume of imports from June 2023 onwards is related to the anti-dumping investigation and in particular a request for registration rather than any particular market force. The decrease in volume of imports observed from June 2023 reflected the importers' likely drive to limit their exposure to potential retroactive anti-dumping duties but did not eliminate price pressure of dumped Chinese imports, which at that point, was unimpeded by any measure. Thus, it not surprising that even when the statistics showed a drop on the dumped imports the Union industry remained loss-making and did not immediately recover.

5.3. **Interested parties' comments after provisional measures**

- (82) In their comments on provisional disclosure, CPCIF (the Chinese PET producers' association) submitted that the Commission did not provide any quarterly data on the Union industry prices during the IP, nor did it furnish any post-IP information about the Union prices and as a result the Commission did not objectively examine prices and price effects based on positive evidence. CPCIF also submitted that no information for the post-IP had been furnished in the provisional Regulation as to the imports from the PRC that have been made by the complaining Union industry companies.
- (83) As established in recital (231) of the provisional Regulation, the Union industry was selling below the cost of production in the last quarter of the IP and the first quarter post-IP. Therefore, the Commission objectively examined, based on positive evidence the effects of Chinese dumped imports on the Union prices. The fact that the specific data on the quarterly IP and post-IP Union sales prices, Union cost of production and import prices and import volumes recognizing the imports by complaining Union producers (which are now for the sake of completeness and clarity presented in Table 1 and Table 2 respectively) was previously not outlined in the provisional Regulation did not invalidate the conclusion ultimately drawn by the Commission.

- (84) CPCIF submitted that the Commission's assessment in the provisional Regulation was based on inaccurate import data. According to CPCIF, Eurostat reported the volume of Chinese imports in the initial half of 2023 as 216 560 tonnes, contrasting the Commission's assertion of 223 558 tonnes. Similarly, the recorded imports for the corresponding period in 2022 stood at 144 706 tonnes, diverging from the Commission's finding of 139 672 tonnes. Consequently, the year-on-year increase in Chinese imports would be less than 50 %, rather than the asserted 60 % by the Commission.
- (85) The Commission's assessment in the provisional Regulation was based on import data reported at the time of data extraction for the provisional stage of the investigation. The difference between the data used by the Commission and data extracted by CPCIF lied in the point in time at which the data was extracted from Eurostat. This is due to the various updates made from time to time to data reported in Eurostat. Irrespective of that, the revised data would in any event not be capable of invalidating or otherwise altering the Commission's assessment and the finding made in recital (210) of the provisional Regulation would remain on substance the same, i.e. that a significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports has been established.
- (86) Svepol and UNESDA submitted that the marginal increase of 1 to 1,5 % in market share of Chinese imports over the period considered could not form the basis of a finding of a threat of injury. Svepol further drew a comparison between the evolution of market share between Chinese imports and other third country imports, referring to the rapidly increasing market share of Türkiye, Vietnam, and Egypt (an aggregated increase in market share of 5 percentage points).
- (87) First, the increase of 1 to 1,5 % in Chinese market share referred to the market share after deduction of the Chinese imports by the Union industry. In this context, it is unclear what the proportion of imports from other third countries made by the Union industry and their related companies was and hence the comparison made by Svepol cannot be considered fair and objective. Moreover, Svepol aggregated the market share growth for the other large exporting countries and compared this aggregated figure with the Chinese imports.
- (88) Irrespective of the above, contrary to what the parties argued, in determining the significant rate of increase of dumped imports, the Commission did not rely exclusively on the increase in market share by Chinese imports over the entire period considered. Such an approach would be inappropriate considering the facts of this case and in particular that the threat of injury became visible only at the end of the IP. As set out in recital (210) of the provisional Regulation, a more granular analysis was conducted, assessing the evolution of the dumped imports market share over relevant periods, i.e. comparing 2021 to the IP and the first half of 2022 to the first half of 2023. This assessment showed a significant rate of increase, indicating the likelihood of substantially increased imports from the PRC. Therefore, the argument made by Svepol and UNESDA was rejected.
- (89) Following final disclosure, UNESDA argued (referring to the fact that 45-62% of the increase in imports from China that occurred in the IP were made by the complainant) that if the Union industry does not restart imports from China, there is no reason to assume that imports will again increase significantly. In this respect, it is observed that the finding of an injurious threat does not hinge on the imports from the Union industry and as set out in recital (252) of the provisional Regulation, these imports do not affect the Commission's injury analysis.
- (90) CPCIF contended the Commission's alleged finding that the imposition of trade defence measures by certain countries has rendered it entirely impracticable for Chinese exporters to gain access to these markets. CPCIF further submitted that the Commission failed to examine alternative export markets in the IP or in the post-IP period. CPCIF referred to markets such as Indonesia, India, or Japan and their significant import capacity and/or their sizable imports from the PRC in September 2023 despite existence of trade defence measures. CPCIF restated its arguments following the final disclosure.

