



Thereafter lies the substantive bulk of our submission. Oxy Vinyls will show that the data on US import volumes and prices does not show that US imports are injurious. Moreover, Inovyn's market share has remained stable (and at times, increased); and while investments are blooming in Inovyn's production centers situated in the European Union ("EU"), the sites in the United Kingdom ("UK") are being ignored, possibly leading to their poor performance. In any event, no "causal link"<sup>4</sup> exists between US PVC imports and alleged material injury to the UK industry. There are various non-import related factors that may be causing the alleged injury to the UK industry.

In closing, Oxy Vinyls will also make the case that there is no ground for a "threat" of material injury, as alleged by the applicant, either. There is also no basis for the applicant's desire to use a 15% profit margin (something they have never attained) to calculate alleged injurious price effects. Finally, Oxy Vinyls will request the TRA to take into account the interests of UK users when performing the economic interest test ("EIT") under Regulation 25(4)(a)(iii) of Schedule 4 of the Taxation (Cross-border Trade) Act of 2018 ("Schedule 4 of Act").

## **2. Preliminary observations**

Oxy Vinyls would like to make four preliminary observations.

### **a. The TRA should carefully consider all sources of injurious imports**

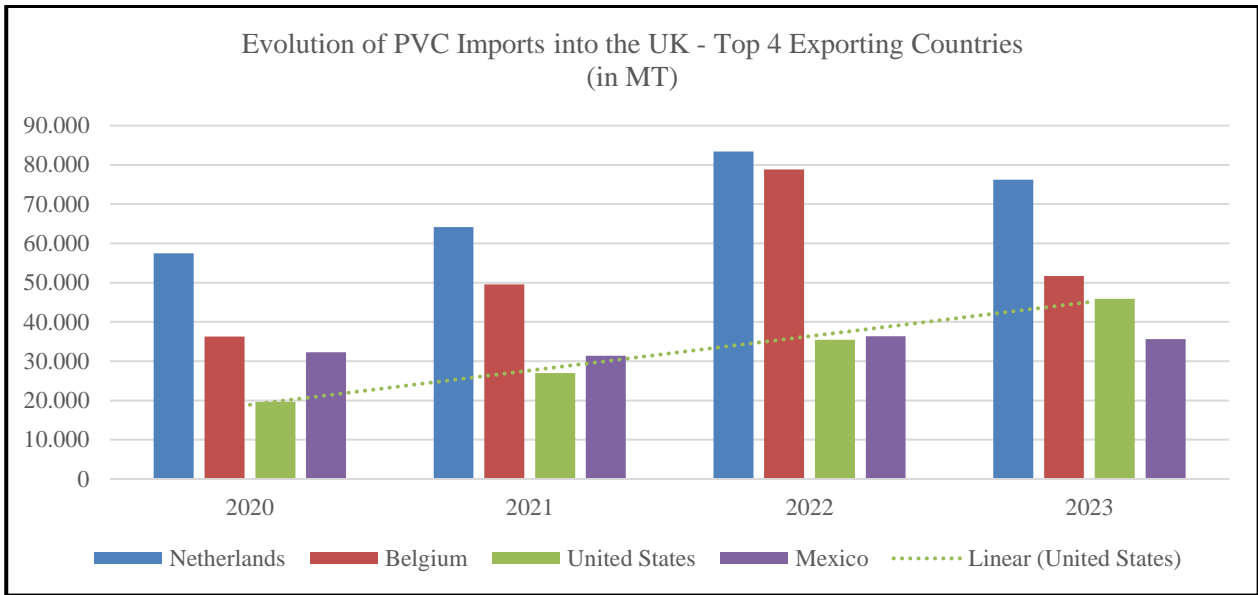
Inovyn's application singularly targets US imports. The application represents a continuation of concentrated efforts by *inter alia* Inovyn to eliminate US producers from European markets. Inovyn has already (successfully) sought an investigation into US PVC imports arriving in the EU.<sup>5</sup> The EU investigation is underway, despite the fact that EU PVC producers (including Inovyn) hold the lion's share of the EU market. Now, Inovyn has set its sights on sealing off the UK market.

US imports are selectively targeted despite the fact that EU Member States (such as Belgium and the Netherlands), which have larger import volumes than the US in all years of the period concerned; as well as other European/EU countries (Norway, Sweden, France, Spain and Germany), which have large and often increasing import volumes, have been excluded from the scope of the investigation.

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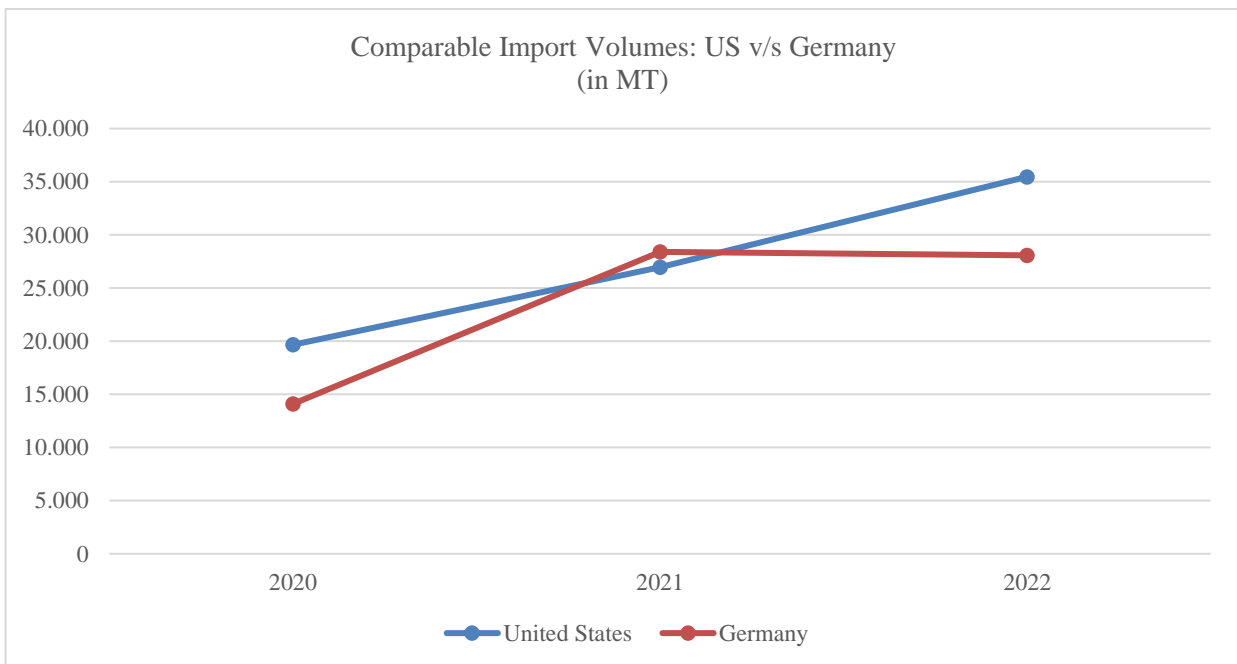
<sup>4</sup> WTO Appellate Body Report, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 117.

<sup>5</sup> Official Journal of the European Union, Notice of initiation of an anti-dumping proceeding concerning imports of certain polyvinyl chloride ("PVC"), originating in Egypt and the United States of America, C/2023/1033, 15.11.2023. Inovyn was [[SENSITIVE: as a non-confidential summary, it is noted that Inovyn was associated with the complaint in the EU investigation]].



Source: UK HM Revenue & Customs

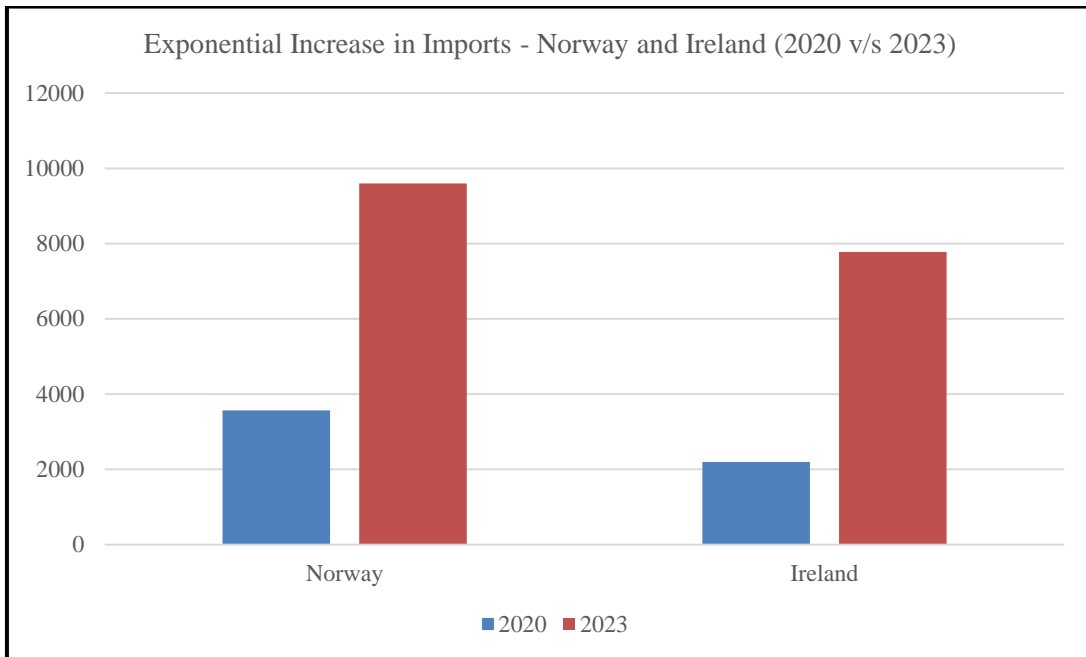
This is not inadvertent. What these excluded countries have in common is that they hold Inovyn's PVC production centres: Jemeppe in Belgium; Porsgrunn in Norway; Stenungsund in Sweden; Tavaux in France; Martorell in Spain; and Rheinberg in Germany.<sup>6</sup>



Source: UK HM Revenue & Customs

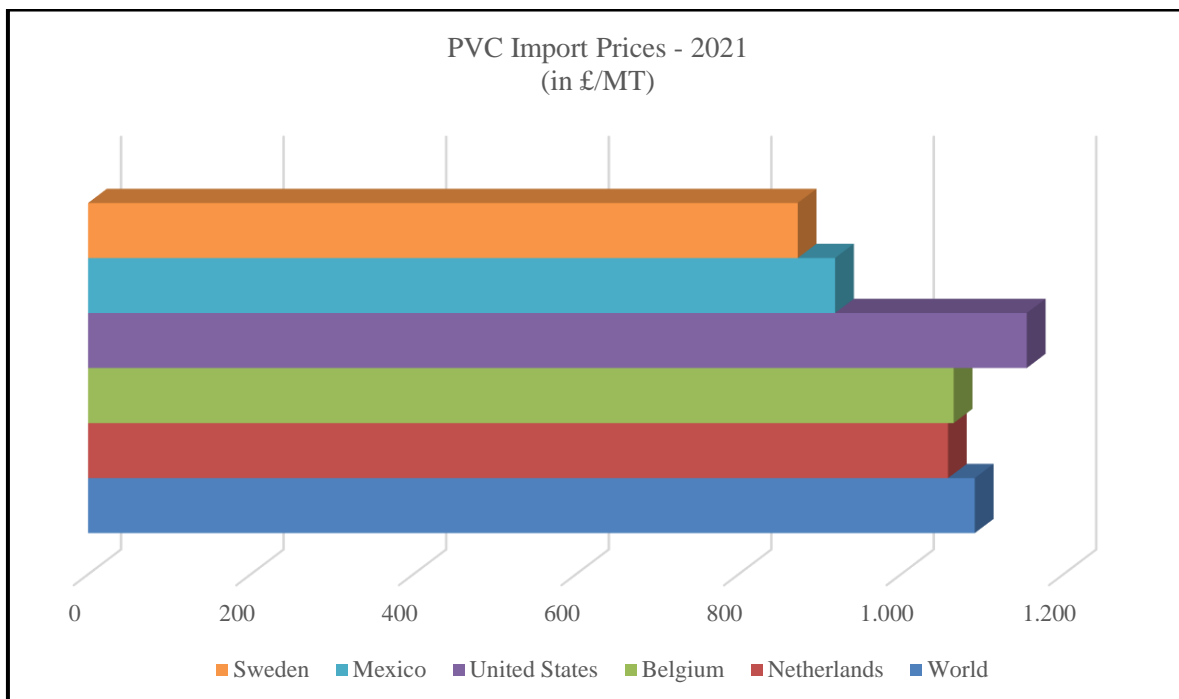
<sup>6</sup> See generally: Inovyn, Locations, available at: < <https://www.inovyn.com/locations/>> (last accessed 4 March 2024).

In fact, imports from countries like Norway (where Inovyn's Porsgrunn facility is located) and even Ireland have sharply accelerated, increasing by about 170% and 260% respectively over the course of the period considered. But these sources of imports are ignored.



Source: UK HM Revenue & Customs

US exporters have also sold their product at a higher price than others. For example, in 2021, US import prices were higher than not just the world average, but also than the price quoted by producers from the Netherlands, Belgium, Mexico, and Sweden:



Source: UK HM Revenue & Customs

It is therefore curious that countries with higher import volumes and lower import prices than the US have been omitted from the present investigation. In Oxy Vinyls' view, there is a simple explanation for this: Inovyn wants to have its cake and eat it. Unsatisfied with its monopolistic position in the UK producer industry, Inovyn now wishes to remove its competition from US imports. Note that the US is the rare non-European source of PVC imports identified in Appendix 2 of the application (listing the top 10 exporters to the UK). The only other one is Mexico, which Inovyn turns a blind eye to as well, despite the fact that Mexico had more imports than the US in 2020, 2021 and 2022.

