COMMISSION IMPLEMENTING REGULATION (EU) 2022/2001

of 21 October 2022

imposing a definitive anti-dumping duty on imports of aspartame 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

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EU) 2016/1247 ([2]), the European Commission imposed anti-dumping duties on imports of aspartame, originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned') ('the original measures' or 'original investigation'). The investigation that led to the imposition of the original measures will hereinafter, be referred to as 'the original investigation'.

(2) The anti-dumping duties currently in force are at rates ranging between 55,4 % and 59,4 % on imports from the sampled exporting producers, 58,8 % on the non-sampled cooperating companies and a duty rate of 59,4 % on all other companies from the PRC.

1.2. Request for an expiry review

(3) Following the publication of a notice of impending expiry ([3]), the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.

(4) The request for review was submitted on 26 April 2021 by HSWT France S.A.S. ('HSWT' or 'the applicant'), the sole manufacturer in the Union of aspartame and thus constituting the Union industry of aspartame in the sense of Article 5(4) of the basic Regulation.

(5) The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and recurrence of injury to the Union industry ([4]).

1.3. Initiation of an expiry review

(6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 29 July 2021 the Commission initiated an expiry review with regard to imports into the Union of aspartame originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of initiation in the *Official Journal of the European Union* ([5]) ('the Notice of initiation').

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Commission Implementing Regulation (EU) 2016/1247 of 28 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the People's Republic of China (OJ L 204, 29.7.2016, p. 92).

([3]) Notice of the impending expiry of certain anti-dumping measures (OJ C 366, 30.10.2020, p. 24).

([4]) Due to the fact that there is only one producer of aspartame in the Union, some of the data in this Regulation is presented in ranges or in index form to preserve the confidentiality of the data of the Union producer.

([5]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of aspartame originating in the People's Republic of China (OJ C 303, 29.7.2021, p. 12).

1.4. **Review investigation period and period considered**

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

1.5. **Interested parties**

(8) In the Notice of initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, the known producers of aspartame in the PRC and the authorities of the PRC, as well as known importers and users, about the initiation of the expiry review investigation and invited them to participate.

(9) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(10) Hearings took place with the sole exporting producer cooperating with the investigation 'Changmao Biochemical Engineering Co., Ltd ('Changmao')'.

1.6. **Comments on initiation**

(11) The Commission received comments on initiation from Changmao. The applicant also provided comments in this regard.

(12) Changmao argued that it was likely that the complainant in the original investigation Ajinomoto Sweeteners Europe SAS was not an independent legal entity established in France, but only a branch of Ajinomoto Inc. Furthermore, it was claimed that the branch used audit reports that formed an integral part of Ajinomoto Inc. in Japan, which exaggerated the cost of the French factory by using internal valuation, transfer pricing and costing methods, which distorted the production cost of aspartame in Europe and resulted in the imposition of an anti-dumping duty.

(13) The Commission notes that these claims refer to the original investigation that was completed in July 2016 ([6]) and therefore they were rejected as they were irrelevant for the current investigation.

(14) Changmao also argued that the initiation of the investigation was illegal without the pre-examination of the identity of the Dutch investment Fund, Standard Investment, which acquired some of the aspartame production assets of Hyet Sweet and hired certain employees of Hyet Sweet in the course of the bankruptcy procedure of Hyet Sweet. It was pointed out that it was not clear whether this fund was a related entity of Ajinomoto Inc. and the fund may have served the purpose of concealing capital sources in Japan, thereby protecting the interests of Ajinomoto Inc. against the imports of aspartame from the PRC via misuse of EU anti-dumping procedures.

(15) The Commission notes that pursuant to Article 11(2) of the basic Regulation, the Commission must initiate a review of the anti-dumping measures in force when sufficient evidence of a likelihood of dumping and injury exists to justify the initiation of an expiry review. The request for review submitted by HSWT referred to in recital (4) included such information. The investigation covers imports of aspartame from the PRC. Whether the shareholder of the applicant is related to a Japanese producer of aspartame is not relevant for the initiation of this investigation. Therefore, the claim was rejected.

(16) Changmao also argued that the Commission should not have initiated this expiry review investigation as there was no reference in the Notice of initiation to the circumstances of the bankruptcy of Hyet Sweet or any preliminary justification as to the reasons HSWT's request for review would appear compliant with the requirements of Article 11(9) of the basic Regulation. It was further argued that the Commission had disregarded the impact of Hyet Sweet's bankruptcy on the standing of HSWT for the initiation of the expiry review.

([6]) Implementing Regulation (EU) 2016/1247.

(17) The Commission notes that Article 11(9) of the basic Regulation does not include any provisions about changes in the composition of the Union industry. Furthermore, Changmao did not explain why Hyet Sweet's bankruptcy would affect HSWT's standing for the initiation of the expiry review investigation and why the reasons for the bankruptcy of Hyet Sweet should be mentioned in the Notice of initiation. At the moment of the examination of the expiry review request, Hyet Sweet did not exist anymore and HSWT was the sole producer of aspartame in the Union. Therefore, these claims were rejected.

(18) Changmao argued that the Commission was not in a position to review the injury assessment originally conducted for Ajinomoto Inc.'s aspartame producing branch (since 2016 Hyet Sweet SAS) by reference to a different company, HSWT, in the course of the present expiry review. Furthermore, it was stated that several injury indicators during the three-year period preceding the initiation of the current investigation would relate to Hyet Sweet SAS that went bankrupt in the middle of this period and was not succeeded by HSWT as HSWT allegedly bought only certain assets from Hyet Sweet and took over only part of Hyet Sweet's employees.

(19) In an anti-dumping investigation initiated pursuant to Article 5 or 11(2) of the basic Regulation, the Commission needs to assess the injury suffered by the whole Union industry and not by a particular producer. The Union industry can be constituted of one or several Union producers. Furthermore, whether the composition of the Union industry changed between the original investigation and the expiry review investigation has no bearing on the latter. This is because the purpose of an expiry review investigation is to assess whether the measures in force should be continued or terminated following an assessment of whether the expiry of the measures would likely lead to a continuation or recurrence of dumping, and material injury to the Union industry. Furthermore, the fact that the injury indicators before 2019 relate to Hyet Sweet SAS and as of 2019 relate to HSWT, both being Union producers of aspartame, is irrelevant since the Commission's injury assessment is conducted on the Union industry and not on specific producers. Therefore, the claims were rejected.

(20) Changmao further claimed that in the review request, HSWT provided two different sets of data on Union consumption. The first set used the consumption estimated by Allied Market Research ('AMR'), the Chinese imports were based on Chinese export statistics, while the Japanese imports were calculated as the difference between total consumption and the sum of Chinese exports and EU sales. The second set of data used the imports from China and Japan from the 14(6) database. Changmao indicated that there were large discrepancies between the two data sets and that the Commission failed to take these discrepancies into account when deciding to initiate the expiry review investigation, contrary to the requirements of Article 11(9) of the basic Regulation which require that the request for review should be predicated on reliable and coherent data. Furthermore, in March 2022, Changmao requested the Commission to verify the accuracy of Union consumption data set out in Table 4 of the request for review and to modify the Union consumption data set out in Table 2 of the request for review.