- (91) First, the Commission did not conclude that the imposition of trade defence measures by certain countries rendered it entirely impracticable for Chinese exporters to gain access to these markets. It rather stated in recital (217) of the provisional Regulation that certain markets have become increasingly difficult to access (however, not entirely impracticable) for the Chinese exporting producers. Second, contrary to CPCIF's claim, export markets for Chinese PET were duly examined. As outlined in recital (220) of the provisional Regulation, no other Chinese export destinations for PET, apart from the Russian Federation, came close to the export volume made during the IP to the Union. Furthermore, this trend continued also in the post-IP period, in the first half of 2023. The statistics showed that the Union is the PRC's primary PET export destination, and a large proportion of the Chinese overcapacity is, in the absence of measures, likely to be directed for export to the Union. No substantiated arguments invalidating this finding were put forward by the interested parties. Moreover, for the purposes of this analysis, Chinese export figures into the Union and their comparison with exports into other markets from the second half of 2023 was considered unrepresentative given the chilling effect this investigation had on the level of Chinese imports (see recital (68)). The Commission further referred to the assessment made in recitals (221) and (247) of the provisional Regulation, which remained valid.
- (92) In response to the final disclosure, CPCIF contended that by invoking chilling effect, the Commission essentially nullifies the purpose of Article 3(9)(b) of the basic Regulation on availability of other export markets to absorb any additional exports, when assessing the likelihood of substantially increased dumped exports to the Union. It was recalled that the Commission duly analysed the availability of other export markets, notably in the period decisive for the establishment of an injurious threat and addressed any substantive comments made in this respect (see recitals (217), (220)-(221) of the provisional Regulation as well as recital (91)). As it clearly transpires from the recital (91), the reference to chilling effect is limited to the post-IP period of the second half of 2023 and does not represent the sole justification for findings made by the Commission in relation to Article 3(9)(b) of the basic Regulation.
- (93) Svepol stressed that a determination of a threat of material injury must be established during the period for which it is alleged, namely Q4 2022 and Q1 2023. Svepol argued that the Commission did not provide any evidence of price undercutting by Chinese exporting producers in Q4 2022 and Q1 2023 and that such alleged price undercutting caused the Union industry's prices and profitability to decline. Svepol further submitted that even if the Commission were to establish price undercutting in Q4 2022 and Q1 2023, it did not establish that there was price depression or price suppression as a result of imports of PET from the PRC over the period considered, in the IP, and especially for Q4 2022 and Q1 2023, despite provisionally concluding that this was the case.
- (94) Following final disclosure, Svepol maintained that in a threat of injury analysis, the Commission shall give consideration to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. In its response to the final disclosure, CPCIF also submitted that the latest data from Q3 2023, crucial for the Commission's threat of injury analysis, indicates that Chinese import prices do not undercut the Union sales prices.
- (95) The Commission disagrees that it was required to calculate undercutting for quarterly periods within the investigation period. In fact, as noted by the Court in *Giant Electric* ⁽¹¹⁾, the Commission is not required under Article 3(3) of the basic Regulation to determine price undercutting at all and can base its injury analysis and, therefore, the causal link, on other price phenomena listed in Article 3(3) of the basic Regulation, such as significant depression of Union industry prices or prevention of price increases to a notable extent. The Commission also disagrees that its price analysis was not detailed enough, when it took into consideration not only the information for the investigation period but assessed also the situation of both dumped imports and the Union industry on a quarterly basis for the investigation and the post-investigation period. The Commission further looked at quarterly

⁽¹¹⁾ Judgement in Case T-242/19, *Giant Electric Vehicle Kunshan Co. Ltd v Commission*, paragraph 102, EU:T:2022:259

information on Chinese import volumes and prices, as well as production, sales, prices and costs of the Union industry (see Table 14 of the provisional Regulation and Table 1 as well as Table 2 of this Regulation). As it was already clear from the data and analysis in recitals (222) to (224) of the provisional Regulation, the Commission concluded that, due to the large influx of dumped Chinese imports in the investigation period at prices undercutting the Union industry's prices, the Union industry was forced to lower its prices in the last quarter of the investigation period and the first quarter after the investigation period, resulting in a lossmaking situation in those two quarters. The continuing large volume of Chinese imports at decreasing prices after the investigation period, notably in Q1 2023, showed a further shift towards these dumped imports at prices that suppressed significantly the Union producers' prices.

- (96) The development of these negative trends is further observed when looking at the post-IP data for Q2 and Q3 2023 on sales prices, cost of production and profitability (see Table 1). The average selling prices as well as the cost of production of the sampled Union producers showed that, unlike in the first three quarters of the IP, as from the last quarter of the IP until Q3 2023, the sales prices of the Union producers were pressed down below the level of the production cost by the Chinese imports.
- (97) In addition to that, a comparison of the Union sales data with the export prices of the sampled exporting producers for Q4 2022 showed that the Chinese prices were significantly undercutting the Union prices by 8 %. Therefore, not only was the Union industry confronted with significant undercutting during the IP as a whole, but also at the end of the IP when the threat of injury manifested itself.
- (98) Following final disclosure, CPCIF contended that the Commission failed to justify why it attributed the price depression to dumped imports, especially considering that the decline in prices since Q4 2022 closely mirrored the decrease in the domestic industry's costs. As outlined in recital (96) above, as from the last quarter of the IP until Q3 2023, the sales prices of the Union producers were pressed down below the level of the production cost by the Chinese imports. While the Union industry sales prices might have decreased at a similar rate as the cost of production, such trend does not explain why the sales prices remained below the cost production.
- (99) CPCIF contested the Commission's finding made in the provisional Regulation that "the Chinese imports have shown a substantial increase during the period considered, but also that this trend was not stopped or reversed during the post-investigation period", referring to a significant drop in imports since June 2023. CPCIF reiterated its argument following the final disclosure, adding that contrary to the provisional Regulation, the Commission conceded that the trend of increasing volumes had stopped following the second quarter of 2023.
- (100) The decrease of Chinese import volumes from June 2023 can be explained by the chilling effect of this investigation referred to in recital (68). This decrease in import volumes is temporary, and such trend would be reversed if no measures were to be imposed. Moreover, there is no discrepancy between the findings made in the provisional Regulation (where trend until Q1 2023 included is examined) and the definitive findings made herein, observing that the trend of increasing volumes had stopped following the second quarter of 2023. Therefore, CPCIF's claim was dismissed.
- (101) CPCIF further claimed that the post-IP data provided in the provisional Regulation, in particular the positive trend in productivity, the Union sales volumes and the profitability in Q1 2023 relative to Q4 2022, did not constitute an evidentiary basis for the assertion of the threat of injury on account of Chinese PET imports.
- (102) While the indicators described by CPCIF showed a positive trend, the indicators have to be seen in a wider context and compared principally against the situation in the period preceding the establishment of injurious threat (see recital (238) of the provisional Regulation). Such analysis, further supported by additional Q2 and Q3 2023 data on profitability (see Table 1) clearly showed that the Union industry was in a fragile state which could be turned into material injury immediately in the absence of measures.