Country/Year	2020	2021	2022
United States	19.661	26.973	35.468
Mexico	32.277	31.417	36.335

Source: UK HM Revenue & Customs

In all, Inovyn seems to desire the whole UK market for itself (and for its production centres in Europe/EU). This is the context in which Inovyn has brought its application. However, this is not the purpose that anti-dumping procedures (and duties) are meant to serve. Initiating an investigation on the basis of a "*frivolous or unfounded*" application is improper.<sup>7</sup> Oxy Vinyls therefore requests the TRA to carefully check *all* potential sources of injurious imports.

**b. The TRA should select a more precise PCN**

PCNs are used to ensure an apples-to-apples comparison. In the TRA's own words, PCNs are "*identifiers which are used to match the foreign producers' exported goods with the UK producers' domestically sold goods.*"<sup>8</sup> In the case of *OFC from China (2023)*, the TRA noted that "*[t]he TRA uses Product Control Numbers (PCNs) to define and group different types of products that are defined in the goods concerned description ... to ensure that the prices of similar products are compared during any calculations.*"<sup>9</sup> The same case noted that "*PCNs are created on the basis of the main physical characteristics differentiating the goods, providing that the characteristics have an impact on price.*"<sup>10</sup>

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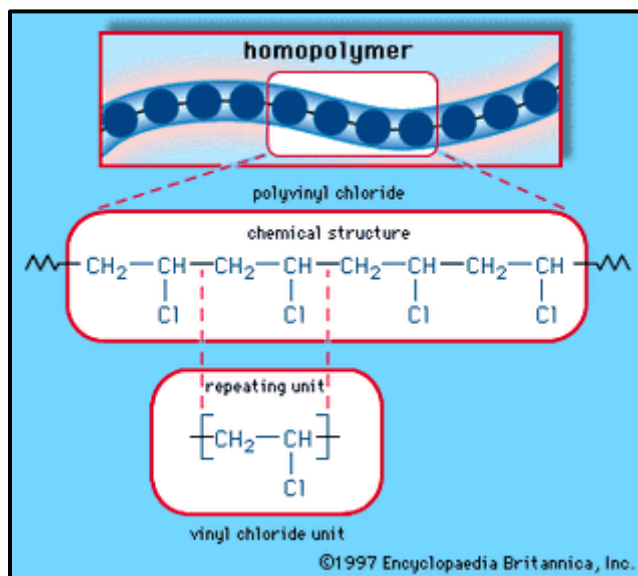
<sup>7</sup> WTO Panel Report, *US – Offset Act (Byrd Amendment)*, para. 7.61; WTO Panel Report, *Guatemala – Cement I*, para. 7.52.

<sup>8</sup> TRA, Guidance: How we assess injury (updated 7 February 2024), available at: <<https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-assess-injury>> (last accessed 4 March 2024). (emphasis added)

<sup>9</sup> UK TRA, Final Determination: Optical Fibre Cables imported into the United Kingdom from the People's Republic of China Investigation No. AD0021 into alleged dumping (23 October 2023), para. 112 ("*OFC from China (2023)*"). (emphasis added)

<sup>10</sup> *OFC from China (2023)*, para. 113.

Oxy Vinyls requests the TRA to opt for a PCN that takes into account the varied physical and chemical properties of different kinds or types of PVC that are manufactured in the UK and in the US. As noted in our reply to the pre-sampling questionnaire, Oxy Vinyls produces different 'grades' of PVC, which capture different prices. These different grades of PVC have different physical and chemical characteristics; they also serve different end uses. Most relevant for the PCN issue is the 'K-value' of the PVC. The K-value of PVC is a measure of the product's degree of polymerization (also known as "DP").<sup>11</sup> It denotes the number of monomers on the PVC chain. It thus also influences the molecular weight of the chain (and of the ultimate PVC product).

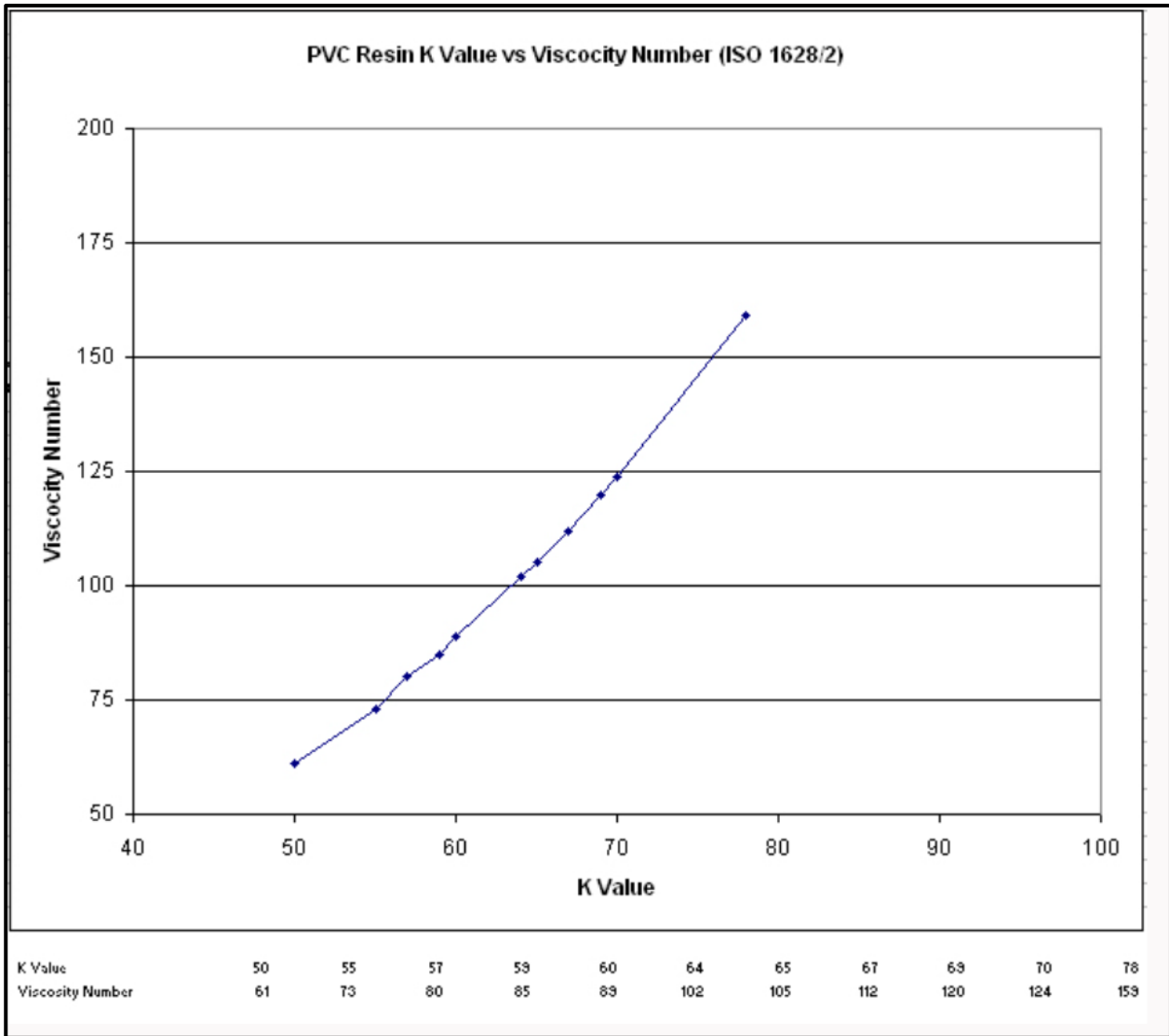


Source: Encyclopaedia Britannica<sup>12</sup>

The K-value has a direct impact on the properties of the PVC resin, as well as on the chemical properties of the final PVC product. It is generally accepted in industrial circles that higher K-values correspond (in the resin) to more porosity and crystallinity, and less bulkiness and transparency; and (in the product) to higher tensile and modulus properties and better weatherability. K-values also impact the processing of resin to product.

<sup>11</sup> The International Union of Pure and Applied Chemistry ("IUPAC") defines DP as "*The number of monomeric units in a macromolecule or oligomer molecule, a block or a chain*". See: Glossary of basic terms in polymer science, *IUPAC Recommendations*, 1996, page 2291.

<sup>12</sup> Britannica, PVC, available at: <<https://www.britannica.com/science/polyvinyl-chloride>> (last accessed 11 March 2024).



Source: Plastemart<sup>13</sup>

Producing PVC with different K-values also requires different manufacturing processes. As the European Commission has noted: *"To produce Commodity S-PVC with particularly low K-values such as K48, the reactors need to operate at higher temperatures and pressure. Conversely, to produce Commodity S-PVC with particularly high K-values such as K80, specialised additives are needed."*<sup>14</sup>

Oxy Vinyls manufactures [[SENSITIVE: as a non-confidential summary, it is noted that Oxy Vinyls produces a variety of PVC grades, with different K-values. These K-values correspond to different chemical properties, and fetch different prices on the market.]]

<sup>13</sup> Plastemart, PVC: What you should know about it, available at: <<http://atozplastics.com/upload/literature/pvc.asp>> (last accessed 11 March 2024).

<sup>14</sup> European Commission, Case M.6905 – INEOS/SOLVAY/JV, Merger Procedure Regulation (EC) 139/2004 (08/05/2014), para. 121.



Oxy Vinyls requests the TRA to select a PCN that takes into account, in the very least, the K-values of different PVC products.

**c. TRA should require Inovyn to provide cost of production data**

While Inovyn states that it has "*clearly separated costs of production for the following: raw materials, labour & direct costs, overhead expenses and SG&A and financial costs*",<sup>19</sup> data at this granular level is missing from the application (and its annexes). This impairs Oxy Vinyls' ability to understand the production cost structure of the applicant. This understanding is crucial to test whether (as suggested by us below), the alleged injury that Inovyn is supposedly suffering from, arises from high and increasing raw material/production costs.<sup>20</sup> We note that Inovyn has indeed provided such data (at least in ranges) in the parallel EU investigation. There is no reason why the same cannot be done before the TRA.

There is a further problem with Inovyn's disclosure of mere ranges for (total) costs of production. The non-provision of actual cost data makes it impossible for Oxy Vinyls to rebut Inovyn's charge that US imports are "*even entering the UK market at prices below the cost of production in the UK during the POI*".<sup>21</sup> For a "*full defence*" of its interests,<sup>22</sup> Oxy Vinyls must be enabled to dispute Inovyn's allegations regarding undercutting/underselling by US producers.

Therefore, Oxy Vinyls requests the TRA to require Inovyn to release detailed and granular cost of production data.

**d. TRA should critically examine Inovyn's use of data**

As a final preliminary note, Oxy Vinyls would like to comment on the manner in which the applicant has marshalled certain data in the application. First, we note that Inovyn has used the same data-point to arrive at different, conflicting conclusions. A good example is the way in which Inovyn uses consumption data. On the one hand, in its discussion of alleged "*overcapacity*" (itself incorrectly conceptualized),<sup>23</sup> Inovyn claims that US export capacities are "*particularly concerning in light of the UK's consumption which ... has declined since 2021*".<sup>24</sup> On the other hand, when discussing non-attribution factors, Inovyn changes its tune. It states that demand fluctuation cannot be the reason behind the industry's economic misfortunes since "*[t]otal UK consumption [showed] an increase of 4% from 2020*".<sup>25</sup> Thus, Inovyn uses consumption data in

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<sup>19</sup> Application, page 45.

<sup>20</sup> See below: Section 6.b.

<sup>21</sup> Application, page 52.

<sup>22</sup> See: Article 6.2 of the WTO Anti-Dumping Agreement ("ADA"). See further: WTO Appellate Body, *US – Oil Country Tubular Goods Sunset Reviews*, para. 241, stating that this provision requires authorities to give parties "*liberal opportunities*" for the defense of their interests.

<sup>23</sup> See below: Section 7.

<sup>24</sup> Application, page 48. (emphasis added)

<sup>25</sup> Application, page 53. (emphasis added)

any way it wishes, to serve a predetermined conclusion.<sup>26</sup> The TRA should take critical note of this.

Second, while the investigation is limited to imports of Suspension PVC ("S-PVC"), Inovyn has not separated imports of S-PVC from those of Emulsion PVC ("E-PVC"). Inovyn's justification is that apparently "*the majority of E-PVC imported into the UK originates in the EU*".<sup>27</sup> Thus 100% of imports from the US are considered to be included within the scope of the present investigation, even though, as per the application, as much as 6%-16% of PVC coming into the UK is E-PVC. Oxy Vinyls thus requests the TRA to either require Inovyn to furnish proof for its position (*i.e.*, to properly justify its methodology); or alternatively, to segregate US imports and analyse only S-PVC when determining *inter alia* alleged injury.

#### **e. Interim conclusion**

The TRA should not take the applicant's selection of the PVC import sources at face value. It should objectively analyse whether imports from European/EU countries where Inovyn has production centres, are the real reason behind alleged UK injury. When analysing injury, moreover, the TRA should opt for a PCN that at least takes into account the different K-values of PVC produced in the UK and the US. Finally, the TRA should require Inovyn to provide full and granular cost of production data, since the cognizance of this data is essential to a full defence of our due process rights. Inovyn's (mis)use of relevant data should also be closely monitored.