(21) First, the Commission established the Union consumption during the investigation as explained in recitals (178) to (181), revising the data provided in the request when necessary. Second, in relation to the inconsistencies of the statistics used, the Commission notes that the 14(6) database does not include imports under inward processing while the Chinese export statistics database includes all the Chinese exports. As explained in recital (190), a significant volume of imports from the PRC were made under the inward processing system. Furthermore, the 14(6) database includes imports made according to customs applicable rules in the Member States where the importation is made, while the Chinese database includes exports made according to the Chinese customs rules. Therefore, there could be differences between the total volume of imports from China in the 14(6) database or Eurostat for a certain product and the volume of exports from China to the Union in the Chinese database. Moreover, while Changmao seems to misquote Article 11(9) of the basic Regulation, the Commission did examine the accuracy and adequacy of the evidence provided in the request for review and considered that the overall figures and trends from the different sources constituted sufficient evidence to justify the initiation of an investigation. Therefore, the claim was rejected.

(22) Changmao argued that the anti-dumping measures on imports of aspartame from the PRC did not protect the Union industry but promoted the imports of aspartame from Japan. Changmao claimed that these imports increased after the imposition of the anti-dumping measures traditionally at high prices and high volumes at the cost of Union users and consumers. Changmao criticized the Commission for not requesting HSWT to clarify this matter. It further argued that the imports from Japan were related to the bankruptcy of Hyet Sweet and, although the Commission was aware of Hyet Sweet's bankruptcy, it did not request HSWT to clarify the reasons for the bankruptcy. Furthermore, it was stated that if the measures in place could not prevent Hyet Sweet from going bankrupt, this meant that there was no causal link between Hyet Sweet's bankruptcy and imports from the PRC.

(23) The purpose of the imposition of the anti-dumping measures is meant to restore the level playing field in the Union market. Aspartame is manufactured only in the Union, the PRC and Japan. Japan is therefore just another source of imports of aspartame. The fact that the imports from Japan increased after the imposition of anti-dumping measures on imports of aspartame from the PRC is irrelevant for the current expiry review investigation. Changmao also did not explain why the Commission should have asked the applicant to explain the increase of imports of aspartame from Japan. Furthermore, Changmao's claim that the imports from Japan were related to the bankruptcy of Hyet Sweet was not substantiated by any evidence. Therefore, these claims were rejected.

(24) Changmao further claimed that according to a statement published on the internet by HSWT and the Chinese company Vitasweet in September 2019, the two companies stated that they had reached an agreement that Vitasweet would provide HSWT with aspartame at a competitive price ([7]). It was further claimed that if Hyet Sweet or HSWT imported aspartame from the PRC, these imports did not cause any injury to Hyet Sweet or HSWT but promoted its development. If there was injury, then it was self-inflicted. Furthermore, it was stated that HSWT did not clarify whether it was the largest importer of aspartame from Japan and the PRC in the request for review and the Commission had failed to properly assess HSWT's standing under Article 11(9) of the basic Regulation. Moreover, Changmao argued that being the largest EU aspartame importer would be sufficient to exclude HSWT from the definition of the Union industry.

(25) The Commission notes that the claims above include several pieces of factually incorrect information. The statement published on the internet referred to above was not made by HSWT but by the Chinese company Vitasweet on its website and it refers to an agreement with Hyet Sweet and not HSWT. HSWT and Hyet Sweet are two different entities and are not related, as explained in recital (39). Moreover, HSWT did not import and/or sell aspartame from the PRC during the review investigation period. Furthermore, as this investigation covers imports of aspartame from the PRC, the question of whether HSWT has imported aspartame from Japan during the review investigation period is irrelevant for the standing exercise. Therefore, the claims were rejected.

(26) The Commission's analysis confirmed that none of the elements mentioned by Changmao, whether factually correct or not, were sufficient to call into question the conclusion that the request for review contained sufficient evidence tending to show that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury. These aspects had been established on the basis of the best evidence available to the applicant at the time, and were sufficiently representative and reliable. Furthermore, the claims put forward by Changmao and the rebuttals by the applicant were examined in detail in the course of the investigation and are further addressed below. On the basis of the above, the Commission confirmed that the request provided sufficient evidence that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury, thereby satisfying the requirements set out in Article 11(2) of the basic Regulation.

(27) In their comments following final disclosure, Changmao disputed the Commission's assessment that whether the final shareholder of the applicant was related to a Japanese producer was not relevant for the initiation of the investigation. Changmao claimed that only a complete disclosure of HSWT's ownership structure could provide a thorough and comprehensive understanding about HSWT and thus a better understanding on the injury or no injury on the Union producer and the causes thereof. Furthermore, Changmao claimed that the name of the ultimate beneficiary and controlling shareholders referred to by HSWT and the Commission as 'Standard investment' was incorrect and should be corrected.

([7]) http://www.vitasweet.cn/news/30.html

(28) As indicated in recital (15), whether the beneficiary shareholder of the applicant was related to a Japanese producer was not relevant for the initiation of the investigation as the investigation concerns imports of aspartame from the PRC and not Japan. Furthermore, the ultimate shareholder of the Union producer has no bearing on the injury assessment made by the Commission in the framework of the current investigation. Moreover, as indicated in recital (45), in the course of the investigation, HSWT disclosed a chart with Hyet Sweet SAS's group structure until December 2018, a chart with HSWT/Standard Investment's group structure in February 2022 and a comparison chart between the current structures of Hyet Sweet SAS and HSWT/Standard Investment. HSWT also provided sensitive information to the Commission with regard to its ultimate beneficial owner. This sensitive information does not indicate any relationship with Ajinomoto Japan. Furthermore, 'Standard Investment' is the overall non-formal name for the various entities of the group that HSWT belongs to. SIF III Holding Cooperatief U.A. is one of these entities. ('SIF III' stands for 'Standard Investment Fund 3'). Therefore these claims were rejected.

1.7. **Sampling**

(29) In view of the apparent large number of producers in the country concerned and unrelated importers in the Union, the Commission stated in the Notice of initiation that it might sample the exporting producers and unrelated importers in accordance with Article 17 of the basic Regulation.

1.7.1. *Sampling of importers*

(30) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of initiation.

(31) Two companies provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary. One of these companies was requested to complete the questionnaire for unrelated importers. The other appeared to be a user and was therefore, requested to complete the users' questionnaire.

1.7.2. *Sampling of producers in the PRC*

(32) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in the PRC to provide the information specified in the Notice of initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(33) Two exporting producers in the country concerned, Vitasweet Jiangsu Co., Ltd ('Vitasweet') and Changmao, provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

1.8. **Replies to the questionnaire**

(34) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').

(35) The Commission sent letters with links to questionnaires to exporting producers (Vitasweet and Changmao), HSWT and known unrelated importers and users on the day of initiation. The same questionnaires were also made available in the file for inspection by interested parties and on DG Trade's website online ([8]) on the day of initiation.

(36) Questionnaire replies were received from only one exporting producer (Changmao), HSWT and one user, Mars Polska sp. z o.o. No unrelated importer submitted a questionnaire response.