- (103) Svepol claimed that the provisional Regulation did not address the impact of the switch by Chinese exporting producers to breakbulk shipments during the IP. According to Svepol, the surge in shipping costs during the latter part of 2021 and throughout the majority of the IP resulted in the Union PET users and importers resorting to breakbulk shipments instead of using standard container transport, increasing the import volumes from the PRC. Svepol maintained that the competitive advantage of Chinese breakbulk shipments was only a temporary one that has since disappeared with the normalisation of container shipping costs — a fact that was most notably demonstrated by the decline in imports of PET from the PRC in Q2 2023 following the last breakbulk shipment in March 2023 ⁽¹²⁾. Following the final disclosure, UNESDA also argued that since freight costs are back to normal and imports in bulk form were not successful, it was unwarranted to assume that there was a likelihood of renewed increase of imports from China.
- (104) While it is acknowledged that large part of PET shipments from the PRC in 2022 arrived in breakbulk vessels, as noted in the provisional Regulation (see recital (228)), the transport costs started normalising after the peak that lasted until mid-2022. Nevertheless, a surge in Chinese imports was observed all the way to the second half of 2023 ⁽¹³⁾, hence long after the shipping costs returned to normal levels and after the clearance of the last alleged breakbulk shipment. The Commission thus found that even without the breakbulk shipments, the Chinese imports arrived in in the Union in large quantities. Moreover, as set out in recital (68), the decrease of Chinese import volumes towards the end of Q2 2023 can be explained by the chilling effect of this investigation, rather than by the switch from breakbulk shipments to normal containers. Therefore, even if there was a coincidence between the use of breakbulk shipments and the rise in Chinese imports in the course of 2021 and for a part of 2022, such circumstance could not invalidate the Commission's assessment made in the provisional Regulation.
- (105) CPCIF claimed following the provisional disclosure that the Q4 2022 findings of the IP with the clear declining trend in imports towards the end of the IP did not indicate a "foreseeable" or "imminent" injury, nor did they indicate an "impending" threat of injury. CPCIF further argued that if a threat of injury did arise in Q4 2022, it can impossibly be attributed to Chinese imports. Moreover, according to CPCIF, the fact that the Union industry was able to significantly increase its net profits, sales, and sales prices throughout the period considered when Chinese imports were substantially higher than in Q4 of the IP should be duly acknowledged and objectively examined by the Commission. CPCIF restated its position following the final disclosure, suggesting erroneously that the Commission refrained from addressing this argument put forward by CPCIF.
- (106) First, the Q4 2022 findings concerning the level of imports could not be treated in isolation for determining the threat of injury. Second, as outlined in recital (237) of the provisional Regulation, the Chinese imports had significantly increased over the full period considered, the drop in imports in Q4 2022 succeeded a continuous and steep increase in dumped imports in the quarters before and was followed by a further increase in the first quarter after the investigation period. These developments assessed in their entirety and in association with the suppressing effect of Chinese dumped imports on the Union prices towards the end of the IP and in the post-IP period indicated the change in circumstances creating an injurious situation caused by the dumped Chinese imports, which was clearly foreseen and imminent.

5.4. Conclusion on threat of injury

- (107) As set out in the provisional Regulation, while the Union industry was doing well until the third quarter of 2022, almost all injury indicators started to fall dramatically during the last quarter of 2022 and this negative situation continued during the first quarter of 2023.

⁽¹²⁾ In response to the final disclosure, Svepol suggested that breakbulk shipments would be arriving to the Union and would be customs cleared up to May 2023. However, such claim is unsubstantiated and unsupported by any evidence on the file. Indeed, in their comments on provisional disclosure, Svepol itself argued that their last breakbulk shipment was customs cleared in March 2023.

⁽¹³⁾ The level of Chinese imports in Q2 2023 (88 952 tonnes) even exceeded the Q2 2022 import levels (84 906 tonnes).

- (108) Further investigation at the definitive stage confirmed that the Union industry remains in a fragile state and that the negative trend at the Union producers established in the provisional Regulation continued in Q2-Q3 2023. More specifically, the sales prices as well as the cost of production of the sampled Union producers for the said period show that, consistent with the end of the IP and Q1 2023, the dumped Chinese imports kept exercising price suppression on the Union sales prices in Q2-Q3 2023. The sales prices of the Union producers remained below the level of the production cost and the Union industry's lossmaking situation continued at -11% and -13% in the second and third quarter of 2023 respectively.
- (109) The Commission therefore confirmed its conclusions on the existence of a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period as set out in recitals (238) to (242) of the provisional Regulation.