### **3. Inovyn's proposed dumping methodology is problematic**

Oxy Vinyls would like to flag two problems with the dumping methodology as contained in Inovyn's application. First, Inovyn uses UK truck prices as a proxy for actual US transport prices when determining normal value (cost of US producer to customer).<sup>28</sup> No adjustments are made to this price. Without adjustments, UK proxy prices are not representative of the actual transport cost accrued to US producers. Oxy Vinyls submits that the UK proxy figure (\$18/t) used by Inovyn is [[SENSITIVE: as a non-confidential summary, it is noted that Inovyn's suggested figure is extremely low. At present, the actual freight costs for Oxy Vinyls' domestic shipments is many multiples more than the figure suggested by Inovyn.]] Thus, a larger deduction for domestic transport costs is required on the normal value side.

Second, for the determination of export price, Inovyn estimates average handling and freight cost to be 80 £/t (more than 100\$/t) during the POI. A further 10% of trader margin is incorporated.<sup>29</sup> However, Oxy Vinyls' drayage charge is only around [[SENSITIVE: as a non-confidential summary, it is noted that the range of the charge is between \$17/t and \$35/t]]. Moreover, a 10%

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<sup>26</sup> Note that evidence in the application must have "*probative*" value. WTO Panel Report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, para. 7.352.

<sup>27</sup> Application, footnote 1.

<sup>28</sup> Application, pages 28 and 32.

<sup>29</sup> Application, page 32.

trader margin is unreasonably high. We estimate that the current margin is closer to [[SENSITIVE: as a non-confidential summary, it is noted that the range is between 2%-5%]]. Therefore, a much smaller deduction for costs and margins is required on the export price side.

#### 4. The UK industry is not suffering material injury

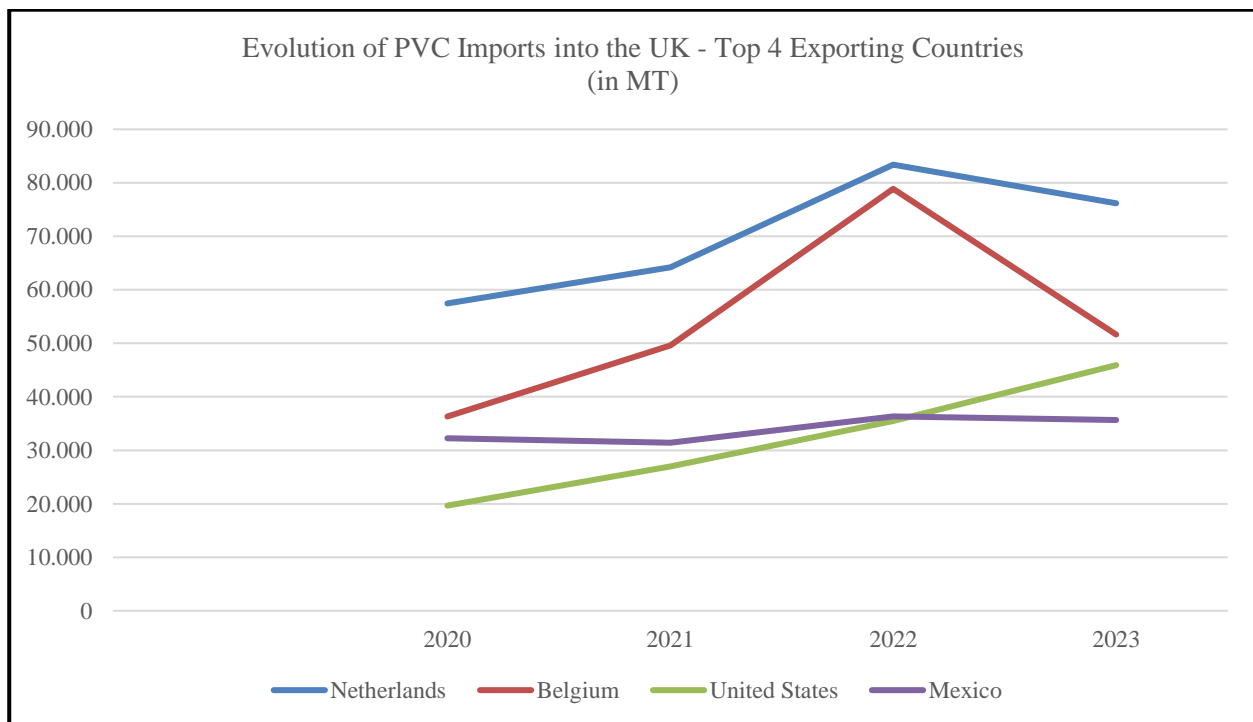
Neither US import data, nor UK industry data lend themselves towards a conclusion that there exists material injury to the UK industry.

##### a. US imports are not injuring the UK industry

Analysis of imports for the determination of injury turns on the twin axes of volume and price.<sup>30</sup> When the available data is exposed to an "*objective examination*",<sup>31</sup> it comes clear that US PVC is not entering the UK in injurious volumes or at an injurious price point.

##### i. Volume of US imports: relative and as such

At the outset, and as noted above, the US is not the main source of PVC imports. As such, the source of the problem (if any) is elsewhere; and Inovyn's application conveniently ignores European/EU sources of PVC. Problematically, the excluded sources are those where Inovyn has production centres.



<sup>30</sup> Regulations 30(1) and 30(2) of the UK's Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("Basic Regulation") and Articles 3.1 and 3.2 ADA. An authority has to "*consider two lines of enquiry*" – namely, volume and price (*see* WTO Panel Report, *China – Broiler Products (Article 21.5 – US)*, para. 7.50).

<sup>31</sup> Article 3.1 ADA.

Source: UK HM Revenue & Customs

For example, consider that imports of PVC from Netherlands and Belgium are between two to three times those from the US during the period considered. Even in the investigation period ("IP") (2023), when the US imports are at their highest, Netherlands and Belgium have higher import volumes of PVC. In 2023, imports from Netherlands are 65% more than those from the US.

Country/Year	2020	2021	2022	2023
United States	19.661	26.973	35.468	45.914
Belgium	36.320	49.600	78.875	51.654
Netherlands	57.458	64.183	83.394	76.194

Source: UK HM Revenue & Customs

Inovyn seeks to justify the exclusion of these countries from the scope of the investigation on the ground that the imports from Netherlands and Belgium are, in fact, US imports. In Inovyn's words, these EU imports are "*passthrough traffic [which] likely originates in the US*".<sup>32</sup> This is a serious allegation. However, Inovyn's position is entirely unsubstantiated. There is no proof in the application that would support such a claim. In the very least, Oxy Vinyls is not aware of any such "*passthrough*" of its products. Such "*passthrough*" also does not make any commercial sense: PVC from both US and Netherlands/Belgium is subject to the same 6% customs duty rate in the UK. Thus, there is no reason why traders would route US products to the UK, through the EU.

Moreover, Inovyn's application itself provides grounds to disregard the charge of a supposed channelling of US product. In Appendix 7, when speaking of the US producers' distribution model (in the UK), Inovyn states under the sub-heading of "*Traceability*" that:

*"Product is sold by the producer to the trader in bulk via rail car. Bulk material is unloaded into silos at the warehouse and then filled into plain bags of different sizes. These plain bags only have the grade name and Lot number on it. Lot number is an identification number assigned to a particular quantity or lot of material from a single manufacturer. The trader will not change the grade name/brand name on the bag in fear that they cannot get the quality guarantee from the supplier. The grade name and lot number are also present on the COA [certificate of analysis] issued by the supplier for each rail car Lot. This allows the traders to trace product back to the supplier in the case of customer complaints on product*

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<sup>32</sup> Application, page 51.

quality etc. Country of origin can also be used to trace back to supplier."<sup>33</sup>  
(emphasis added)

Thus, Inovyn's application is self-contradictory. While it makes a charge of "*passthrough*" of US product through the EU, it also details the reasons that would prevent such an event from occurring (*i.e.*, traceability of origin and producer through lot number and grade name).

Moreover, in the EU investigation (which Inovyn was, in part, responsible for starting) there was no claim made that some US imports, coming into Netherlands and Belgium, were being transhipped to the UK. All US imports into these EU countries were considered to have found their final destination on the EU market. It thus seems that Inovyn is potentially 'double-counting' US imports: first as US imports into Netherlands and Belgium (in the EU case); and then as US imports into Netherlands and Belgium, transhipped to the UK (in the present case). Thus, US imports into Netherlands and Belgium must be considered to be genuine imports into the EU (as they are, by the European Commission, in the EU case); and not as US goods transhipped to the UK through EU ports.

From a legal perspective, Inovyn's unproven allegation in its application is additionally problematic because it takes the form of a "[s]imple assertion, unsubstantiated by relevant evidence".<sup>34</sup> Such an assertion does not constitute "evidence" that would be "sufficient" for justifying the initiation of an investigation.<sup>35</sup> As the WTO Panel in *Guatemala – Cement II* found: "*statements of conclusion unsubstantiated by facts do not constitute evidence of the type [required by law]*" that would justify initiation.<sup>36</sup> Thus, the TRA should either require Inovyn to furnish proof supporting its assertion, or alternatively to explain why Netherlands and Belgium should be excluded from the scope of the present investigation.

In this regard, Oxy Vinyls kindly reminds the TRA of its responsibility as the investigating authority to have checked the "*accuracy and adequacy*" of what is written in Inovyn's application.<sup>37</sup> We trust that the TRA has thoroughly checked the substance of Inovyn's application. Therefore, we would like to see the actual evidence supporting Inovyn's assertion regarding "*passthrough traffic likely originat[ing] in the US*". The TRA must allow Oxy Vinyls to "*see all information that is relevant to the presentation of [its] case*".<sup>38</sup> In our view, there is nothing to show that there was any kind of failure on part of the competent and thorough UK Customs authority to check (what Inovyn seems to be alleging as) customs fraud. In any case, such evidence, if any, is imminently relevant to Oxy Vinyls. Such evidence should be provided to Oxy Vinyls so that it can – if it so

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<sup>33</sup> Application, Appendix 7, page 3.

<sup>34</sup> Article 5.2 ADA.

<sup>35</sup> Article 5.2 ADA.

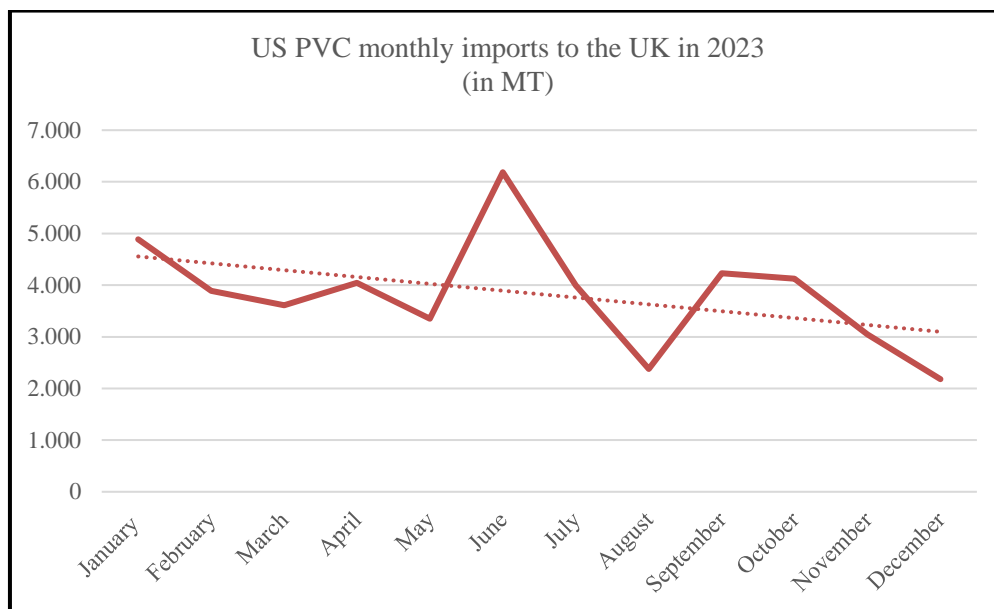
<sup>36</sup> WTO Panel Report, *Guatemala – Cement II*, para. 8.53.

<sup>37</sup> Regulation 52(1) Basic Regulation; Article 5.3 ADA.

<sup>38</sup> Article 6.4 ADA.

chooses – exercise its rights of defence; and if need be, rebut the assertion that US products are being illegally channelled into the UK through EU ports.

In any event, Oxy Vinyls notes that US imports have fallen across the most recent period (the IP):



Source: UK HM Revenue & Customs

US imports into the UK have almost halved across 2023. In January 2023, US imports clocked in at 4,886 MT, and by December of that year, these imports had fallen to 2,180 MT. In itself, this shows that US PVC imports into the UK are on a downward trajectory, and therefore are not a cause for concern. The spike in US import in May-June can probably be put down to some market peculiarity. This is because, in the same period, UK consumption as well as (related) sales of Inovyn, also increased.<sup>39</sup> The rate of increase in US imports has also been falling – from about 37% in 2020-2021 to a little over 29% in 2022-2023. Given that in the "most recent year" (2023) there has been a decrease in imports of almost 45%, the TRA must find that there has been no "significant increase"<sup>40</sup> in US imports. This would be in line with the WTO Panel's ruling in *Pakistan – BOPP Film (UAE)*.<sup>41</sup>

ii. Price of US imports: increasing and stabilized

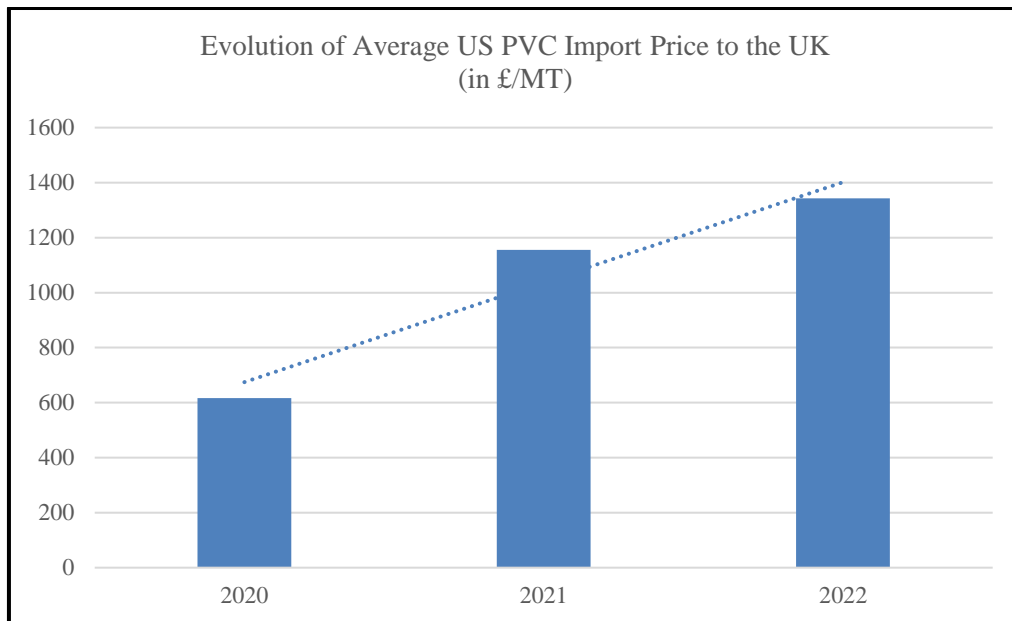
Price indicators for US imports are also robust. Average US import prices continuously increased between 2020 and 2022:

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<sup>39</sup> Application, Appendix 6.