([8]) https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2534

(37) HSWT started to produce aspartame in the Union as of 2019. It purchased all the necessary assets for the production of aspartame including the buildings formerly owned by Hyet Sweet SAS from Hyet Sweet SAS's insolvency administrator through an asset purchase agreement. The applicant explained that the insolvency administrator organised an open bidding process and several potential buyers came forward. HSWT was ultimately the highest bidder. HSWT also submitted the necessary financial data pertaining to Hyet Sweet SAS for the year 2018. Hyet Sweet SAS stopped manufacturing aspartame in the Union in 2018 and entered into bankruptcy. Following the assets purchase agreement, HSWT also received the computer server with the financial information of Hyet Sweet SAS. Thus, the data relating to the operations of Hyet Sweet SAS prior to bankruptcy (for the year 2018) was submitted by HSWT.

(38) Changmao repeatedly claimed in several submissions and several hearings that the former Union producer Hyet Sweet SAS and the applicant HSWT or the two groups these entities are part of (Hyet Group and Standard Investment/HSWT group respectively) were related. Changmao has not submitted any evidence demonstrating a relationship between these two groups. Changmao has also requested the Commission to verify if certain entities that were part of the two groups were related.

(39) The investigation revealed that the former aspartame producer Hyet Sweet SAS or its related companies were not related to HSWT or its related companies. The Commission has examined this matter at length in the course of the investigation and has not identified any piece of evidence that could indicate that these two entities or their groups were related.

(40) Changmao has also requested the Commission to check if certain related companies which are part of the Standard Investment/HSWT group were involved in the production of aspartame or imports of aspartame from the PRC in which case these entities should submit a questionnaire reply.

(41) The investigation revealed that the only producer of aspartame in the Union is the applicant. Furthermore, the Commission has not found any evidence that HSWT or any of its related companies import aspartame from the PRC. Therefore, only HSWT was requested to submit a questionnaire reply.

(42) Changmao claimed that Hyet Sweet SAS and its related company Hyet Sweet BV, allegedly importing aspartame from the PRC, are under an obligation to submit separate questionnaire replies as otherwise the Commission's assessment of the state of the Union industry would not be complete, rendering impossible any conclusive determinations of injury and likelihood of recurrence of injury.

(43) As explained in recital (37), the computer servers with the financial data of Hyet Sweet SAS were taken over by HSWT as part of the asset purchase agreement. HSWT submitted the requested financial information for 2018 related to Hyet Sweet. Therefore, the Commission had at its disposal complete information to carry out the injury analysis during the period considered. Hyet Sweet BV is not related to the current Union producer of aspartame as explained in recital (39). Whether or not it imports aspartame, Hyet Sweet BV has no bearing in the assessment of the Union industry because at most it would be an unrelated importer (in case it even imported the product concerned). Therefore, the claim was rejected.

(44) Changmao claimed that HSWT declined to disclose its beneficiary owners and any corporate and family relationship, cross-directorships, the existence of commercial agreements and plans that would point to the existence of a relationship between HSWT and the Hyet Sweet Group.

(45) The Commission notes that this claim is factually wrong. On 5 April 2022, HSWT disclosed a chart with Hyet Sweet SAS's group structure until December 2018, a chart with HSWT/Standard Investment's group structure in February 2022 and a comparison chart between the current structures of Hyet Sweet SAS and HSWT/Standard Investment. The applicant also explained that certain entities of HSWT/Standard Investment group had in the past similar names to the companies belonging to the Hyet group owned by Mr Timmermans. This was due to the fact that in the past there were plans for cooperation between HSWT/Standard Investment group and Mr Timmermans' companies. However, as these plans were not carried out, subsequently the HSWT group renamed those companies

in order to avoid the wrongful association with Mr Timmermans going forward. Thus, the companies owned by Mr Timmermans are entirely separate legal entities and have no links with Standard Investment/HSWT group. As explained above, the investigation did not reveal any links between Standard Investment/HSWT group and Hyet Sweet SAS, nor did Changmao submit any concrete evidence in this regard apart from baseless speculations. Therefore, the claim was rejected.

(46) Changmao claimed that HSWT should not be considered as a cooperating party as it did not provide a meaningful non-confidential version of all annexes in response to the Commission deficiency letter (such as the stock evaluation and the management accounts). Furthermore, Changmao claimed that HSWT provided a revised questionnaire table with no explanation of reasons for the modification. Moreover, it was claimed that the trends of indexes provided for unit production costs and profit on unrelated EU sales were different in the review request and the revised questionnaire for the period 2018-2020 and HSWT did not provide any explanation for the discrepancies.

(47) The Commission disagreed with this claim. In the framework of an anti-dumping investigation, during the deficiency process, the Commission requests the cooperating parties (exporters, Union producers, importers, and users) to provide a number of clarifications and documents, which are confidential by nature in order to carry out the investigation. The questions sent by the Commission during the deficiency process are also confidential by nature because they contained detailed description of the confidential information provided by the company to be clarified. HSWT provided an open version of the documents that were not confidential by nature. The stock evaluation and the management accounts are documents that include information confidential by nature. The revised questionnaire reply submitted by HSWT follows the additional questions raised by the Commission, which are also confidential by nature. Furthermore, the data reported by HSWT in the review request is *prima facie* evidence submitted for the initiation of the review and therefore changes to the data may be necessary in the course of the investigation. Furthermore, the data submitted in the review request is only used to decide whether the initiation of the review is warranted. On the other hand, the data reported in the questionnaire reply after the initiation of the investigation is verified in detail and corrected/adjusted by the Commission as appropriate during the deficiency process and on-spot verification or remote cross-check. The data submitted in the questionnaire reply can be revised during the investigation. This process is the same for all interested parties (including exporting producers) cooperating with the investigation. The final data is presented in the current regulation under Section 5. Therefore, the claim was rejected.

(48) Changmao claimed that HSWT did not specify which companies in the reported groups' structure of HSWT and Hyet Sweet were involved in the business of aspartame or its raw materials, including production, processing, sales, import and export, testing, renting buildings and land for production and therefore, the corporate structures and the relationship between these two groups remained unclear and contradictory.

(49) The Commission disagrees with this claim. At the beginning of the investigation, already in the standing form, HSWT stated that none of its related companies were involved in the production and/or sales of aspartame produced in the Union. Furthermore, HSWT has also stated that it was not related, directly or indirectly, to any producer or exporter of aspartame from the PRC and that it did not sell aspartame in the Union which was imported from the PRC. The investigation confirmed these statements and Changmao has not submitted any evidence to indicate the opposite. Therefore, this claim was rejected.

(50) Changmao also alleged that HSWT used the workshops and land owned by Hyet Sweet SAS for the production of aspartame during the period concerned as allegedly HSWT only purchased a small quantity of fixed assets of Hyet Sweet SAS during the liquidation procedures. It further claimed that as HSWT did not purchase the land but rented it from Hyet Sweet which indicated that HSWT and Hyet Sweet SAS were related.