6. CAUSATION

6.1. Assessment

- (110) In its provisional findings, the Commission distinguished and separated the effects of all known factors (Imports by the complainants and related companies to the complainants, increased use of recycled PET by PET users, imports from third countries, export performance of the Union industry, cost increases in raw material and energy prices, increase in investment costs and customer purchasing preferences) on the situation of the Union industry from the injurious effects of the dumped imports. The effect of these other factors on the Union industry's negative developments was however found to be only limited, if any and did not attenuate the causal link between the dumped imports and the threat of injury.
- (111) Following the update of the post-IP data at the definitive stage, the quarterly data regarding the production cost and sales prices of the Union producers in Q2 and Q3 2023 (outlined in Table 1) shows that the Union producers continued to be forced to sell below cost as a result of the pressure coming from the dumped Chinese imports, thus supporting the Commission's provisional findings. On this point, Svepol contended in its response to the final disclosure that it is not explained how the reversal in the import conditions in Q4 2022-Q3 2023 did not alleviate the alleged pressure on the Union producers.
- (112) Regarding the most recent import data (for Q2-Q3 2023) from China and other third countries, despite the decrease of Chinese imports in the said period due to a chilling effect of the initiation of this investigation (see recital (68)), the Union producers continued to suffer due to the effects of unmitigated price suppression by Chinese exporting producers, which prevented the Union producers from setting their prices above their costs of production.
- (113) In light of the above and consistent with Section 6.1 of the provisional Regulation, the Commission confirmed its conclusion that the Chinese dumped imports had a negative impact on the situation of the Union industry and were causing a threat of material injury to the Union industry while other factors were not capable of attenuating such causal link.

6.2. Interested parties' comments after provisional measures

- (114) CPCIF claimed that the Commission failed to establish a causal link between the dumped imports and the threat of injury by those dumped imports. According to CPCIF (and without detailed analysis on this point), the Provisional Regulation lacked a meaningful analysis and fell short of providing any causality element backed by sufficient evidence demonstrating that the volume and/or price levels were responsible for a negative impact on the Union industry. CPCIF restated its argument following the final disclosure.
- (115) The Commission referred to Section 6 of the provisional Regulation setting out the reasons for concluding that the causation was established to the requisite legal standard.

- (116) Svepol claimed that the Commission had not demonstrated the existence of a positive causal relationship between the allegedly “low prices of the Chinese imports” in Q4 2022 and Q1 2023 and the suppression of Union industry prices resulting in the significant deterioration of the Union industry’s profitability in the last quarter of the IP and remaining losses in Q1 2023. In its response to the final disclosure, Svepol maintained that the Commission failed to explain how, when the import volumes were at their highest and import prices were low during the first three quarters of 2022, the Union producers were able to perform their best and “fend off” price suppression. Despite the analysis set out in the recital (117), CPCIF also suggested in its response to the final disclosure that the fact that the Union PET market remains under downward pricing pressure due to continued weak demand is reflected nowhere in the Commission’s analysis.
- (117) As set out in recital (249) of the provisional Regulation, the production level and capacity utilisation of the Union industry showed a significant drop during the investigation period, right after a period where a significant increase in Chinese imports occurred. While the Union industry was able to fend off the increasing volume of dumped Chinese imports in the first three quarters of the IP by maintaining profitable PET operations and relatively stable Union sales volumes, this was due to an uptake in customer demand seen in the first half of the IP. However, as soon as the demand and the Union sales volumes started declining and Union operating rates sharply decreased, the pressure from the dumped Chinese imports reached unsustainable levels and led to an aggravation of the situation of Union producers at the end of the IP and in the post-IP period (see recital (223) of the provisional Regulation), which reflected depressed sales prices and a negative profitability. Therefore, positive causal relationship between Chinese imports and significant deterioration of the Union industry was duly established and Svepol’s claim was rejected.
- (118) CPCIF submitted that the Commission’s threat of injury determination relied on its findings during Q4 2022 and the post-IP period, distinct from its findings for the period considered wherein no injury was identified. However, when evaluating the effects of Chinese imports by the Union producers, according to CPCIF the assessment compared them to overall import trends over the period considered, rather than focusing specifically on Q4 2022 and the post-IP period. CPCIF restated its argument following the final disclosure.
- (119) CPCIF’s claim was incorrect. First, as it followed from Section 5 and Section 6 of the provisional Regulation (notably recitals (210), (212), (213), (222), (223), (230), (233), (244)-(247), (252), (255)), it is evident that the determination of injurious threat hinged on the examination of trends in the investigation period with a particular focus on quarterly developments. At the same time, in line with recital (207) of the provisional Regulation, the Commission also reviewed the data for the period considered for better understanding of the situation of the Union industry over a longer period, which led to the establishment of injurious threat. Second, specifically with respect to the imports from the PRC by the complaining companies, contrary to CPCIF’s claim, as set out in recital (252) of the provisional Regulation, the Commission evaluated the situation in relation to the IP as well as for Q4 2022. Furthermore, as outlined in Table 14 of the provisional Regulation and in Table 1 of this Regulation, the Q1 – Q2 2023 figures, which showed that the imports by the Union industry accounted for [10 - 20] % of overall Chinese imports were not capable of attenuating the causal link. CPCIF’s claim was therefore rejected.
- (120) Following the imposition of provisional measures, CPCIF sought to show a shift from virgin PET to recycled PET by comparing quarterly figures for the period Q4 2022 - Q1 2023 for the two segments. CPCIF restated this following the final disclosure. UNESDA also reiterated its argument regarding the substitution of vPET for rPET, leading to the loss of sales by vPET producers.
- (121) First, the Commission referred to the conclusions made in recital (254) of the provisional Regulation, which remain valid. Second, as outlined in recital (49) the rPET production figures for Q1 2023 have been updated taking into consideration the latest Wood Mackenzie data available with downward adjustments made to the production of rPET. Third, even when taking into account the original figures, a temporary uptake in rPET production driven by the EU sustainability efforts cannot plausibly undermine the threat of injury analysis in this case nor attenuate the causal link in view of the size of rPET Union industry segment and its impact on the economic indicators in the

period considered, over the IP or in the post-IP period. In any event, CPCIF and UNESDA failed to demonstrate how a temporary counterbalancing of production decrease for vPET by increase in rPET production in the period in which threat of injury has been already established would have in any way impacted the causality in this case.