<sup>40</sup> Regulation 31 Basic Regulation; Article 3.2 ADA.

<sup>41</sup> WTO Panel Report, *Pakistan – BOPP Film (UAE)*, paras. 7.272-7.275.

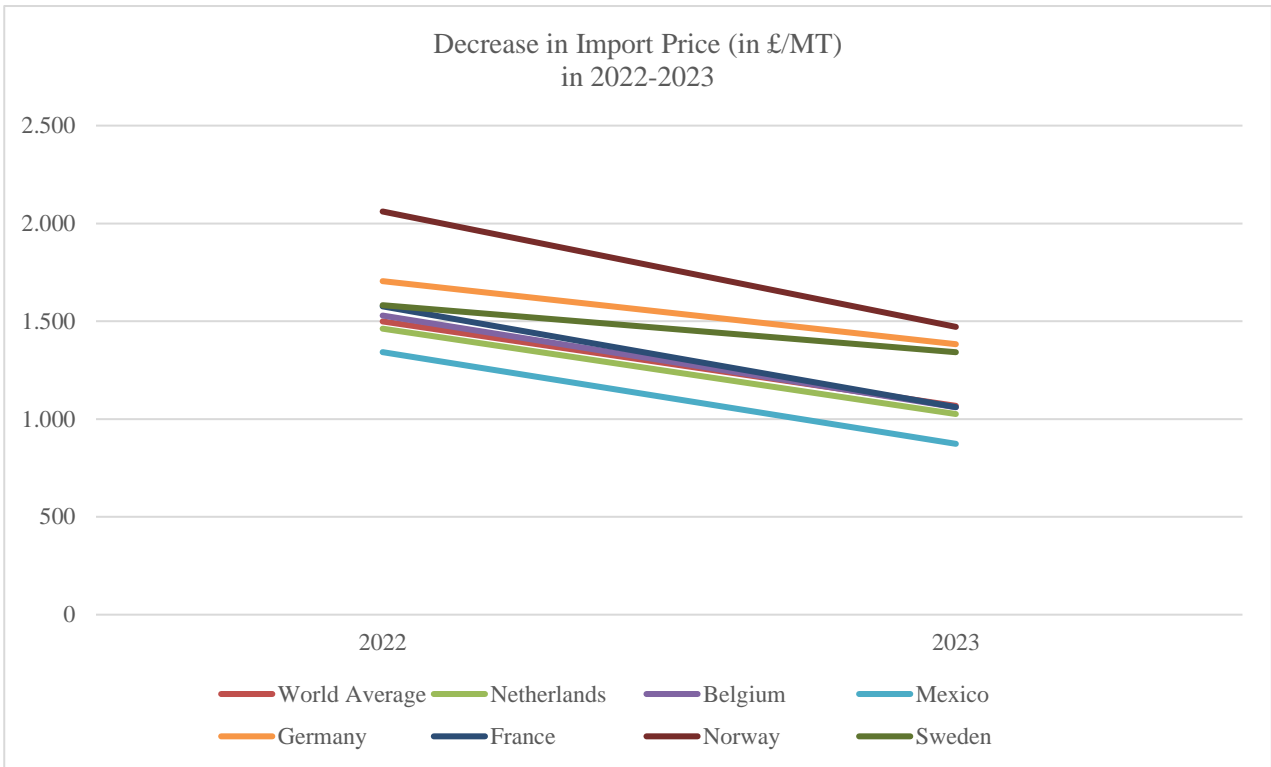


Source: UK HM Revenue & Customs

Increasing import prices suggest that imports are not causing injury to the domestic market.<sup>42</sup> While there was some decrease in average US import price between 2022 and 2023, this was the case with all major sources of UK PV imports, as well as with the world average:

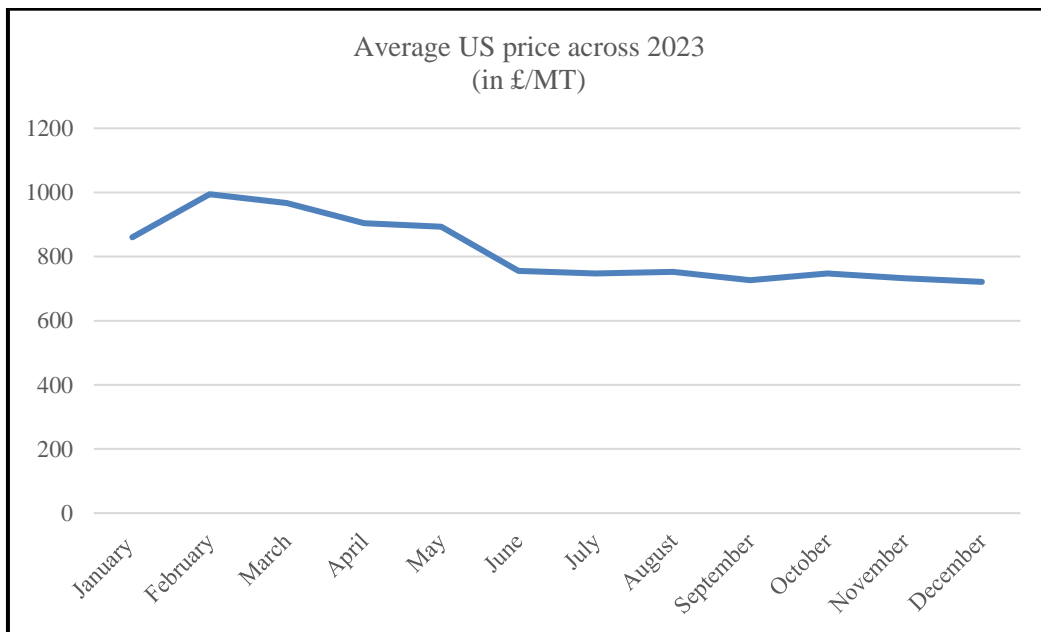
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<sup>42</sup> For context, *see* the following EU decisions where increase import prices were seen as an indication that the imports were not contributing to the deterioration of the state of the EU industry: Commission Implementing Regulation (EU) 2022/95 of 24 January 2022 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, recitals (143)-(144); Commission Regulation (EU) No 118/2011 of 10 February 2011 imposing a provisional anti-dumping duty on imports of certain ring binder mechanisms originating in Thailand, recital (69).



Source: UK HM Revenue & Customs

In any event, US import prices in the IP (2023) have stabilized:



Source: UK HM Revenue & Customs

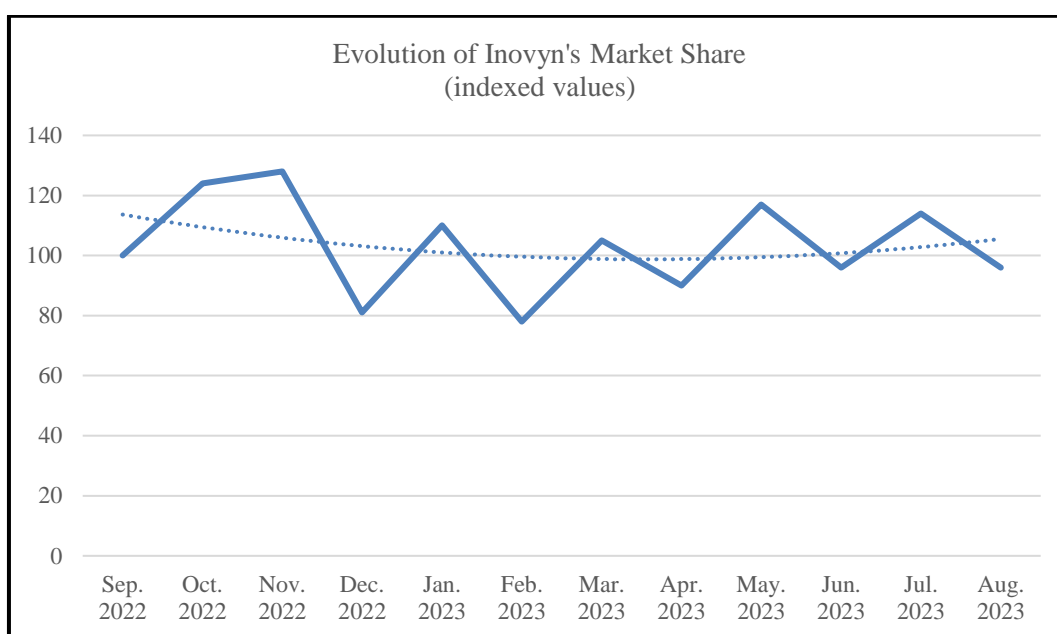
Thus, from the perspective of price as well, US imports are not a cause for concern.

**b. The UK industry is economically healthy**

From the external we move to the internal. Having examined US imports, we now analyse the state of the UK industry. At the present stage (given the limited data provided in the application), Oxy Vinyls would like to focus on two elements: market share and investments.

i. Inovyn's market share has remained stable and at times has improved

A clear and substantial decline in the UK industry's market share would perhaps indicate that the industry is suffering material injury.<sup>43</sup> However, while Inovyn's market share in the recent period has oscillated somewhat, the fluctuations have remained in a fairly narrow window. Moreover, Inovyn has *gained* market share in many parts of the IP; for example, between February and March 2023; April and May 2023; and June and July 2023. According to the application, Inovyn's market share evolved in the following manner:



Source: Application, Appendix 6

These positive trends in Inovyn's market share must be considered by the TRA. Oxy Vinyls notes that in *Pakistan – BOPP Film (UAE)*, the WTO Panel found that the investigating authority had erred by finding injury while failing to consider the "increasing market share of the domestic industry during the first and last part of the POI".<sup>44</sup>

On a related note, Oxy Vinyls takes issue with Inovyn's refusal to provide actual market share data. Without actual figures concerning domestic and US market shares, it is impossible for Oxy Vinyls to make a comprehensive case against Inovyn's allegation of injury (on account of alleged loss in market share). Without these figures, we cannot show (as we believe to be the case), that the market share of US imports on the UK market is – in absolute terms – quite minimal (even if it has

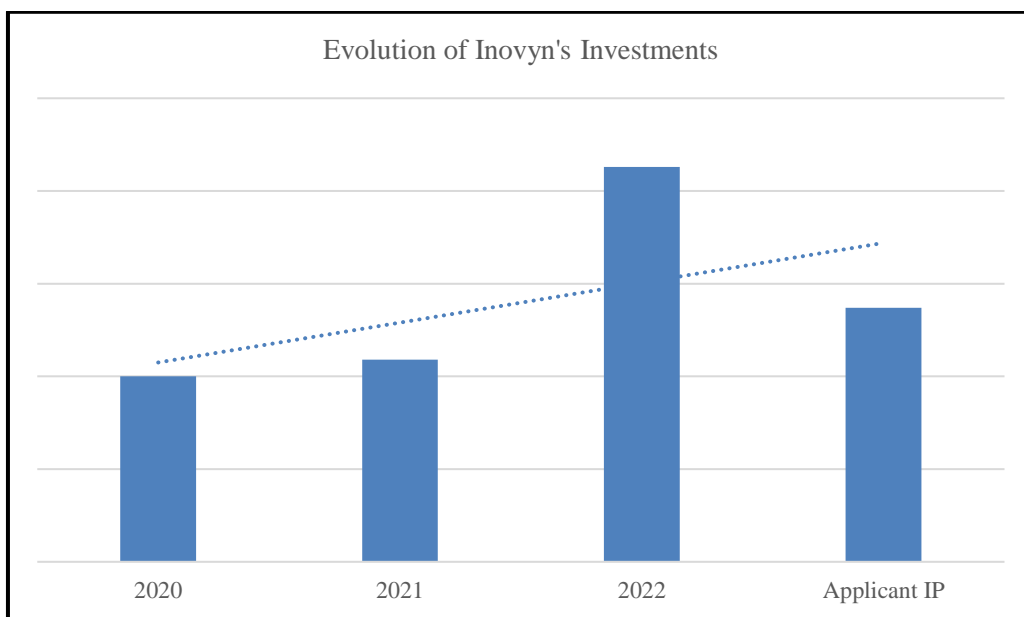
<sup>43</sup> Regulation 33(a) Basic Regulation; Article 3.4 ADA.