(51) As explained in recital (37), HSWT purchased all the necessary assets for the production of aspartame including the buildings formerly owned by Hyet Sweet SAS from Hyet Sweet SAS's insolvency administrator through an asset purchase agreement. The insolvency administrator organised an open bidding process and several potential buyers came forward. HSWT was ultimately the highest bidder. As Hyet Sweet SAS's assets were sold under a bankruptcy procedure, the sale of these assets was made at a lower value than their book value stipulated in Hyet Sweet SAS's

accounts, which explains the difference between the value of assets in Hyet Sweet SAS's accounts and the value of assets in HSWT's accounts for 2019. The applicant explained that the land was not included in the asset purchase agreement with the insolvency administrator as Hyet Sweet SAS did not own the land but rented it. Furthermore, two companies are not considered related if one company rents or uses the land of another company. Natural persons or legal persons (i.e. companies) are deemed to be related pursuant to the requirements set out in Article 127 of Commission Implementing Regulation (EU) 2015/2447 ([9]). Therefore, the claim was rejected.

(52) Changmao also wrongly claimed that HSWT admitted that the two groups HSWT and Hyet Sweet were related during the period 2018 – 2019 since both groups agreed that the name Hyet would be used by some companies of both groups.

(53) The Commission notes that HSWT has not made such a statement in the investigation. Furthermore, two companies are not considered related solely on the basis of the fact that certain companies of two distinct groups agree to use similar names, in this case 'Hyet'. The conditions for two companies to be considered related are reproduced in recital (51). Therefore, the claim was rejected.

(54) Changmao claimed that because two companies related to HSWT were involved in the acquisition of certain assets from Hyet Sweet SAS and the establishment of HSWT, these companies must submit a questionnaire reply at least on the following issues: (1) their commercial business in establishing HSWT; (2) their plans to effectively address the problems that led to the Hyet Sweet liquidation; (3) the relation between HSWT and Hyet Group; (4) the reasons for HSWT and its owners' decision to allow Hyet Group to continue importing aspartame into the Union from competing producers in the PRC; (5) whether the subsidies from the French Government are helpful for re-organization of the business of aspartame or they cover operating expenses.

(55) In the framework of an expiry review investigation, in principle only related companies involved in the production and sales of the product under review need to submit a questionnaire reply. As stated in recital (176), HSWT is the only entity of the Standard Investment/HSWT group involved in the production and sales of aspartame in the Union. Furthermore, HSWT and Hyet Sweet are not related companies and therefore cannot interfere in the Hyet Group's alleged decision to import aspartame from the PRC. Finally, regarding the alleged subsidies received by HSWT from the French government, Changmao did not explain why this fact would be relevant for an expiry review investigation. Therefore, these claims were rejected.

(56) In their comments following final disclosure, Changmao claimed that HSWT did not provide an official document confirming the cessation of existence of Hyet Sweet SAS.

(57) The Commission noted that HSWT was not required to submit such document. As explained in recital (37), HSWT purchased the assets from Hyet Sweet SAS which entered into bankruptcy. Whether Hyet Sweet SAS still existed as an entity for the bankruptcy procedure is not relevant for the current expiry review investigation. What matters is that Hyet Sweet SAS was no longer an aspartame producer in the Union after the sales of its assets to HSWT. Therefore, the claim was rejected.

(58) In their comments following final disclosure, Changmao reiterated its claim that Hyet Sweet SAS should have submitted a questionnaire reply as a Union producer of aspartame during the period considered as it was related to HSWT during the period November 2018 to February 2019 due to the fact that during that period of time Hyet Sweet SAS and the shareholders of HSWT were discussing to setup a joint venture. Furthermore, Changmao argued that during this period, HSWT (1) used the HYET brands and Trademarks for marketing the products manufactured at the Gravelines plant; (2) used email addresses ending in @Hyetsweet.com, and, importantly, (3) even used the name 'Hyet' for describing these two shareholder companies, i.e., 'Hyet Sweet Now Holding BV' and 'Hyet Sweet NL BV.' Changmao claimed that the reply on the data for the year 2018 should have been submitted by Hyet Sweet SAS itself, or at least should have been verified with Hyet cooperation. Changmao argued that the insolvency administrator in charge of Hyet Sweet SAS could have provided the questionnaire response for Hyet Sweet SAS.

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

Furthermore, Changmao claimed that the questionnaire was required not only relating to the financial information of Hyet Sweet SAS but also with regard to the sales information, company history, structure, and business orientation. Changmao stated that HSWT was not in a position to ensure the accuracy and completeness of information that was necessary from Hyet Sweet SAS in this respect, for instance, there was lack of financial information of Hyet Sweet SAS in 2017, while the Commission had to choose the period considered starting from 2018, instead of from 2017. Changmao stated that there was doubt as to how HSWT could ensure the truthfulness and accuracy of the financial information provided by Hyet Sweet SAS. Changmao also asked the Commission to disclose the reason why it avoided contacting Hyet Sweet SAS.

(59) As indicated in recital (45), the Commission was aware of the attempted cooperation between the two companies and took into account this fact in its assessment. However, the Commission concluded that the fact that the shareholders of HSWT and Hyet Sweet SAS were discussing to set up a joint venture during four months in 2018 (during which HSWT might have used the trademarks and/or email addresses of Hyet Sweet) had no material impact on the current expiry review investigation. As indicated in recital (43) the computer servers with the financial data of Hyet Sweet SAS were taken over by HSWT as part of the asset purchase agreement. Also, relevant employees which worked for Hyet Sweet in 2018 continued to work for HSWT. Therefore, HSWT was the best source of financial and other information relating to Hyet Sweet SAS for the year 2018. During the verification visit, the Commission was able to verify the information requested in the questionnaire as it had access to the necessary information for 2018 and the former employees of Hyet Sweet SAS that were able to provide answers to the questions raised by the Commission. Therefore, the Commission did not need to contact Hyet Sweet SAS. In addition, the year 2017 was not relevant for the investigation, as the period considered was from 1 January 2018 to 30 June 2021. It is the Commission practice to include in the period considered three full calendar years prior to the investigation period. The Commission concluded that the attempted commercial relationship of the two companies was not relevant for its assessment of whether the anti-dumping measures in force should be maintained or allowed to expire. Therefore, the claims were rejected.

(60) In their comments following final disclosure, Changmao stated that a company named Hyet Aspartame BV was established within the Hyet Sweet Group, and no information on the activities of this company during the period considered had been disclosed, including information on whether this company was a producer or trader of aspartame, when it was registered, and for what purpose. Changmao also asked the Commission to clarify whether Hyet Sweet SAS's parent company (Stratco BV) was involved in the production and trading of aspartame.

(61) As explained in recital (176), HSWT is the sole Union producer of aspartame in the Union. The Commission also found that there is no relationship between Hyet Aspartame BV or Stratco BV on one hand, and HSWT on the other hand. Therefore, neither Hyet Aspartame BV nor Stratco BV has to provide a questionnaire reply as part of the Union industry. Furthermore, whether Hyet Aspartame BV or Stratco BV are traders of aspartame is not relevant for the finding of likelihood of recurrence of injury that has to be conducted by the Commission in an expiry review. Needless to say that the cooperation of traders is not mandatory in trade defence investigations and the two companies, even if traders of aspartame, are free not to participate in this review. Therefore, the claim was rejected.