- (122) Svepol argued that the Commission had only assessed import volumes and prices from third countries for the IP as a whole, without analysing the situation for these imports in terms of prices and volumes for Q4 2022 and Q1 2023. According to Svepol, there were no grounds to conclude that imports from third countries did not attenuate the causal link between imports from the PRC and the threat of injury to the Union industry. In support of this claim, Svepol submitted that imports from Türkiye, Vietnam, and Egypt increased over the period Q4 2022 to Q1 2023 and were cumulatively 80 000 tonnes higher than imports from the PRC over the said period. Svepol restated its arguments following the final disclosure, adding that the Commission should also consider data on imports from third countries for Q2-Q3 2023. In the same vein, according to CPCIF, the Commission should have considered import data for Q4 2022 and post-IP data in its assessment of imports from third countries. In its analysis, CPCIF referred to a significant surge of imports from Egypt in 2023 and to recent import data (June – September 2023) showing that the volume and the rate of increase of imports from various other third countries substantially surpassed those attributed to the PRC. CPCIF reiterated its argument following the final disclosure. UNESDA also argued following the final disclosure that in 2023, four of the main supplying countries (Indonesia, Pakistan, Vietnam and Oman) accounting for 29,5% of the Union imports had import prices lower than the price of imports from China (accounting for 19,7% of the Union imports). Therefore, according to UNESDA, the Union price levels could not be attributed to China.
- (123) In the context of a threat of injury determination, the imports from large exporting countries other than the PRC have to be assessed not only for the IP as a whole, but also at a more granular level and on a quarterly basis during and after the IP.
- (124) Against this background, in the period of the first three quarters of 2022, leading up to the establishment of threat of injury and Union price suppression, these third country imports were priced significantly higher than those originating in the PRC. Moreover, none of these 'other third country' imports' prices were below the Union prices in the third quarter, immediately preceding the significant deterioration of the Union industry. In addition to that, while the market shares of these imports were relatively stable over the period of 2022 until Q1 2023, the market share of the Chinese imports, excluding the imports made by the Union industry, jumped up to [12-13] % in Q1 2023 (compared to [4,5-5,5] % seen in Q1 2022 or Q4 2022), when the injurious threat was already present. Hence, in consideration of the price level and stability of market shares of imports from other third countries over the period 2022 to Q1 2023 compared to the Chinese imports, it was found that the imports from third countries (Türkiye, Egypt, and Vietnam) were not able to attenuate the causal link between the Chinese dumped imports and the threat of injury to the Union industry as set out in recital (259) of the provisional Regulation. Regarding the analysis of the most recent import data conducted by CPCIF and UNESDA, a chilling effect of the initiation of this investigation (see recital (68) of this Regulation) rendered the analysis of such recent data, comparison with the Chinese import figures into the Union and the effect on the Union prices unrepresentative. Therefore, the claims made by Svepol, CPCIF and UNESDA were dismissed.
- (125) CPCIF submitted that the Commission did not furnish any quarterly data concerning the cost of production of the Union industry throughout the IP and the subsequent post-IP period and, consequently, the causation analysis in this regard was speculative and lacking positive evidence. Furthermore, CPCIF claimed that prior to Q4 2022, the production costs of PET experienced an unprecedented surge, rendering it impossible for Union producers to align their sales prices, particularly in light of the concurrent decline in demand. In support of its claim, CPCIF referred to an abrupt and extraordinary escalation in electricity, gas, and PTA prices in September 2022.

- (126) First, the quarterly data regarding the production cost of the Union producers in the IP and in the subsequent post-IP period outlined in Table 1 and Table 2 supported the Commission's findings made in recital (265) of the provisional Regulation. The quarterly analysis showed that although the cost of production in Q2 and Q3 2022 rose almost to the levels seen in Q4, the Union producers were able to set the sales prices in that period (Q2 - Q3 2022) well above the level of their cost of production. However, in Q4 2022 and in Q1 - Q3 2023, the Union producers were forced to sell below cost as a result of the pressure coming from the dumped Chinese imports. Second, CPCIF's argument that there was an abrupt and notable increase in raw material and energy prices just prior to or at the beginning of Q4 2022 did not find support in the verified data on the cost of production. The Union industry cost of production hardly changed between Q3 and Q4 of 2022 (4 % increase), which rendered CPCIF's argument ineffective.

6.3. Conclusion on causation

- (127) The conclusions reached in recitals (270) to (271) of the provisional Regulation were confirmed.