<sup>44</sup> See: WTO Panel Report, *Pakistan – BOPP Film (UAE)*, paras. 7.367-7.369.

marginally increased over time). Market share percentages are not business confidential (or commercially sensitive) in the same way as, for example, a company's profit/loss data or the name of its input suppliers/customers may be.<sup>45</sup> Moreover, the fact that market share data is not confidential, is proven by the fact that Inovyn provided market share information (as a part of the EU domestic industry) in the parallel EU investigation. Thus, Oxy Vinyls requests the TRA to require Inovyn to provide market share percentages of itself and of US imports. This would enable us to fully defend our interests.<sup>46</sup>

ii. Investment data shows that Inovyn is healthy but not prioritizing UK facilities

Inovyn's investments have been growing since 2020; more than doubling in 2022, compared to the start of the period considered. As per the applicant's data:



Source: Application, Appendix 6

High and increasing investments (and the ability to raise capital, more generally) is generally considered to be a sign of a healthy and prosperous industry.<sup>47</sup> In fact, the real problem seems to

<sup>45</sup> In any event, Inovyn has not made such a case for confidentiality of its market share data.

<sup>46</sup> Article 6.2 ADA (first sentence).

<sup>47</sup> For context, *see* the following decisions from the EU where high investments (including that geared towards environmental protection) was considered a relevant factor in the European Commission's conclusion that the EU industry had not suffered injury: Commission Implementing Regulation (EU) 2017/109 of 23 January 2017 imposing a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, recitals (162), (167), (169); Commission Implementing Regulation (EU) 2017/2206 of 29 November 2017 imposing a definitive anti-dumping duty on hand pallet trucks and their essential parts originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, recitals (103), (106), (108); Commission Implementing Regulation

be that Inovyn has not prioritized its UK manufacturing centres. All major investments of the company in the recent past seem to be concentrated in the EU. For example, in February 2023, it was reported that Inovyn had secured financing of € 3.5 billion for its cracker project in Antwerp (Belgium).<sup>48</sup> Similarly, Inovyn fitted its Jemeppe PVC production unit (in Belgium) with 90,000 solar panels, making it one of the country's largest solar farms.<sup>49</sup>

However, nothing points to any attention being paid to Inovyn's sites in Newton Aycliffe, Northwich, and Runcorn. A perusal of the company's annual reports confirms this. For example, when speaking of the investments made regarding hydrogen (as a fuel/feedstock), Inovyn's 2022 report says that the "*first [hydrogen] plants will be built in Norway, Germany and Belgium in the next 10 years*"; it is only then offhandedly mentioned that "*investment [are] also planned in the U.K. and France*".<sup>50</sup> Perhaps this is the reason why the applicant is not doing well. The company seems to be actively choosing to invest *outside* the UK (*i.e.*, in the EU). It is interesting to note that investments are flourishing in countries like Belgium, which as noted above, the applicant has chosen to exclude from the investigation despite high import volumes.

Moreover, while the applicant states that investments are "*largely based on maintenance of the production plant*",<sup>51</sup> this is hard to reconcile with the information contained in the company's annual reports. These reports show that the company has been making investments above and beyond the mere maintenance of *status quo*. For example, the company has invested in production of new technology (BIOVYN™ being a prime example); expansion of production; and in environmental upgrades, such as improvement in recyclability of its PVC products.<sup>52</sup>

Relatedly, the applicant seems to downplay the relevance of high (and increasing) investments. It states in the application that these investments "*must be read in light of the trends in cash flow over the same period, which decreased ... from 2020 to the POI*".<sup>53</sup> However, first, the company's cash flow, in fact, *increased* from 2020 to 2022. Cash flow in 2021 was almost 8.5 times that in

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(EU) 2018/931 of 28 June 2018 imposing a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, C/2018/3975, recitals (121), (122), (129); Commission Implementing Regulation (EU) 2023/1159 of 13 June 2023 imposing a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, recitals (173), (178).

<sup>48</sup> MRC, INEOS secured financing for its cracker project in Antwerp, Belgium (14 February 2023), available at: <<https://www.mrchub.com/news/406231-ineos-secured-financing-for-its-cracker-project-in-antwerp-belgium>> (last accessed 7 March 2024).

<sup>49</sup> Ineos/Inovyn, 90,000-panel solar farm in Belgium to come online in 2024 for INEOS Inovyn (19 February 2024), available at: <<https://www.inovyn.com/news/90000-panel-solar-farm-in-belgium-to-come-online-in-2024-for-ineos-inovyn>> (last accessed 7 March 2024).

<sup>50</sup> Ineos/Inovyn, Annual Report 2022, page 112.

<sup>51</sup> Application, page 44.

<sup>52</sup> Ineos/Inovyn, Annual Report 2022, pages 112, 87, and 114 respectively.

<sup>53</sup> Application, page 44.

2020.<sup>54</sup> Thus, the applicant is baldly misrepresenting its cash flow situation. Second, in any event, Oxy Vinyls fails to see the relevance of these cash flow issues. Cash flow problems (arising only post-2022) do not take away from the fact that the company is able to put serious money behind its business. If the company is (separately) facing cash flow problems, that may be a sign of internal financial misallocation. The company's inability to manage cash fluidity is quite besides the point.

**c. Interim conclusion**

The UK industry is not facing harm on account of US imports, since these imports have fallen in the most recent time period, while their price has increased and then stabilized. The applicant's assertion regarding a "passthrough" of US PVC products through EU ports makes no sense; and, in any event, has not been supported by evidence of any kind. In itself, the UK industry is doing well as can be seen from its stable (and at times increasing) market share. Inovyn has resources to spend on its business – which is itself testimony to its health – however Inovyn is choosing to prioritize EU production centres over those in the UK, to the detriment of the latter.

**5. No causal relationship exists between alleged UK PVC injury and US imports**

In the words of the WTO Appellate Body: "[a] causal link between dumping and injury to the domestic industry is ... fundamental to the imposition and maintenance of an anti-dumping duty".<sup>55</sup> There must be *causation*; not mere coincidence or correlation.<sup>56</sup> However, no such correlation, let alone causation, exists in the present case, between US imports and alleged UK injury. Oxy Vinyls will demonstrate this in two ways.

First, consider Inovyn's revenue and profitability, which were increasing between 2020 and 2022.

Revenue in 2020	Revenue in 2021	% of increase	Revenue in 2022	% of increase
€ 2.878 million	€ 4.225 million	47%	€ 5.136 million	22%

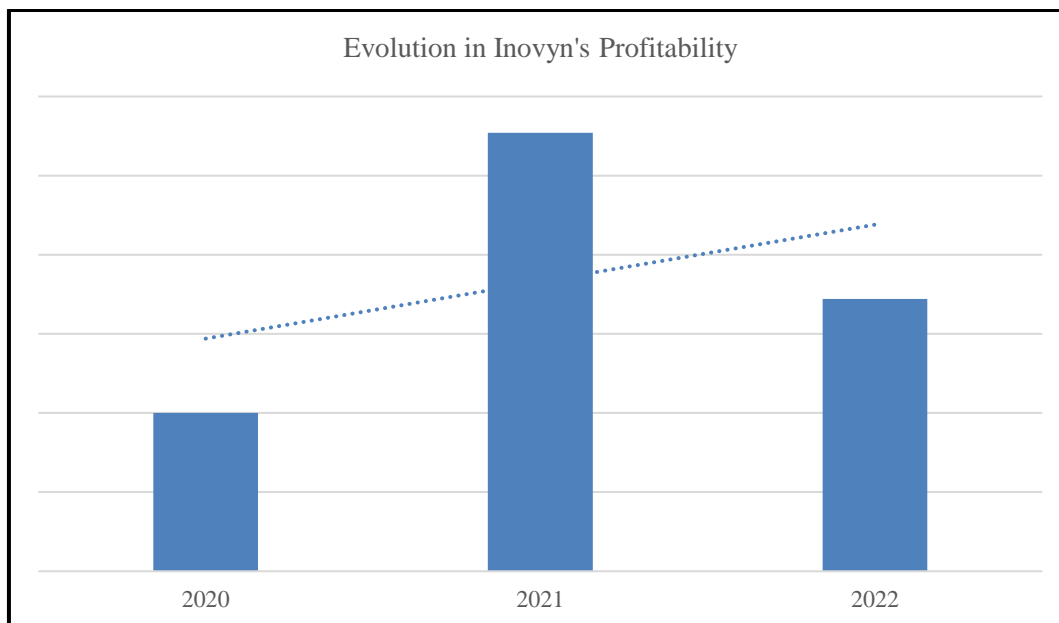
Source: Inovyn Annual Reports<sup>57</sup>

<sup>54</sup> Application, Appendix 6.

<sup>55</sup> WTO Appellate Body, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 117.

<sup>56</sup> WTO Panel Report, *China – X-Ray Equipment*, para. 7.247.

<sup>57</sup> Ineos/Inovyn, Annual Report 2022, page 53; Ineos/Inovyn, Annual Report 2021, page 57.



Source: Application, Appendix 6

In itself, increasing revenue and profitability is a sign that the domestic industry is doing well.<sup>58</sup> Note that these positive developments occurred at a time when US imports were *increasing*. In other words, US imports cannot be the cause of any injury to the UK industry since the industry was doing well (and improving, due to competition from abroad) while US imports increased. Thus there is no "*genuine and substantial relationship of cause and effect*" between US imports and alleged UK injury.<sup>59</sup>

In the 2022-2023 period, there was a sudden decline in economic factors for the UK industry. However, US imports could not have *suddenly* caused this decline, since they were already present on the UK market from before. Moreover, the rate of increase in US imports in 2022-2023 was not as sharp as in previous periods. Indeed, as noted above, US imports decreased across 2023. Thus, the cause for the declining health of the UK industry lies elsewhere. As will be shown below, other factors such as turnaround problems and high input costs could be contributing to the temporary deterioration in the state of the UK industry.

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<sup>58</sup> See for context the following EU decision where the investigation was terminated on the ground that the domestic industry was making high profits, even though several other injury factors were negative: Commission Implementing Regulation (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd, recitals (135) and (140)-(141). This decision was upheld by EU courts: Case T-211/16, *Caviro Distillerie and Others v. Commission*, ECLI:EU:T:2018:148; Case C-345/18 P, *Caviro Distillerie and Others v. Commission*, ECLI:EU:C:2019:589. See also: Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, recitals (99), (101)-(102), where *inter alia* high profit margins led to the conclusion that no injury had been suffered by the EU industry.

<sup>59</sup> WTO Appellate Body Report, *US - Wheat Gluten*, para. 69.

Second, consider market share. As noted above, UK industry's market share has remained stable. What is more: contrary to what the applicant implies,<sup>60</sup> the UK producer has not lost market share to US imports. Between 2020 and the applicant's chosen IP, while the market share of US imports increased, so did the market share of other (non-US sourced) imports.<sup>61</sup> Moreover, the applicant has not provided market share data of other major source of imports, such as the Netherlands, Belgium, Mexico, Norway and Ireland. It is entirely possible that these countries have large (and increasing) market share in the UK, as well.

Even more telling is the fact that in the applicant's chosen IP, the UK and US market shares do not correlate at all. In other words, UK market share has increased when US share has increased (September-October 2022) *and* when it has decreased (February-March 2023). UK market share has also *decreased* when US share has increased (March-April 2023) and also when it has decreased (November-December 2022; January-February 2023; July-August 2023). Since both UK *and* US products lost market share in certain parts of the applicant's IP, it is clear that the UK industry has lost market share to *non-US* imports. In this regard, the applicant's reports from 2023 squarely blame Chinese imports for the declining situation of the UK industry.<sup>62</sup>

## **6. Various known factors break the causal link between US imports and alleged UK injury**

Even if the TRA were to somehow find that the UK industry has been injured, Oxy Vinyls submits that US imports are not the cause of that injury. There exist various other factors, unrelated to US imports, that could have contributed to injury to the UK's industry. Such injury cannot be attributed to US PVC imports.<sup>63</sup> Since Inovyn's application contains no serious non-attribution analysis, Oxy Vinyls identifies – at this preliminary stage – the following four factors that may have contributed to any alleged injury that the UK industry may be suffering.

### **a. Turnaround problems in Rafnes**

As noted above, the applicant was doing well right up till the period of the applicant's chosen IP. Revenue as well as profits were increasing. However, something seems to have gone wrong in 2022. This is the point of departure from where these economic factors demonstrate a downturn. And something did happen in 2022: Inovyn's VCM production site at Rafnes (Norway) was shut for two months. The company's 2022 Annual Report states:

*"In our INOVYN Business, sales volumes of general purpose PVC, specialty PVC and caustic soda in the second quarter of 2022 were **negatively impacted** by key turnaround programs at our facilities in Rafnes, Norway and the Feyzin cracker in France, both of which*

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<sup>60</sup> Application, page 51.

<sup>61</sup> Application, Appendix 6.

<sup>62</sup> Ineos/Inovyn, Q1 2023 Report, page 26, stating that "European general purpose PVC selling prices also experienced downward pressure from strong import competition, in particular from Chinese producers".

<sup>63</sup> WTO Appellate Body, *EC – Tube or Pipe Fittings*, para. 175.