(62) In their comments following final disclosure, Changmao claimed that since HSWT's related company Sweet Now NL was engaged in the purchase and sale of raw materials for HSWT, Sweet Now NL must submit a questionnaire response. Without the cooperation of Sweet Now NL, the production cost of HSWT should be subject to facts available, their selling prices should be adjusted downwards and the price undercutting also corrected downwards.

(63) The Commission disagreed with this claim. The questionnaire for the Union producers asks the Union producers to list its five main suppliers (in terms of purchase value) during the review investigation period of each main raw material used in the production of aspartame. Based on this information, the Commission assesses on a case by case basis whether additional information is needed in this regard. The investigation revealed that all raw materials were

purchased directly by HSWT from unrelated suppliers, with the exception of some purchases at the beginning of 2019, when Sweet Now NL purchased some raw materials for HSWT. Given the volumes and period when these purchases were made, the Commission concluded that it was not necessary for HSWT to provide additional information regarding the purchases of raw materials from Sweet Now NL.

(64) Changmao also claimed that if aspartame sold by HSWT to related companies was resold during the period considered, the related company should submit a questionnaire response.

(65) The investigation revealed that the related company did not resell aspartame to unrelated customers. HSWT sold aspartame to a related company in 2019 and 2020 only (16 % and 1 % of total production volume respectively) and then purchased it back at almost the same price for cash flow purposes. Therefore, there was no need for the Commission to require the related company to submit a questionnaire reply. Therefore, the claim was rejected.

1.9. **Verification**

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

Union producer

— HSWT France SAS, Gravelines, France (covering both Hyet Sweet SAS for 2018 and HSWT from 2019 to the end of the review investigation period).

1.10. **Subsequent procedure**

(67) On 15 July 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping measures in place ('final disclosure'). All parties were granted a period within which they could make comments on the disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(68) Changmao submitted comments and requested a hearing, which took place on 1 August 2022. HSWT reacted to the Changmao's claims as well. All claims were addressed in this Regulation.

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

2.1. **Product under review**

(69) The product under review is the same as in the original investigation, namely aspartame (N-L-α- Aspartyl-L-phenylalanine-1-methyl ester, 3-amino-N- (α-carbomethoxy-phenethyl)-succinamic acid-N-methyl ester), CAS RN 22839-47-0, currently falling under CN code ex 2924 29 70 (TARIC code 2924 29 70 05) ('product under review').

(70) Aspartame is used as an artificial sweetener in a wide range of applications, for example in food, beverage and pharmaceutical products.

2.2. **Product concerned**

(71) The product concerned by this investigation is the product under review originating in the PRC.

2.3. **Like product**

(72) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of the PRC; and

— the product produced and sold in the Union by the Union industry.

(73) These products are therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

(74) During the review investigation period (i.e. from 1 July 2020 to 30 June 2021), imports of aspartame from the PRC continued. According to Eurostat imports of aspartame from the PRC accounted for [6 – 8 %] of the Union market in the review investigation period compared to 50 – 70 % market share during the period of investigation considered in the original investigation. In absolute terms, imports have decreased by [70 % – 80 %] since the investigation period of the original investigation.

(75) As mentioned in recital (36), only one exporter from the PRC, Changmao, cooperated in the investigation. As Changmao's imports represent less than 3 % of the total imports of aspartame from the PRC during the review investigation period, they could not be considered to be representative of the total imports from the PRC. Therefore, on 31 March 2022 and 1 April 2022, the Commission informed the authorities of the PRC and Changmao respectively that due to insufficient cooperation from exporting producers in the PRC, the Commission intended to apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. Comments were received from Changmao.

(76) Changmao claimed that they had fully cooperated and the Commission should not take worse facts into account than the facts included in their questionnaire response and submissions, including relating to imports from Japan and the PRC.

(77) The Commission clarifies that the application of Article 18 of the basic Regulation in this case refers to its findings on continuation or recurrence of dumping and injury in respect of the PRC, and not to Changmao. All the submissions made by Changmao in the framework of the investigation have been duly assessed in the relevant sections of this regulation. As the exports of Changmao were found not to be representative of the total imports into the Union from the PRC, the Commission did not calculate an individual dumping margin for Changmao. In the absence of cooperation covering representative quantities, the Commission calculated a countrywide dumping margin as detailed in section 3 below. Needless to note that in expiry reviews, actual anti-dumping duties are not revised; calculations are only used as the basis for the findings of likelihood of continuation/recurrence of dumping and injury. Therefore, even had the Commission calculated an individual dumping margin for Changmao, it would not have affected the outcome of the investigation, which depended on the calculation of a countrywide margin for the remaining 97 % of imports. Thus, the individual dumping margin of Changmao, being limited to only 3 % of Chinese imports into the Union, would not have been relevant to determine whether dumping had continued country-wide during the review investigation period.

(78) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular information in the review request, the information received from the Union producer and from Changmao, and from available statistics, namely those from the 14(6) database and the Global Trade Atlas ('GTA').

3.2. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of aspartame originating in the PRC

(79) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.

(80) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, on 13 June 2022 the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.

(81) In point 5.3.2 of the Notice of initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.

(82) On 4 March 2022, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of aspartame. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Argentina, Malaysia and Thailand as an appropriate representative country. The Commission received comments from Changmao on the First Note.

(83) On 28 April 2022, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on data of the company Ajinomoto (Malaysia) Berhad ('Ajinomoto Malaysia'), a manufacturer of food, seasoning and synthetic sweeteners in Malaysia. No comments were received.

3.3. **Normal value**

(84) According to Article 2(1) of the basic Regulation, '*the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*'.

(85) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined […] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks'*, and *'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'* ('*administrative, selling and general costs*' is refereed hereinafter as 'SG&A').

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

3.3.1. *Existence of significant distortions*

(87) Even though the Commission did not investigate exports of aspartame in the context of Article 2(6a) in the past, in the recent investigation into another artificial sweetener in the PRC, notably acesulfame potassium ([10]), the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.

(88) In that investigation, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ([11]).

(89) In particular, the Commission concluded that in the acesulfame potassium sector, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation ([12]) but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ([13]).

(90) The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs, have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ([14]). Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ([15]).

(91) In the same vein, the Commission found distortions of wage costs in the acesulfame potassium sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ([16]), as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ([17]).

(92) Like in the previous investigation concerning acesulfame potassium, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the review request, as well as

([10]) Commission Implementing Regulation (EU) 2022/116 of 27 January 2022 imposing a definitive anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 19, 28.1.2022, p. 22).

([11]) Regulation (EU) 2022/116, recitals 82-88 and 121-122.

([12]) Regulation (EU) 2022/116, recitals 91-92.

([13]) Regulation (EU) 2022/116, recitals 93-94, 96: While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of acesulfame potassium and the suppliers of their inputs.

([14]) Regulation (EU) 2022/116, recitals 97-100.

([15]) Regulation (EU) 2022/116, recitals 101-104.

([16]) Regulation (EU) 2022/116, recitals 105-106.