7. LEVEL OF MEASURES

7.1. Injury margin

- (128) Referring to recital (163) of the provisional Regulation, and the adjustment of the exporters' CIF price for post-importation costs, Svepol inquired the Commission why its post-importation costs were non-representative in this investigation. It is observed that Svepol declared as post-importation costs the SG&A of the company as well as the transport costs to customers incurred following the customs clearance. Neither category of the costs listed by Svepol could however be considered as costs for which adjustment is made in the context of undercutting and injury margin calculation.
- (129) PET Europe considered that the use of the minimum target profit was unreasonable and reiterated its argument following the final disclosure. While the 6 % target profit applied is a legal minimum, as set out in recital (275) of the provisional Regulation), according to PET Europe it did not reflect the needs of the Union industry which is capital intensive. The complainant referred to the CSI Market tracker, based on which the profitability in the chemicals sector was 14,73 % (pre-tax margin) and noted that for the purposes of constructing normal value in this case, the Commission applied a profit margin of 14,84 %. PET Europe subsequently concluded that a target profit margin of at least 14 % is appropriate for the purposes of this investigation.
- (130) First, PET is considered a commodity, as also recalled in the other measures covering imports of this product – see recital (170) of Regulation (EU) No 2019/1286 ⁽¹⁴⁾, and the Union producers typically achieve a profitability below the legal minimum. This was demonstrated by the figures from the first two years of the period considered (2,9 % in 2019 and 0,3 % in 2020) as well as from the past investigation, where profitability of the Union industry reached 3 % in 2017 and 3,7 % respectively in the period April 2017 to March 2018 (see recital (160) of Regulation (EU) No 2019/1286). Moreover, profitability data from the CSI market tracker concerned the chemical manufacturing sector rather than the plastics and rubber industry sector, for which the profitability is 5,13 % for Q3 2023 (period referred to by PET Europe). Lastly, the profit margin used for constructing the normal value concerned the profit made in the representative country identified under Article 2(6a) of the basic Regulation, which cannot be used as a benchmark for target profit of the Union industry producers. In view of the aforesaid, PET Europe's claim was rejected.
- (131) As provided by Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure and therefore reflect the additional injury resulting from such increase in the determination of the injury margin.

⁽¹⁴⁾ COMMISSION IMPLEMENTING REGULATION (EU) No 2019/1286 of 30 July 2019 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and the Council (OJ L 202/81 ELI: http://data.europa.eu/eli/reg_impl/2019/1286/oj).

- (132) Based on data from the Surveillance 3 database, import volumes from the PRC during the four weeks period of pre-disclosure were 42 % lower than the import volumes in the investigation period over the same four-week period. On that basis, the Commission concluded that there had not been a substantial rise in imports subject to the investigation during the period of pre-disclosure.
- (133) Therefore, the Commission did not adjust the injury elimination level in this regard and in the absence of comments, recital (279) of the provisional Regulation is confirmed.

7.2. Conclusion on the level of measures

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

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

8. UNION INTEREST

8.1. Interest of the Union industry

- (135) In addition to the assessment provided in the provisional Regulation, it is noted that following the IP, in 2023 several Union producers temporarily reduced or fully stopped their production as a reaction to the difficult situation caused by the dumped imports. Therefore, in the absence of measures, not only would the existence of PET industry in the Union be gravely endangered, but equally the stability of PET supply for PET users would be jeopardized.
- (136) In the absence of any comments regarding the interest of the Union industry, the conclusion reached in recital (284) of the provisional Regulation was confirmed.

8.2. Interest of users and unrelated importers

- (137) The users reiterated in their response to the provisional disclosure that the following facts must be taken into account in the analysis of the Union Interest: (i) PET as a percentage of the cost of production ranged between 30 % and 60 % for producers of bottled water and between 14 % and 30 % for producers of soft drinks, thus having a high impact on operations and profitability of the users, (ii) requirements stemming from the Single Use Plastic ('SUP') Directive, i.e. tethered caps from July 2024 and the incorporation of 25 % of rPET in plastic beverage bottles as from 2025 increasing to 30 % by 2030) and Packaging & Packaging Waste Regulation (PPWR) associated with a higher rPET cost since the price of rPET follows the price of vPET but it is substantially higher and (iii) the fact that the rPET industry's growth is shielded from competition with PET from the PRC, due to the existing and future regulatory framework such as the SUP Directive and EFSA ⁽¹⁵⁾ approvals for food grade rPET. In their response to the final disclosure, UNESDA argued that imposition of the anti-dumping duties would be prohibitive for the PET imports from China, referring to the imposition of most-favoured-nation (MFN) tariff of 6,5% on India in 2022 and the subsequent disappearance of Indian PET imports in 2023.
- (138) The Commission acknowledged that PET is the single biggest cost component for PET users. However, in line with the recital (294) of the provisional Regulation, the duties imposed are set at a level that will allow the users and importers to continue to import PET from the PRC at reasonable prices. Since the duties are set as low as 6,6 %, even if PET accounted for 14 to 60 % of the cost of production of the users, the level of duties should not have a prohibitive effect or materially affect the implementation and achievement of sustainability objectives and could be absorbed by the users that wish to continue sourcing the material from the PRC. Moreover, supplies can be secured from other producers, such as the Union industry and other third countries like Türkiye, Vietnam, and Egypt. Regarding the comparison by UNESDA to the introduction of the MFN tariff for Indian imports resulting in elimination of Union imports, it was noted that Chinese imports of PET have been subject to the common customs duty of 6,5% already prior to this investigation which did not prevent them from capturing significant market share in the Union.
- (139) The Commission also did not contest that the downstream PET users operate in a challenging regulatory and macroeconomic environment, having to make additional investments or bear extra costs to comply with and implement the requirements in connection with, among others, the SUP Directive and PPWR. However, the existence of these regulatory requirements, similar to other factors that weigh in on the cost of PET (e.g. price of raw materials or pressure from buyers) could not endanger a level playing field on the upstream Union market for PET by addressing the situation of injurious dumping, in particular when the adverse effect of anti-dumping duties on the users is considered to be minor.
- (140) As regards the rPET segment, while it has been a growing segment also owing to the Union's legislated sustainability requirements, it was certainly not shielded from any unfair Chinese competition. The regulatory framework did not preclude the dumped Chinese rPET from entering the Union – on the contrary, the sustainability agenda would only encourage the influx of Chinese rPET and Chinese exporters are not prevented from applying (and obtaining for that matter) regulatory approvals from the EFSA.
- (141) Furthermore, the users emphasised that conditions of competition will be adversely affected by instituting anti-dumping duties in this case, since on the supplier side the market is dominated by Union producer Indorama and the measures would remove the only large third country not dominated by Indorama. UNESDA reiterated the argument following the final disclosure, adding that the price impact of the anti-dumping measures will be larger because of the oligopoly of the market structure. Svepol also argued in its response to the final disclosure that imposition of anti-dumping duties on top of the common customs duty would impede access to the Union market for the Chinese exporters, especially in view of low-priced imports from other third countries.