*experienced **significant delays in start-up** following the completion of planned maintenance activities. [...]*

*Likewise, unplanned outages or unforeseen transportation interruptions can impact our operating results, even if such outages or interruptions are covered by insurance. ... For example, in the second quarter of 2022, the financial performance of the INOVYN Business was negatively impacted by the delay in the re-start of its VCM and PVC operations at Rafnes, Norway following a key turnaround event. The turnaround event started at the end of April 2022 and was planned to come back online at the end of May, but due to unforeseen technical issues, production of general purpose PVC could not re-start until the **end of June**."<sup>64</sup> (emphasis added)*

Recall that Rafnes is the site that supplies VCM to Inovyn's UK PVC production centre.<sup>65</sup> The fact that VCM (in Norway) and PVC (in the UK) could not be produced for two months in the middle of 2022 is clearly the reason behind poor economic performance at that time. Most often, the cause-effect relationship that can be established in the most straightforward manner, with minimum assumptions, is the most robust.<sup>66</sup> The TRA can therefore safely disregard other causes of poor performance during this period. Inovyn's mid-year report from 2022 clearly connects its poorer performance year-on-year to Rafnes:

*"The results for the three month period ended June 30, 2022 decreased compared to the same period in 2021, primarily due to product mix. The product mix effect mainly arose as a result of the scheduled turnaround maintenance of the Rafnes cracker in the quarter ended June 30, 2022. Whilst the reduction in volumes due to the turnaround was largely offset by higher volumes at other sites, these offsetting volumes were in lower margin products than those produced at the Rafnes site."<sup>67</sup> (emphasis added)*

Oxy Vinyl's conceptualization of the problem tracks with Inovyn's production, which shows a significant dip in 2022:

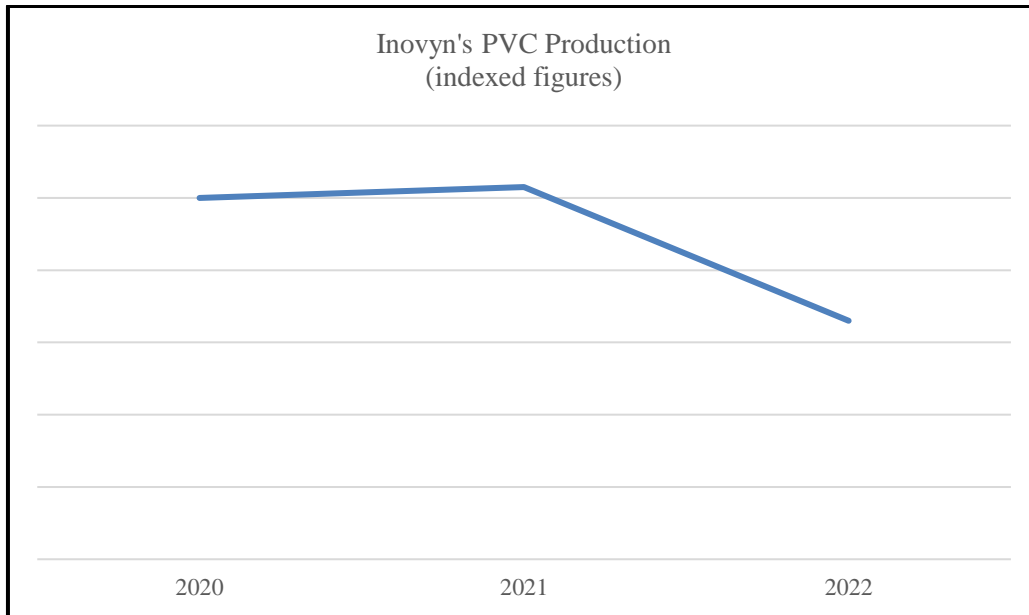
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<sup>64</sup> Ineos/Inovyn, Annual Report 2022, pages 31 and 46.

<sup>65</sup> Application, page 8.

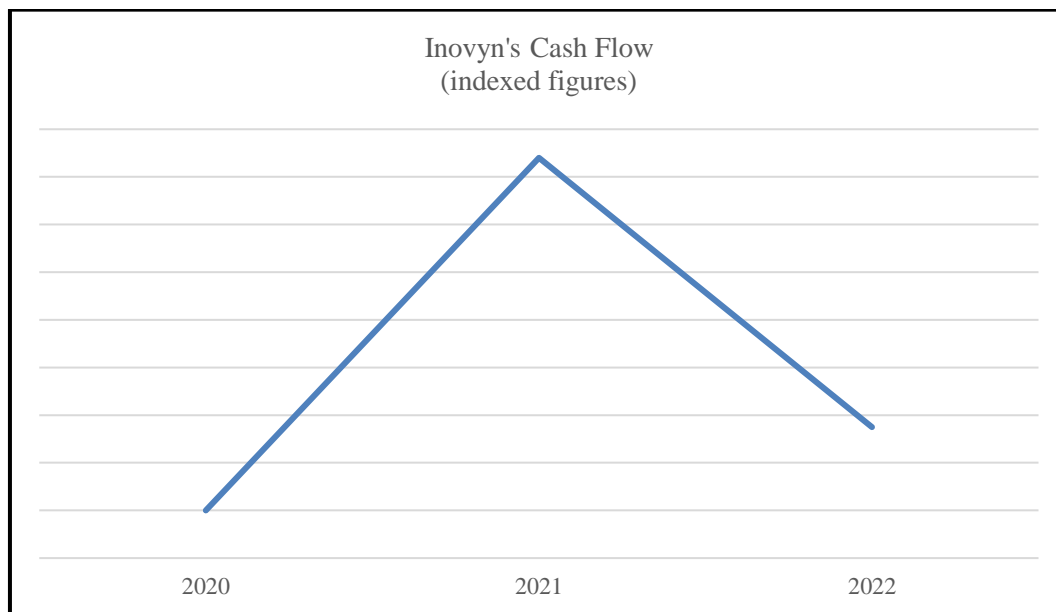
<sup>66</sup> In the theory of logic, this is referred to as "Ockham's razor".

<sup>67</sup> Ineos/Inovyn, Q2 2022 Report, page 27.



Source: Application, Appendix 6

The same is the case with cash flow, which also dropped in 2022:



Source: Application, Appendix 6

This makes sense. In the parallel EU investigation, the complainants (of which Inovyn was a part) went to great lengths to explain how it is very expensive to have turnarounds or reduction/stoppage of production, even for a few days. The complaint in the EU case, quite helpfully, states that:

*"Turning on and off a VCM or electrolysis plant is not easy. Idling of plants requires that the system be kept active and warm because when cooled down there is a risk of leaking flanges, or blockage of VCM crackers. VCM plants operate fluid bed oxychlorination reactors. In case of shutdown,*

those reactors must be kept warm (steam consumption) and under fluidisation (N2 consumption) to avoid corrosion and plugging. Preventing these issues would require proper mothballing of the assets, which means decommissioning the whole equipment, an operation that typically takes several days and important manpower reinforcement with contractors. After decommissioning, the equipment has to be specially protected from moisture and other environmental agents to avoid corrosion. Mothballing assets is an operation that is considered only if the asset is expected to be shut down for months or years.

In the case of VCM plants, it is also possible that a decoking of the EDC cracking furnace will need to be run if the last decoking operation was made more than 2 months before, because cooling down brings a high risk of coke lumps to break down from the walls, causing clogging downstream in the installation.

In case one electrolyser is permanently damaged in the period, the cost of repair of one electrolyser is in the range of €1-3 million depending on the degree of damage. Damages in a VCM plant can be very expensive to fix too. Should the catalyst be disregarded, emptying an oxychlorination reactor and filling with a new catalyst bed takes at least one week provided that no hardware damage is found."<sup>68</sup> (emphasis added)

According to Inovyn (in the EU case), the cost of keeping a VCM asset (like Rafnes) idle is between € 50.000 to € 100.000 per day. In addition, it would take "2 to 4 days [of] transition before obtaining inspection material [and a further] 8 days for decoking".<sup>69</sup> Thus, if there is any reason for the recent and temporary downturn in the economic fate of Inovyn, it is to be found within; not without.<sup>70</sup> Indeed, only since 2022 has the company's profitability been falling.<sup>71</sup>

This is not the first time that Rafnes has been a problem.<sup>72</sup> In 2020 (i.e., at the beginning of the period considered), Inovyn was forced to declare a *force majeure* due to a power outage at Rafnes.<sup>73</sup> The company's annual report notes that business was:

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<sup>68</sup> EU Complaint, pages 20-21.

<sup>69</sup> EU Complaint, page 21.

<sup>70</sup> For context, see the following EU decision where *force majeure*/turnarounds were considered to be an appropriate non-attribution factor: Commission Regulation (EU) No 821/2011 of 16 August 2011 imposing a provisional anti-dumping duty on imports of vinyl acetate originating in the United States of America, recitals (103)-(107).

<sup>71</sup> Application, Appendix 6. Between 2021 and 2022, Inovyn's profitability fell by about 100 percentage points.

<sup>72</sup> For an older example, see: Ineos/Inovyn, Annual Report 2020, page 52, referring to unplanned turnaround in Rafnes in October 2016, due to a power outage which resulted in a fire.

<sup>73</sup> ChemOrbis, Inovyn issues force majeure on European PVC supply (2 September 2020), available at: <<https://www.chemorbis.com/en/plastics-news/LATEST-NEWS-Inovyn-issues-force-majeure-on-European-PVC-supply/2020/09/02/798153&isflashhaber=true#reportH>> (last accessed 11 March 2024).

*"[N]egatively impacted by approximately €6 million as a consequence of a delay in the re-start of its VCM and PVC operations at Rafnes, Norway following a key turnaround event. The turnaround event started at the end of April 2020 and was planned to come back online at the end of May, but due to unforeseen technical issues, production of general purpose PVC could not re-start until the middle of June."*<sup>74</sup> (emphasis added)

Given that the company is prone to having such production issues, the TRA is requested to carefully consider whether the cause of any injury that is being faced by the company is closer to home than the company would let on.

#### **b. High and increasing production costs**

As noted above, Inovyn has not provided data trends (let alone precise data) on the costs associated with factors of production over time. However, statements made in the application and information that is publicly available show that the reason the company seems to be suffering may have to do with the fact that it is becoming more and more expensive to manufacture PVC in the UK. Consider the costs associated with energy, ethylene, and UK environmental regulations.

##### **i. Energy costs**

High and increasing energy costs have been acknowledged as a problem in the application.<sup>75</sup> Note that energy accounts for about 50% of Inovyn's raw material expenses.<sup>76</sup> In this regard, Inovyn has clearly stated that: "*[a]s a result of the recent energy crisis, UK costs of production have increased substantially resulting in a significant increase in the prices sought by UK producers.*"<sup>77</sup> In a similar vein, Inovyn's 2022 annual report states that: "*[a]s a consequence of the war in Ukraine, electricity and natural gas prices rose to unprecedented levels in 2022 significantly increasing production costs.*"<sup>78</sup> This report explicitly connects "high electricity prices" and high "energy input costs" to low revenue generated by the company.<sup>79</sup> The fact that this issue has continued into 2023 is confirmed by the latest trading statement released by the company (February 2024), which continues to refer to "high energy costs" as a problem.<sup>80</sup>

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<sup>74</sup> Ineos/Inovyn, Annual Report 2021, page 48.

<sup>75</sup> See: Application, pages 43, 45, 48, 49.

<sup>76</sup> Ineos/Inovyn, Annual Report 2022, page 81.

<sup>77</sup> Application, page 49. (emphasis added)

<sup>78</sup> Ineos/Inovyn, Annual Report 2022, page 47.

<sup>79</sup> Ineos/Inovyn, Annual Report 2022, page 53.

<sup>80</sup> Ineos/Inovyn, Q4 2023 Trading Statement (26 February 2024).

Notably, the decrease in UK PVC production (2021 onwards)<sup>81</sup> completely corresponds with the period of the acute energy crisis in Europe (mid-2021 to late-2022)<sup>82</sup>. Before 2021, UK production levels seem to have been steady. As evidenced by the data in the application itself, the cost of production for Inovyn increased at exactly the time when the energy crisis hit (2021 onwards).<sup>83</sup> In sum, if there is any injury accruing to the UK's PVC industry, it is on account of increased energy costs, which have resulted in decreased production and profitability.

## ii. Ethylene costs

The application notes that substantial amount of ethylene is needed to manufacture VCM (and in turn, PVC).<sup>84</sup> Inovyn seems to rely on naphtha to produce ethylene.<sup>85</sup> On the other hand, US producers like Oxy Vinyls use ethane to produce ethylene. US producers thus have a competitive advantage: it is common industry knowledge that it is cheaper to obtain ethane and thus ethane-based ethylene (used to manufacture PVC) has a cost benefit.<sup>86</sup> This fact is acknowledged by industry observers such as S&P Global.<sup>87</sup> Cefic (the European Chemical Industry Council) recently noted that it was 3.2 times more expensive to produce ethylene in Europe than in the US.<sup>88</sup>

This has always been the case. In recent times, the cost difference has only increased. For example, between 2015 and 2021, the average delta between US and European ethylene costs was \$433.04/MT. Between 2022 and 2023, this delta increased to \$639.48/MT, *i.e.*, a substantial increase of \$206.44/MT.<sup>89</sup> This means that in the most recent period under investigation, when Inovyn's production and profits fell, the cost for one of the main components of PVC increased by almost 50%. This is corroborated by Inovyn's data, as provided in the EU case, which showed that Inovyn's cost for manufacturing VCM went up, even when *lesser* VCM (over time) was used.

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<sup>81</sup> Application, Appendix 6.

<sup>82</sup> For timeline, *see*: Reuters, Europe's energy crisis is over (29 November 2023), available at: <[https://www.reuters.com/business/energy/europes-energy-crisis-is-over-kemp-2023-11-28/#:~:text=LONDON%2C%20Nov%2028%20\(Reuters\),firms%20to%20cut%20use%20rapidly](https://www.reuters.com/business/energy/europes-energy-crisis-is-over-kemp-2023-11-28/#:~:text=LONDON%2C%20Nov%2028%20(Reuters),firms%20to%20cut%20use%20rapidly)>. (last accessed 11 March 2024)

<sup>83</sup> Application, Appendix 6.

<sup>84</sup> Application, page 10. Moreover, in the EU case, Inovyn noted that ethylene is one of the two main factors that have a decisive impact on PVC prices.