([17]) Regulation (EU) 2022/116, recitals 107-117.

in the Report ([18]), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.

(93) The review request in this case referred to the Report, in particular to the findings in the Report concerning the chemical sector. Moreover, the request listed a number of policy documents which have an impact on the aspartame sector, including the 13th National FYP, the Made in China 2025 Initiative, the 13th FYP for the Chemical and Petrochemical Industry, State Council Guidelines on Promoting Enterprise Technological Transformation (2012), Light industry development plan (2006-2020) and the 13th 5-Year Plan for the development of the chemical industry in Jiangsu province.

(94) Furthermore, the investigation revealed that in the aspartame sector, a certain degree of ownership and control by the GOC persists in the sense of Article 2(6a)(b), second indent of the basic Regulation, including the following SOEs producing aspartame: Niutang Group, L&P Food Ingredient and Nantong Changhai Food Additives (all three companies belong to one group ([19])).

(95) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, during the investigation the Commission established the existence of personal connections between producers of the product under review and the Chinese Communist Party ('CCP'). It was established that some aspartame producers are active members of the China Food Additive and Ingredients Association (CFAA), which stipulates the following in its Articles of Association: 'Article 3: The Association adheres to the overall leadership of the Communist Party of China, and, in accordance with the provisions of the Constitution of the Communist Party of China, establishes an organization of the Communist Party of China, develops Party activities, and provides necessary conditions for the activities of the Party organization. The registration and management authority of the Association is the Ministry of Civil Affairs of the People's Republic of China, and the leading authority for Party building is the Party Committee of the State-owned Assets Supervision and Administration Commission of the State Council. The Association accepts the business guidance, supervision and management of the registration and management authority, the party building leading authority, and of the relevant industry management departments. […] Article 22: The election and removal of directors: (1) The first directors shall be jointly nominated by the association members upon establishment, and shall be elected by the members' representative assembly after being approved by the Party building leadership.' The investigation revealed that among the known aspartame producers in the PRC, Sinosweet has the role of the executive director and Changmao Biochemical Engineering is a director member. Furthermore, Deputy General Manager of Niutang Food Additives is at the same time chairman of the labour union and a Chinese People's Political Consultative Conference member.

(96) Both public and privately owned enterprises in the aspartame sector are subject to policy supervision and guidance. Producers of the product under review explicitly emphasise Party building activities on their websites, have Party members in the company management and underline their affiliation to the CCP. The investigation revealed party building activities in Niutang Group, which is an SOE.

(97) Furthermore, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the aspartame sector.

(98) The aspartame industry is covered by a number of plans, directives and other documents focused on food additives, which are issued at national, regional and municipal level such as the 13th FYP on Food Technological Innovation and the 13th FYP on Petrochemical and Chemical industry (aspartame would fall in the category of fine chemicals). Also, at the regional level, there are instruments allowing the state to intervene in the aspartame industry. For example

([18]) Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

([19]) https://www.lpfoods.com/

Jiangsu province, where two known aspartame producers are located: Jiangsu Vitasweet and the related company Changzhou Guanghui, has established a fund for the structural adjustment of the chemical sector, with the purpose of supporting enterprise upgrading, relocation and transformation, among others. Chemical synthetic sweeteners are further listed in the 2019 version of the Guiding Catalogue for industry structural adjustment ([20]) and are therefore subject to the respective government policies in place.

(99) As can be seen from the above examples, the GOC guides the development of the aspartame sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the development and functioning of the sector. Thus, the aspartame industry benefits from governmental guidance and intervention concerning the main raw materials, namely cyclohexylamine and sulphamic acid.

(100) In addition to the above, the aspartame producers are also beneficiaries of state subsidies, which clearly indicates the interest of the state in this sector. During the investigation, the Commission established that aspartame producers benefited from direct state subsidies, including Changmao Biochemical Engineering ([21]). In addition, Vitasweet Jiangsu's website indicated that the since 2010 company is recognised as Jiangsu Province's technological centre for functional food and ingredients, which was one of the goals of the Jiangsu Province Implementation Plan for the development of Biotechnology and new medicine industries 2009-2012 ([22]), pointing to the fact that it is eligible to receive governmental financial support. Furthermore, Changzhou Guanghui Biotechnology, being located in the Changzhou National Chemical Park, is eligible for governmental support, as all companies located in this park are subject to the Notice on Standardized Management of Chemical Industry Concentration Areas, in order to Strengthen the Province's Chemical Industry Parks.

(101) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of […] as the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.

(102) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the aspartame sector referred to above in recital (90) would not affect the manufacturers of the product under review.

(103) The aspartame sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (88). Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

(104) Moreover, no evidence was submitted in the present investigation demonstrating that the aspartame sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (88). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

(105) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of the product under review purchase or contract for these inputs, the prices paid (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions; they may borrow money that is subject to the distortions on the financial sector/capital allocation; and they are subject to the planning system that applies across all levels of government and sectors.

([20]) See Section 12 – Light Industry; available at: www.gov.cn/xinwen/2019-11/06/content_5449193.htm (accessed on 19 May 2022).

([21]) See company's 2021 and 2020 annual report: https://media-changmaobio.todayir.com/20210419170802763497231O3_tc.pdf and https://media-changmaobio.todayir.com/20220421185601518210220602_tc.pdf

([22]) The Plan provides the following in annex 3 page 21: '[…] strive to build 100 innovative service support platforms by 2012 to fully support the rapid development of our province's biotechnology and new pharmaceutical industries.' And further, among the 100 platforms listed: '87. Jiangsu Functional Food Ingredients Research and Development Centre (to be built)'.

(106) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

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

(108) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3.2. *Representative country*

3.3.2.1. General remarks

(109) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

— A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ([23]).

— Production of the product under review in that country ([24]).

— Availability of relevant public data in the representative country.

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

(110) As explained in recitals (82) and (83), the Commission issued two notes for the file on the sources for the determination of the normal value: the First Note on 4 March 2022 and the Second Note on the factors of production on 28 April 2022. These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

3.3.2.2. A level of economic development similar to the PRC

(111) In the First Note on factors of production, the Commission explained that the product under review did not appear to be produced in any of the countries with a level of economic development similar to the PRC in accordance with the criteria mentioned in recital (109). It was only produced in the PRC, Japan and the Union.

([23]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income

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

(112) As a result, the Commission considered whether there was production of a product in the same general category and/or sector as the product under review in country with a level of economic development similar to the PRC. The Commission consequently indicated that it would consider production of sweeteners, flavourings and food additives, which were products in the same general category as aspartame, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation.

(113) In the First Note on factors of production, the Commission identified Argentina, Malaysia and Thailand as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of products in the same general category was known to take place.

3.3.2.3. Availability of relevant public data in the representative country

(114) In the First Note the Commission identified one company in Argentina, one company in Malaysia and four companies in Thailand for which financial information for products in the same general category as the product under review was readily available in the Dun and Bradstreet database ([25]) or via the company website.

(115) With regard to Argentina, the Commission found readily available financial information for one producer of products in the same general category as the product under review, Laboratorios Argentinos Farmesa, of products in the same general category as aspartame, in the Dun and Bradstreet database for 2020 but did not find published financial statements.