⁽¹⁵⁾ European Food Safety Authority, EFSA | Science, safe food, sustainability (europa.eu).

- (142) First, fairly priced Chinese imports will not be prevented from entering the Union. Second, the Union PET industry consists of at least eight independent operators involved in the vPET production and more than fifty rPET producers, which, contrary to UNESDA's argument, cannot be considered as an oligopoly market structure. Furthermore, while Indorama might have a strong foothold in the Union and the global PET market, large exporting countries such as Vietnam, South Korea, or Türkiye and their producers pose a healthy competition to Indorama entities. Moreover, the Users did not provide any substantiated evidence that those countries would not be able to meet the demand coming from the Union users and importers.
- (143) Svepol contended in its response to the final disclosure that the alternative exporting markets would not be able to exert competitive pressure over Indorama's market dominance in the Union. In the same vein, UNESDA argued that imports from Vietnam and Korea would not be enough to counter the market concentration being created. The claims were unsupported by any facts, in particular in light of the import statistics for 2023 showing by way of example that Vietnam's imports into the Union were 5 percentage points higher than those of Türkiye (market, where Indorama is also present, but not exclusively) and 5,6 percentage higher than the imports from Egypt (market dominated by Indorama). These statistics are clearly demonstrative of the healthy competition that alternative export markets pose to Indorama companies. Therefore, Svepol's argument had to be rejected.
- (144) The users further referred to the employment in the beverage sector as being one of the key elements for consideration and restated that position in their response to the final disclosure. The user industry claimed that they are in a vulnerable situation with (i) employment levels being affected after the significant increases of costs in 2022, (ii) the doubling of the PET price compared to all other costs, and (iii) stagnation of sales prices (of PET-packaged products). A particular emphasis was placed on SMEs, which account for 95 % of the bottled water sector which in return represented 37 % of the food grade PET consumption and which are more vulnerable to inflation and face a higher proportion of PET cost on the overall cost of production. Svepol also submitted that the imposition of anti-dumping duties would lead to disastrous consequences for the Union downstream industry, putting thousands of Union jobs into peril, and for EU consumers since this would lead to an increase of prices of bottled drinks in the context of cost-of-living crisis and high inflation, while the situation of the PET producers would unlikely improve following the adoption of the anti-dumping measures, also given that the profitability of the Union producers continued to decline despite very low Chinese imports. In its response to the final disclosure, Svepol maintained that the Commission failed to explain, why it accords more weight to the comparatively tiny employment in the Union PET industry, while dismissing the risk to the employment of 300 000 people in the Union user industry.
- (145) The adverse effect of anti-dumping duties on employment in the beverage industry was considered to be minor for the reasons set out in recital (138) above. A remote and unmeasurable risk for employment in the user industry could not outweigh the interest in addressing the specific situation of injurious dumping found on the upstream PET market. Regarding the interest of the Union consumers, while it was not contested that they are faced with inflation and increased costs of living, it is difficult to see how they would feel the impact of the anti-dumping duty either in a situation where the raw material price for PET packaging drops or where, as the PET users argued, the latter is unable to pass on any price increases, including a hypothetical increase driven by the imposition of an anti-dumping duty) on the buyers, such as retail chains.
- (146) The users further contended that the level of profitability of the vPET producers was substantially higher than the levels of profitability of users. UNESDA restated the argument following the final disclosure and with reference to the period 2019-2022. This claim was however unsubstantiated with respect to the end of the IP and post-IP period and could not be sustained in the context of the current loss-making situation of the Union producers.