<sup>85</sup> Ineos/Inovyn, Annual Report 2022, page 11 states that "*In our INOVYN Business, the key feedstocks and raw materials upon which we depend are energy, ethylene, naphtha and salt.*"

<sup>86</sup> For proof, *see*: Annex 1: Chemical Markets Analytics, US vs. West Europe: Ethane, Ethylene, Naphtha Prices - 2015 to 2023 (Open).

<sup>87</sup> S&P Global, Global ethylene and MEG set to struggle in H2 2023 amid oversupply, weak demand (5 June 2023), available at: <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/chemicals/060523-chemicals-outlook-global-ethylene-and-meg-set-to-struggle-in-h2-2023-amid-oversupply-weak-demand>> (last accessed 11 March 2024).

<sup>88</sup> Cefic, Growth and competitiveness, available at: <<https://cefic.org/a-pillar-of-the-european-economy/facts-and-figures-of-the-european-chemical-industry/growth-and-competitiveness/>> (last accessed 11 March 2024). (emphasis added)

<sup>89</sup> Annex 1: Chemical Markets Analytics, US vs. West Europe: Ethane, Ethylene, Naphtha Prices - 2015 to 2023 (Open).

Inovyn's 2022 annual report notes that costs of sale increased due to "*higher costs of ... key raw materials including ethylene*".<sup>90</sup> In sum, harm accruing to Inovyn on account of increased ethylene costs is unrelated to US imports and cannot be attributed to these imports.

iii. Regulatory costs

Oxy Vinyls requests the TRA to not penalize foreign exporters like Oxy Vinyls for the increased manufacturing costs of Inovyn, which arise out of the UK's own policy choices. The application<sup>91</sup> as well as Inovyn's annual reports<sup>92</sup> note the increasing financial and administrative burden faced by companies in the UK as a result of the UK's green initiatives.<sup>93</sup> In fact, this push in the UK was the impetus behind initiatives like BIOVYN™ at Inovyn.<sup>94</sup> While the company has not provided granular cost data in the present investigation, the data submitted in the EU case shows that Inovyn's depreciation related to environmental and social costs sky-rocketed in the recent past.

Therefore, the reason behind Inovyn's loss in profitability is the increase in costs associated with manufacturing PVC in the context of UK's regulatory measures. This is not a justification for imposing anti-dumping duties, since such duties are solely meant to counteract dumping.<sup>95</sup>

**c. Inflation**

Inflation in the UK was rising throughout the period considered, with a peak in mid-to-late 2022.

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<sup>90</sup> Ineos/Inovyn, Annual Report 2022, page 51.

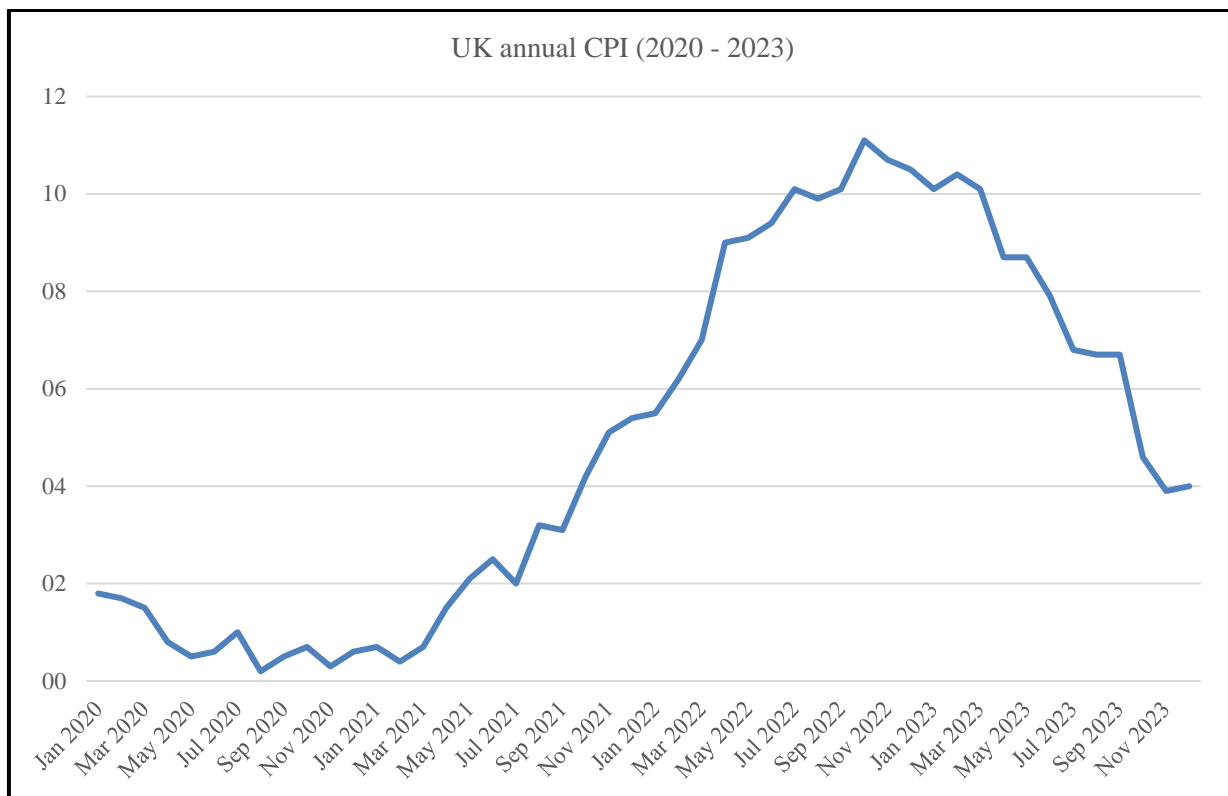
<sup>91</sup> Application, page 44, referring to "*significant investment [that are] needed to achieve 2030 decarbonisation targets and to reach the UK's sustainability objectives*".

<sup>92</sup> Ineos/Inovyn, Annual Report 2022, pages 27-28.

<sup>93</sup> Of course, US producers such as Oxy Vinyls have to bear similar burdens (on account of US regulations).

<sup>94</sup> See: Ineos/Inovyn, Biovyn, available at: <<https://biovyn.co.uk/>> (last accessed 11 March 2024).

<sup>95</sup> WTO Appellate Body, *US – 1916 Act (Japan)*, para. 119.



Source: UK Office for National Statistics

The inflation peak coincides with the period when Inovyn faced most of its losses.<sup>96</sup> High inflation could have contributed to decreased PVC production and decreased profitability during that time. In this regard, Inovyn has repeatedly recognized "*high inflation rates*" as a cause for the "*erosion of margins*"<sup>97</sup> and for "*weak margins*"<sup>98</sup>.

#### d. Weak demand

The final factor that Oxy Vinyls would like to point out is the weak domestic demand for PVC in recent years. This has been acknowledged in some of the news reporting cited in Inovyn's application.<sup>99</sup> In fact, elsewhere, Inovyn has clearly connected the reduction in its production to weak demand; *not* (as it implies through its application) to US imports. In its Q1 2023 report, Inovyn states that: "*Demand for general purpose and specialty PVC in European markets was lower than the first quarter of 2022 resulting in lower plant operating rates and volumes sold*".<sup>100</sup> Indeed, as per the applicant's data, production volumes fell in early 2023.<sup>101</sup> Oxy Vinyls notes for

<sup>96</sup> Application, Appendix 6. Note that Inovyn's profitability began to fall from 2021 onwards.

<sup>97</sup> Ineos/Inovyn, Q1 2023 Trading Statement (21 April 2023).

<sup>98</sup> Ineos/Inovyn, Q3 2023 Trading Statement (20 October 2023).

<sup>99</sup> Application, page 49, referring to Platts PolymerScan which stated that European producers "*blamed weak demand*".

<sup>100</sup> Ineos/Inovyn, Q1 2023 Report, page 26. (emphasis added)

<sup>101</sup> Application, Appendix 6.

completeness that a decrease in demand is expressly identified as a possible factor causing injury in Regulation 35(3)(b) Basic Regulation and Article 3.5 ADA.

**e. Interim conclusion**

Several factors unrelated to US imports are causing injury to the UK PVC industry. These include repeated turnaround problems at Inovyn's VCM (or PVC) production centres; high manufacturing costs exacerbated by inflation; as well as low demand. Oxy Vinyls believes that when the TRA will "*separate and distinguish*"<sup>102</sup> the impact of these other factors from that of US imports, it will become clear that the problem, if any, resides in these other factors.

**7. There is no proof that there exists a threat of injury to the UK industry**

Inovyn has raised concerns about a "*threat of injury*" to the UK PVC industry.<sup>103</sup> At the outset, Oxy Vinyls notes that the determination that such a threat exists carries a high legal standard.<sup>104</sup> When an applicant alleges a threat of injury, the application must contain adequate evidence of such a threat.<sup>105</sup> As will be shown in this section, this is not the case with Inovyn's application.

In this regard, UK law requires that three factors must exist for there to be a threat of injury: a "*significant rate of increase*" in recent imports; "*sufficient freely disposable or an imminent substantial increase in capacity*"; and a potential "*depressing or suppressing effect on [domestic] prices*".<sup>106</sup> Inovyn's applicant, however, fails on all three counts.

First, as shown above, imports from the US have *decreased* across 2023. Since a threat of injury analysis is necessarily prospective,<sup>107</sup> data on imports from the "*most recent*"<sup>108</sup> time period is particularly instructive. In other words, the situation existing "*at the outset*" must be observed.<sup>109</sup> Judged by the current state of affairs, one can safely conclude that there is no risk of a "*significant rate of increase*" in US imports:

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<sup>102</sup> WTO Appellate Body Report, *EC – Tube or Pipe Fittings*, paras. 188-190.

<sup>103</sup> Application, pages 47-50.

<sup>104</sup> WTO Appellate Body Report, *Mexico – Corn Syrup (Article 21.5 – US)*, para. 100.

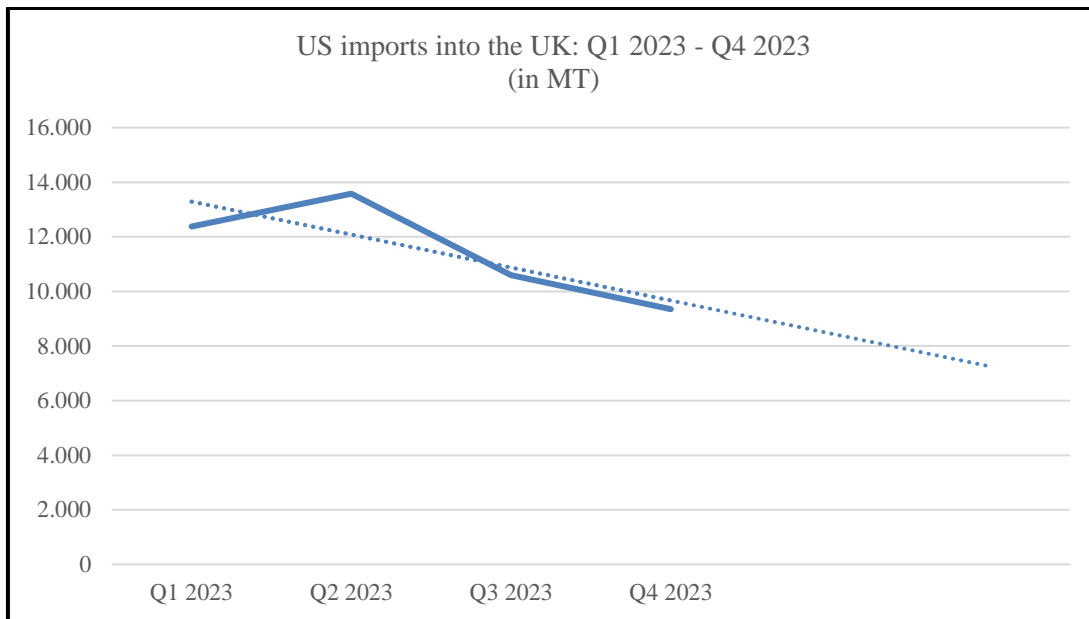
<sup>105</sup> WTO Panel Report, *Guatemala – Cement I*, paras. 7.75-7.77.

<sup>106</sup> Regulation 28(2)(a) – (c) Basic Regulation.

<sup>107</sup> WTO Appellate Body Report, *Mexico – Corn Syrup (Article 21.5 – US)*, para. 85.

<sup>108</sup> See for context: Commission Regulation (EC) No 289/2009 of 7 April 2009 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China, recital (116).

<sup>109</sup> WTO Panel Report, *Egypt – Steel Rebar*, paras. 7.91-7.93.



Source: UK HM Revenue & Customs

Moreover, Inovyn's argument that VCM(-sourcing) problems at Shintech are the cause behind the above demonstrated decrease, does not hold much water. Shintech is only one of the many US producers exporting PVC to the UK. Therefore, a temporary decrease in one producer's output does not explain the overall fall in US exports to the UK. Moreover, Olin (the VCM supplier in question) was only one of the VCM suppliers to Shintech; thus, it is not as if Shintech entirely stopped producing or exporting PVC during the period in question. In fact, total US PVC exports fell in 2024 as well (*i.e.*, after the supposed problems with Shintech). Thus, US imports pose no threat to the UK industry.

Second, while the applicant has alleged the existence of "*overcapacities*" in the US PVC market,<sup>110</sup> Oxy Vinyls rejects both, the applicant's conceptualization of (what it calls) '*overcapacity*'; as well as the allegation that such excess capacity actually exists in the US.