(116) With regard to Malaysia, the Commission found readily available published financial statements for one producer of products in the same general category as the product under review, Ajinomoto Malaysia, for the financial years ending on 31 March 2018, 2019, 2020 and 2021 ([26]) as well as readily available financial data for that company in the Dun and Bradstreet database.

(117) With regard to Thailand, the Commission found readily available financial data for three producers of products in the same general category, as the product under review, in the Dun and Bradstreet database for one of them the financial year ended on 31 December 2020 and for the other two the financial year ended on 31 March 2021. Furthermore, the Commission also found readily available data for financial year ending on 31 March 2021 for Ajinomoto Company (Thailand) Ltd. However, the financial information of Ajinomoto Company (Thailand) Ltd was incorporated in the annual report of the Ajinomoto Group without any separate declaration for the Ajinomoto Company (Thailand). The data for the other three Thai companies could not be used as their data either did not cover much of the RIP and or did not make its full audited accounts available on their websites.

(118) The Commission also analysed the imports of the main factors of production into Argentina, Malaysia and Thailand. It was noted that a significant portion of the imports of the main factors of production such as L – aspartic acid and L – phenylalanine into Argentina, Malaysia and Thailand originated from the PRC. This pointed to potential distortions in the import prices from other third countries, as they are affected by the Chinese imports. This was also the case for other possible representative countries such as Brazil, Colombia, the Philippines, Russia, Turkey, Serbia and South Africa for which the Commission was not able to find producers of similar products with publicly available financial information. Mexico and Peru reported reasonable volume of imports of these factors of production from countries other than the PRC. However, Mexico and Peru did no report imports of the second most significant factor of production (acetic anhydride). Furthermore, the Commission was not able to find producers of similar products with publicly available financial information.

(119) Therefore, while the high volume of imports from the PRC for the factors of production mentioned above could have a distorting effect on the price of the imports from other countries, considering that the current investigation is an expiry review pursuant to Article 11(2) on the basic Regulation which does not require a precise dumping margin calculation, but rather to establish the likelihood of continuation or recurrence of dumping, the Commission considered that in this case it could exceptionally use the import price from countries other than the PRC following the methodology stated in recital (136), despite the high volume of imports from the PRC.

([25]) https://globalfinancials.com/index-admin.html
([26]) https://www.ajinomoto.com.my/investors/annual-reports

(120) Changmao opposed the selection of either Ajinomoto Thailand or Ajinomoto Malaysia. It argued that (1) both entities focus on the production of other products and not sweeteners, especially not aspartame, (2) the profit margin of Ajinomoto Thailand exceeded the reasonable profit margin achieved by a sweetener producer, (3) as Ajinomoto Japan had a monopolistic position in the market in Japan, it was likely that Ajinomoto Thailand and Ajinomoto Malaysia also enjoyed very strong positions in their markets. Furthermore, Changmao argued that since Ajinomoto's exports of aspartame from Japan to the Union increased since the imposition of the antidumping duties on the PRC, Ajinomoto Group had a vested interest in maintaining the antidumping duties in force. As a result, it was argued that in order to ensure the conduct of an objective investigation, it was not appropriate to select any Ajinomoto related companies in Thailand or Malaysia for the purposes of determining the normal value.

(121) The Commission noted that Changmao did not propose any alternative producers in Malaysia and Thailand. As regard the first claim, it is recalled that aspartame is only produced in the PRC, Japan and EU. While Ajinomoto Malaysia manufactures several types of products, it also manufactures sweeteners. Aspartame is a type of sweetener.

(122) With regard to the claim concerning the fact that the level of profit of Ajinomoto Thailand was too high, as highlighted in the Note of 4 March 2022, the annual report publicly available presented the financial data on a consolidated bases, not only for the entity in Thailand that manufactures sweeteners. Furthermore, the Commission noted that Changmao did not give any indication regarding a 'reasonable' profit margin achieved by a sweetener producer.

(123) Concerning the claim on the monopolistic position of Ajinomoto affiliates in Thailand and Malaysia, the Commission noted that Changmao did not submit any evidence in this regard. Therefore, this claim was rejected.

(124) Finally, the claim that it was not appropriate to select any Ajinomoto related company in Thailand or Malaysia for the purposes of determining the normal value due to the fact that Ajinomoto arguably had an interest to maintain the anti-dumping measures in force in EU was not substantiated and, in any event, the Commission was relying on readily available audited financial information. Therefore, the claim was rejected.

(125) In view of the above, the Commission considered that the financial information available for the Malaysian company Ajinomoto Malaysia was the most appropriate source to establish the SG&A and profits for the construction of the normal value. Audited financial statements overlapping the review period by 9 months were readily available for Ajinomoto Malaysia and allowed a reliable calculation of the SGA and profit margin for the construction of the normal value. Furthermore, Ajinomoto Malaysia is a large company and has significant production of products in the same general category as the product under review. On the other hand, as explained above, the information for Ajinomoto Company (Thailand) was consolidated at group level without any separate declaration of the financial data for Ajinomoto Thailand.

(126) Therefore, the Commission concluded that the financial data of Ajinomoto Malaysia, which included flavourings and food additives, was appropriate for the purpose of this review.

(127) In the light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Malaysia as an appropriate representative country and the company Ajinomoto (Malaysia) Berhad, in accordance with Article 2(6a)(a), first ident of the basic Regulation, in order to source undistorted prices or benchmarks for the calculation of normal value.

(128) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country and of Ajinomoto (Malaysia) Berhad as producer in the representative country. No further comments were received.

3.3.2.4. Level of social and environmental protection

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

3.3.2.5. Conclusion

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

3.3.3. *Sources used to establish undistorted costs*

(131) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

(132) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Institute of Labour Market Information and Analysis (ILMIA) ([27]) for establishing undistorted costs of labour, electricity price information published by the electricity company Tenaga Nasional Berhad (TNB) in its website ([28]) for electricity costs.

3.3.3.1. Undistorted costs and benchmarks

3.3.3.1.1. Factors of production

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

Table 1

Factors of production of aspartame

Factor of Production	Commodity Code in Malaysia	Undistorted value (CNY)	Unit of measurement
Raw materials			
Acetic anhydride	29152400	9,73	kg
L-aspartic acid	29224900	16,56	kg
L-phenylalanine	29224900	16,56	kg
Formic acid	29151100	5,51	kg
Methanol	29051100	2,00	kg
Sodium hydroxide/Caustic Soda (Salts of formic acid)	29151200	6,95	kg
Sodium carbonate (disodium carbonate)	28362000	1,62	kg
Labour			
Direct and indirect labour in the manufacturing sector	[N/A]	53,6	Per hour
Energy			
Electricity	[N/A]	0,54	kWh

([27]) https://www.ilmia.gov.my/index.php/my/labour-cost
([28]) https://www.tnb.com.my/commercial-industrial/pricing-tariffs1
https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf

(134) The Commission also included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The methodology to establish this amount is duly explained in recital (141).

Raw materials

(135) The cost structure of aspartame is mainly determined by the costs of the raw materials, i.e. various chemicals, as well as energy.