- (147) The users also referred to issues and disruptions of PET deliveries sourced from the Union PET producers during the period considered as being one of the elements to be assessed as part of the Union interest analysis. Following the final disclosure, UNESDA claimed that the disruptions related to the oligopoly structure of the market. The Commission found that stability of the Union PET industry along with fairly priced imports from third countries is crucial for ensuring stability of supply for the user industry and for the mitigation of effects of any future force majeure incidents or other issues with PET deliveries. Furthermore, the Union PET industry has at least eight independent operators involved in the vPET production and more than fifty rPET producers, which, contrary to UNESDA's argument, cannot be considered as an oligopoly market structure.
- (148) The users further referred to the impossibility of passing on unprecedented PET price increases to their customers and the negative impact on their already low or even negative profitability, which was intertwined with the pressure to avoid further inflation in the consumer goods sector. Following the final disclosure, UNESDA maintained that the anti-dumping measures will lead to an increase in the price of vPET and rPET in the Union, as well as to the rise in vPET imports, dominated by Indorama.
- (149) As set out in recital (291) of the provisional Regulation, alternative sources of supply exist for PET users. Moreover, while the PET price in the Union might increase as a result of the anti-dumping measures, there are numerous other factors weighing heavily on the evolution of the PET price, such as the fluctuation of the crude oil price which is the basis for the PTA price, the main raw material for PET, the price of utilities or the destocking of PET. And as noted in this case, the PET price fluctuated in both directions, with the 2023 prices being at least 15 to 30 % lower than the 2022 prices. In light of these fluctuations and the current PET price, the argument had to be dismissed.
- (150) In conclusion, the above analysis of the various elements impacting on the user industry addressed the concerns expressed by the user industry and other interested parties over the potential ambiguity, lack of clarity or omissions of certain facts in the provisional Regulation.
- (151) According to Svepol, the Commission should take into account the comments on the Union interest submitted by interested parties before adopting any definitive measures. Svepol also added that the Commission incorrectly stated in recitals (288) and (291) of the provisional Regulation that PET resin makes up 15 % of the final cost of the preform.
- (152) First, regarding recitals (288) and (291) of the provisional Regulation the Commission referred to information originating directly from a submission made by the users' association (UNESDA). Second, the Commission duly addressed all the comments of the interested parties in this Regulation and in the provisional Regulation, highlighting the wide-ranging aspects of the interest of the various stakeholders and arrived at a clear and motivated conclusion identical to the one set out in recitals (294) to (297) of the provisional Regulation.

8.3. Conclusion on Union interest

- (153) The conclusions reached in recitals (294) to (297) of the provisional Regulation were confirmed.

9. DEFINITIVE ANTI-DUMPING MEASURES

9.1. Definitive measures

- (154) In view of the conclusions reached with regard to dumping, injury, causation, level of measures and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.
- (155) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
People's Republic of China	Sanfame Group:	16,0 %	6,6 %	6,6 %
	— Jiangsu Hailun Petrochemical Co., Ltd			
	— Jiangsu Xingye Plastic Co., Ltd.			
	— Jiangyin Xingyu New Material Co., Ltd.			
	— Jiangyin Xingtai New Material Co., Ltd.			
People's Republic of China	Wankai New Materials Group:	22,6 %	10,7 %	10,7 %
	— Wankai New Materials Co., Ltd.			
	— Chongqing Wankai New Materials Technology Co. Ltd.			
People's Republic of China	China Resources Chemical Innovative Materials Group:	17,2 %	21,2 %	17,2 %
	— China Resources Chemical Innovative Materials CO., LTD			
	— Zhuhai China Resources Chemical Innovative Materials Co., Ltd.			
People's Republic of China	Other cooperating companies	19,7 %	11,1 %	11,1 %
People's Republic of China	All other companies	24,2 %	27,5 %	24,2 %

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

(157) 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 ⁽¹⁶⁾. 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*.

(158) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper 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'.

⁽¹⁶⁾ European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

- (159) 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 should 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 rate of duty is justified, in compliance with customs law.
- (160) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular 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, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. 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.
- (161) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.
- (162) Exporting producers that did not export the product concerned to the Union during the investigation period should be able to request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the IP; (ii) it is not related to an exporting producer that did so; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

9.2. Release of the provisional duties

- (163) In light of the findings in the present case and given that it could not be positively established that in the absence of provisional measures, the threat of injury would have developed into material injury, the Commission considers that, pursuant to Article 10(2) of the basic Regulation, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be released.

10. FINAL PROVISION

- (164) In view of Article 109 of Regulation 2018/1046 ⁽¹⁷⁾, 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.
- (165) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion on the measures provided for in this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of polyethylene terephthalate ('PET'), having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, measured according to, or converted to the solvent phenol/1,2-dichlorobenzene (50/50), currently falling under CN code ex 3907 61 00 (TARIC code 3907 61 00 10) and originating in the People's Republic of China.

⁽¹⁷⁾ 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).

2. The rate 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 of origin	Company	Definitive anti-dumping duty	TARIC additional code
People's Republic of China	Sanfame Group:	6,6 %	899V
	— Jiangsu Hailun Petrochemical Co., Ltd		
	— Jiangsu Xingye Plastic Co., Ltd.		
	— Jiangyin Xingyu New Material Co., Ltd.		
	— Jiangyin Xingtai New Material Co., Ltd.		
People's Republic of China	Wankai New Materials Group:	10,7 %	899W
	— Wankai New Materials Co., Ltd.		
	— Chongqing Wankai New Materials Technology Co. Ltd.		
People's Republic of China	China Resources Chemical Innovative Materials Group:	17,2 %	899X
	— China Resources Chemical Innovative Materials CO., LTD		
	— Zhuhai China Resources Chemical Innovative Materials Co., Ltd.		
People's Republic of China	Other cooperating companies	11,1 %	See annex
People's Republic of China	All other companies	24,2 %	8999

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Commission Implementing Regulation (EU) 2023/2659 shall be definitively released.

Article 3

The Annex mentioned in Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) during the period of investigation (1 January 2022 - 31 December 2022);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation, and which could have cooperated in the original investigation; and
- (c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

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

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

Done at Brussels, 27 March 2024.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	SINOPEC YIZHENG CHEMICAL FIBRE LIMITED LIABILITY COMPANY	899Y
People's Republic of China	Dragon Special Resin (XIAMEN) Co., Ltd.	899Z
People's Republic of China	Far Eastern Industries (Shanghai) Ltd.	89AA
People's Republic of China	Jiangsu Ceville New Materials Technology Co., Ltd.	89AB