Contrary to what is argued in the application, "*overcapacity*" cannot be understood in the limited way of production over domestic consumption.<sup>111</sup> Economic scholarship has already disputed the viability of such a narrow definition of the phenomenon. For example, Evenett and Fritz note that such an understanding is contrary to basic economic theory.<sup>112</sup> Lu further notes that the conventional definition of excess capacity does not take into account seasonal factors and the practical need to maintain some (what she calls) "*spare capacity*" at times of refurbishing of

<sup>110</sup> Application, page 48.

<sup>111</sup> Application, page 48.

<sup>112</sup> Simon J. Evenett and Johannes Fritz, *Going Spare: Steel, Excess Capacity, and Protectionism* (CEPR, 2018), pages 44-45, available at: <<https://www.globaltradealert.org/reports/download/44>> (last accessed 11 March 2024).

plants.<sup>113</sup> What the applicant has done, in effect, is conflate "overcapacity" with "export capacity".<sup>114</sup> In reality, these are two distinct measurements.<sup>115</sup>

For additional context, consider how the EU has conceptualized the technical standard for "overcapacity". In the case of *Hot-Rolled Flat Steel Products from China (2016)*, the Commission identified the following principles when determining that there existed alleged overcapacity in steel in China:

- (a) Steel capacity in China was "increasing rapidly for a long time";
- (b) The share of Chinese steel production (in the global total) had doubled in the 10 years preceding the Commission's investigation; and
- (c) Alleged Chinese overcapacity was acknowledged by institutions like the OECD.<sup>116</sup>

None of these factual elements manifest themselves in the present case:

- (a) There has been no rapid increase in PVC capacity in the US;<sup>117</sup>
- (b) The share of US PVC production in the global total has remained entirely stable, with very little variance: US share has held steady between 14%-16% in the time period of 2019-2023;<sup>118</sup> and
- (c) No objective reporting in institutions like the OECD has raised concerns over structural overcapacity in PVC (in the US).

Overcapacity, in its true technical sense – representing something problematic against which action should be taken – encompasses elements of severity (of excess volume), intention (of expansion) and time (the issue must exist for many years). None of these elements exist in the present case.

Moreover, even if there is additional US capacity to be serviced, Oxy Vinyls notes that there are "other export markets [that ca] absorb the additional exports".<sup>119</sup> The UK is not a major (let alone

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<sup>113</sup> Zhiyao (Lucy) Lu, 'China's Excess Capacity in Steel: A Fresh Look', Peterson Institute for International Economics (29 June 2017), available at: <<https://www.piie.com/blogs/china-economic-watch/chinas-excess-capacity-steel-fresh-look>> (last accessed 11 March 2024).

<sup>114</sup> Application, page 48.

<sup>115</sup> See further on this point: WTO Appellate Body Report, *EU – Biodiesel (Argentina)*, paras. 6.142-6.142, 6.145.

<sup>116</sup> Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, Section, 5.2.2.1.

<sup>117</sup> Even based on Inovyn's data, US export capacity has remained stable, coming at roughly 2-4 million tons in the recent past.

<sup>118</sup> Annex 2: OPIS, Chemical supply/demand data (Open).

<sup>119</sup> Regulation 28(2)(b) Basic Regulation.

the main) destination for US PVC exports. According to World Bank data, the UK is not even in the top 15 export destinations for US PVC.<sup>120</sup> Consider for example that in 2022, the US exported 1200% more PVC (by volume) to Canada than to the UK. Additionally, domestic US appetite is healthy.<sup>121</sup> Industry reporting points to improvement in US PVC demand in 2023.<sup>122</sup> All this shows that domestic consumption is robust. In any event, there are export markets other than the UK where US exporters can sell their product.

Finally, the application does not at all make a case for (in Inovyn's words) "*expected*" price depression or suppression. Rather, the application merely reiterates that there exists (at present) alleged price depression.<sup>123</sup> No attempt has been made at a prospective analysis to demonstrate that US imports in the future "*will have*"<sup>124</sup> a significant price depressive/suppressive effect. Oxy Vinyls notes that a threat of injury analysis encompasses "*additional factors*" that need to be assessed – *i.e.*, other than those for determining material injury, *simpliciter*.<sup>125</sup> The additional factor of expected price depression/suppression, on account of *further* imports has not at all been examined by the application.<sup>126</sup>

The TRA should therefore dismiss the applicant's allegation regarding a threat of material injury.

## **8. Inovyn's suggested 15% profit margin is groundless**

Inovyn suggests that a 15% profit margin should be used to calculate alleged underselling. This suggestion rests on three legs.<sup>127</sup> None of these legs lie on solid ground. Its suggestion must fall.

First, Inovyn claims that 15% is the "*normal profitability margin for the chemical industry*".<sup>128</sup> There is however no evidence that this is the case. The application has not provided any data regarding the profit made by Inovyn in the period considered. In fact, Inovyn notes that in its selected IP, the average profits it made were "*significantly below the target profit of 15%*".<sup>129</sup>

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<sup>120</sup> World Bank (World Integrated Trade Solution), US 390410 exports by country in 2022, available at: <<https://wits.worldbank.org/trade/comtrade/en/country/USA/year/2022/tradeflow/Exports/partner/ALL/product/390410>> (last accessed 11 March 2024).

<sup>121</sup> Another way to observe this appetite is the massive decrease in exports in, for example, 2021. In that year, US exports [[SENSITIVE: as a non-confidential summary, it is noted that exports substantially fell]]. *See*: Annex 3: American Chemistry Council, Monthly Statistical Report, 2022 (Open).

<sup>122</sup> S&P Global, US PVC producer Westlake sees moderate uptick in resin demand: CEO (21 February 2023), available at: <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/chemicals/022123-us-pvc-producer-westlake-sees-moderate-uptick-in-resin-demand-ceo>> (last accessed 14 March 2024).

<sup>123</sup> Application, page 50.

<sup>124</sup> Regulation 28(2)(c) Basic Regulation.

<sup>125</sup> WTO Panel Report, *Mexico – Corn Syrup*, para. 7.137.

<sup>126</sup> *See* in this regard: WTO Panel Report, *Dominican Republic AD on Steel Bars (Costa Rica)*, para. 7.291.

<sup>127</sup> Application, page 45.

<sup>128</sup> Application, page 45.

<sup>129</sup> Application, page 46.

Moreover, as context, consider that according to EU practice, chemical industries usually obtain a profit margin between 5%-8%.<sup>130</sup>

Second, Inovyn claims that 15% is "*on average ... the target % of EBITDA for the Applicant*".<sup>131</sup> However, EBITDA is not the same as net profit. For context, consider that in the EU, profits used for calculating underselling are those based on earnings *after* debt and investment costs have been deducted.<sup>132</sup> Thus, the profit margin to be applied in the present case would be much lower than that suggested by Inovyn.

Third, Inovyn essentially makes the case that the usage of 15% profit to calculate the non-injurious selling price would ensure the survival of the UK's PVC industry. Inovyn states in this regard that the domestic PVC industry "*needs to achieve 15% profit margins to be sustainable*".<sup>133</sup> However, this reasoning has been explicitly rejected in the past. For example, in *EFMA v. Council* for example, the EU General Court (then called the Court of First Instance), held that the:

*"argument that the profit margin which is to be used by the institutions must be the margin necessary to ensure the survival of the Community industry and/or an adequate return on capital, has no basis whatever in the basic regulation"*.<sup>134</sup> (emphasis added)

Rather, the EU court ruled that:

*"the profit margin to be used by the [Commission] when calculating the target price that will remove the injury in question must be limited to the profit margin which the Union industry could reasonably count on under*

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<sup>130</sup> See for example: Council Regulation (EC) No 1995/2000 of 18 September 2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in the Slovak Republic, recital (44); Council Regulation (EC) No 1193/2008 of 1 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of citric acid originating in the People's Republic of China, recital (88); Commission Implementing Regulation (EU) 2015/84 of 21 January 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in Indonesia, recital (121); Commission Implementing Regulation (EU) 2023/11 of 18 January 2023 imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia, recital (379); Commission Implementing Regulation (EU) 2024/844 of 13 March 2024 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electrolytic manganese dioxides originating in the People's Republic of China, recital (150).

<sup>131</sup> Application, page 45.

<sup>132</sup> See for example: Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, recitals (624)-(625). In this case, an average of 7% investment costs and an average of 3% debt costs were deducted from the EBITDA to arrive at the target profit.

<sup>133</sup> Application, page 45.

<sup>134</sup> Case T-210/95, *EFMA v. Council*, ECLI:EU:T:1999:273, para. 59.

*normal conditions of competition, in the absence of the dumped imports. It would not be consistent with Article 3(1) and Article 9(4) of the basic regulation to allow the Union industry a profit margin that it could not have expected if there were no dumping".*<sup>135</sup> (emphasis added)

The same idea has been endorsed (in the context of rate of return) by the WTO Panel as well as the Appellate Body in *Russia – Commercial Vehicles*:

*"Where, as in this case, the investigating authority constructs a hypothetical domestic price that would have occurred in the absence of dumped imports (target domestic price) on the basis of a rate of return and the actual costs of production, an investigating authority must use a rate of return that is objective and that is based on positive evidence. Such a rate of return would take into account the particular circumstances of the industry and market at issue in the investigation. Given the nature of the required counterfactual, a rate of return that may reasonably be used as a benchmark for the calculation of a target domestic price that would have been realized in the absence of dumped imports would be one that the domestic industry could have expected to achieve under normal conditions of competition in the absence of dumped imports. That is to say, an objective rate of return based on positive evidence for the purposes of considering price suppression under Article 3.2 is not a rate of return that the domestic industry might wish to achieve, but one that it might actually be able to achieve."*<sup>136</sup> (emphasis added; footnote omitted)

Finally, the TRA itself endorsed this idea in the case of *OFC from China (2023)*.<sup>137</sup> The profit margin in that case was "*based on historic data from the UK industry and what the TRA considers to be expected by the [UK] OFC industry under normal competition*".<sup>138</sup>

There is nothing on the case file to show that the UK industry has always made 15% profit. Thus, Inovyn's suggestion of using a 15% profit margin to calculate alleged underselling should be rejected. Oxy Vinyls recommends using a more reasonable target profit, such as between 5%-6%.

## **9. TRA should consider the interests of UK users of PVC**

Before imposing anti-dumping duties, the TRA is required to assess – under its EIT – the "*likely impact [of such duties] on affected industries and consumers in the United Kingdom*".<sup>139</sup> Oxy

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<sup>135</sup> Case T-443/11, *Gold East Paper and Gold Huasheng Paper v. Council*, ECLI:EU:T:2014:774, para. 245.

<sup>136</sup> WTO Panel Report, *Russia – Commercial Vehicles*, para. 7.61, upheld in WTO Appellate Body Report, *Russia – Commercial Vehicles*, para. 5.110.

<sup>137</sup> *OFC from China (2023)*, paras. 509, 515.

<sup>138</sup> *OFC from China (2023)*, para. 515.

<sup>139</sup> Regulation 25(4)(a)(iii) Schedule 4 of Act.

Vinyls notes that in the parallel EU case, many PVC users such as Rehau (also identified in the application in the present investigation) complained about inflexibility in contracts and a general lack in PVC supply, on part of the handful of EU PVC producers. The inflexibility was chalked up to a lack of competition amongst the few (domestic) PVC players on the market, which gave these players a vast ability to dictate terms. The situation is even worse in the UK, with Inovyn being the sole producer of PVC. The TRA is therefore requested to prevent a monopolistic situation on the UK PVC supplier market. If imports from the US are cut off, UK users of PVC would become even more exposed to the risks associated with shortage in supplies, arising from Inovyn's propensity towards turnarounds and *force majeure*s. The EIT would be robbed of all meaning if it results in the situation where "*industries and consumers*" of PVC become (even more) helplessly dependent on Inovyn.

Moreover, blocking US imports would place UK PVC users in a vulnerable position not only *vis-à-vis* the applicant (located in the UK), but also with respect to other producers in the Inovyn family, which are located in countries such as Belgium, Norway, Sweden, France, Spain, and Germany – *i.e.*, countries that have been (in our view, incorrectly) excluded from the investigation. These non-UK Inovyn producers could begin to charge exorbitant rates for their products or refuse to engage flexibly in commercial negotiations. Denying UK PVC users the possibility of accessing US imports will give these non-UK producers an augmented leverage over UK PVC users. Respectfully, Oxy Vinyls submits that the EIT would only make sense if the TRA prioritizes UK PVC users over third-country PVC producers.

## **10. Final conclusions**

In light of the above, Oxy Vinyls considers at the outset that the TRA should examine all potential sources of injurious dumping, and not take Inovyn's targeting of US imports at face value. The present investigation is simply an attempt on part of Inovyn to eliminate all US-based competition from the European market. In any event, aside from selecting a proper PCN that reflects the K-values of PVC, the TRA should require Inovyn to provide proper cost of production data, and should critically assess how Inovyn interprets and uses certain data.

Substantively, Oxy Vinyls submits, first, that Inovyn's dumping methodology is problematic. Second, no basis can be found – either in US import data or in UK industry data – to conclude that the UK PVC industry is suffering material injury. Third, no correlation (let alone causal link) exists between US imports and alleged UK injury. Fourth, even if such link existed, it would be broken by a multitude of known non-attribution factors. Fifth, and in case the TRA were to somehow find that the UK industry is injured, Oxy Vinyls submits that the TRA should reject Inovyn's suggestion of a 15% profit margin as groundless and unreasonable.

Finally, there is also no proof that there is a risk (or threat) of material injury to the UK industry in the future. Inovyn has, in any case, failed to effectively make such a case. Moreover, in its EIT assessment, the TRA should give proper weight to the interests of PVC users in the UK. These

users are already bearing the brunt of dealing with a lone domestic supplier. Monopolistic capture of the UK supplier market must be resisted.

Oxy Vinyls thanks the TRA for taking the above views into consideration.

Best regards,

A large black rectangular redaction box covering the signature area.