(136) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ([29]). The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (108) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the PRC as well as non-WTO Members, as explained in recital (119), the Commission considered that the imports from other third countries remained sufficiently representative.

(137) Normally, domestic transport prices should also be added to these import prices. However, considering the finding in recital (77) as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence the dumping margin.

Labour

(138) The Commission used the statistics published by the Institute of Labour Market Information and Analysis (ILMIA) ([30]) in Malaysia to determine the wages in Malaysia by using the information for average labour cost per employee in the manufacturing sector for the investigation period.

Electricity

(139) Prices for electricity for companies (industrial users) in Malaysia are published by the electricity company Tenaga Nasional Berhad (TNB) on its website ([31]). The most recent rates were published on 1 January 2014 and were still applicable in the RIP. In order to establish the electricity cost per kWh, the Commission used the rate of tariff E1 applicable to medium voltage general industrial tariff, which was considered to be appropriate for the aspartame industry.

3.3.3.1.2. Manufacturing overhead costs, SG&A, profits and depreciation

(140) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

([29]) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

([30]) https://www.ilmia.gov.my/index.php/my/labour-cost

([31]) https://www.tnb.com.my/commercial-industrial/pricing-tariffs1
https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf

(141) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the sole Union producer in the questionnaire, the Commission established the ratio of manufacturing overheads to the total manufacturing costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.

(142) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial year data ending on 31 March 2021 for Ajinomoto Malaysia. The Commission made this data available to interested parties in the Second Note.

3.3.3.2. Calculation of the normal value

(143) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

(144) First, the Commission established the undistorted manufacturing costs. In the absence of sufficient cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the questionnaire reply on the usage of each factor for the production of aspartame. These consumption ratios provided by the applicant were verified during the verification. The Commission multiplied the consumption ratios by the undistorted costs per unit observed in the representative country Malaysia.

(145) The Commission had also received certain information concerning the factors of production from the one cooperating Chinese exporting producer. However, as recalled at recitals (75) and (77), given the significant level of non-cooperation in this case, this producer was not representative for the companies that exported to the Union market during the review investigation period, and thus its data (i.e. consumption factors) was not considered appropriate to use in the normal value calculation. If cooperation is extremely limited, the Commission cannot assure itself that the data of cooperating exporting producers are an accurate reflection of the actual dumping being practised country-wide.

(146) Once the undistorted manufacturing costs were established, the Commission added the manufacturing overheads, SG&A and profit. Manufacturing overheads were determined based on data provided by the applicant in the review request. SG&A and profit were determined based on the financial statements of Ajinomoto Malaysia) for the year ended March 2021 as reported in the company's audited accounts ([32]). The Commission added the following items to the undistorted costs of manufacturing:

— Manufacturing overheads, which accounted in total [3 % – 7 %] of the direct costs of manufacturing,

— SG&A, which accounted for 34,7 % of the Costs of Goods Sold ('COGS') of Ajinomoto Malaysia, and

— Profits, which amounted to 19,8 % of the COGS as achieved by Ajinomoto Malaysia, were applied to the total undistorted costs of manufacturing.

(147) On that basis, the Commission constructed an average unit normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

(148) In their comments following final disclosure, Changmao claimed that Ajinomoto Malaysia was not comparable to Changmao and other producers from the PRC and its SG&A was much higher than the SG&A of the sweetener producers, as Ajinomoto Malaysia: (1) was active in the production of ingredients, such as monosodium glutamate, (2) did not produce mainly sweeteners, (3) also operated retails business with high SG&A, as well as (4) offered after-sale services to their customers and promotional activities. Changmao claimed that the Commission should examine the details of the SG&A incurred by Ajinomoto Malaysia and make all necessary adjustments on account of these differences in order to ensure a fair comparison between the normal value and the export prices of Changmao and other Chinese producers.

([32]) www.ajinomoto.com.my

(149) In this respect, the Commission noted that Article 2(6a) of the basic Regulation requires that in cases of distortions the normal value must be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks. For this purpose, it provides that costs in an appropriate representative country with a similar level of economic development as the exporting country are used, provided the relevant data is readily available. In the present case, Malaysia was found to be an appropriate representative country and financial information to be readily available for Ajinomoto Malaysia. Changmao has not submitted any evidence concerning the after sales services and promotional activities. Also Changmao did not indicate what was the magnitude of these expenses that the Commission should use to adjust the total SG&A of Ajinomoto Malaysia. The annual report of Ajinomoto Malaysia ending on 31 March 2021 does not include a detailed breakdown of the SG&A information which would allow the Commission to assess whether these allegations were accurate. Therefore, the claim was rejected.

(150) Changmao also claimed that the profit margin of Ajinomoto Malaysia of 19,85 % was too high for a small and medium size sweetener producer such as the Chinese producers. Changmao stated that in the original investigation, the Commission used a target profit between 5 % and 10 %.

(151) The Commission noted that the target profit and the profit in the representative country refer to different concepts and to different countries. In particular, the target profit to which Changmao refers is the profit achieved by the Union industry for domestic sales in the Union under normal conditions of competition and it is used to calculate the injury margin. The profit in the representative country is used in the calculation of normal value by reference to the appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation. This profit must reflect the profit achieved by a company producing the product under investigation or a similar product, in a representative country. Therefore, the claim was rejected.

(152) In their comments following final disclosure, Changmao disagreed with the Commission's position stated in recital (145) to use the consumption factors of the Union industry for the normal value determination. Changmao argued that the fact that it exported low volumes of aspartame to the Union during the review investigation period was not in itself sufficient to consider Changmao's consumption factors unreliable.

(153) The Commission disagreed with this claim. As explained in recital (145) if cooperation is extremely limited, the Commission cannot assure itself that the data of cooperating exporting producers are an accurate reflection of the actual dumping being practised country-wide. Moreover, Changmao did not show why using the consumption factors of the Union industry for the normal value determination would be inappropriate in this case. Changmao did not show either that no dumping would have existed, had the Commission used a more suitable alternative approach. Finally, as explained in recital (160), using the reported consumption data of Changmao would in any event not have affected the outcome of the investigation. Therefore, the claim was rejected.

3.4. **Export price**

(154) In the absence of cooperation by Chinese producers accounting for representative volumes, the export price was determined based on CIF Comext database (Eurostat) adjusted to ex-works level. Thus, the CIF price was reduced by the (sea) freight, insurance cost and domestic transport cost cited in the request for review.

3.5. **Comparison**

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

3.6. **Dumping margin**

(156) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was 27 %. It was therefore concluded that dumping continued during the review investigation period.

(157) In their comments following final disclosure, Changmao claimed that Article 18 of the basic Regulation was applied to it due to the fact that its exports to the Union represent less than 3 % of the total imports of aspartame from the PRC. Changmao stated that the small volume it exported to the Union during the review investigation period did not constitute a legal basis for the Commission to conclude that the factors of production submitted by Changmao were not representative, and that Article 18 of the basic Regulation was applied thereto. Changmao claimed that pursuant to Article 2(3) and 2(6a)(a) of the basic Regulation, the small quantity of exports is not a justification for not calculating its normal value on the basis of its cost of production. Changmao also claimed that there was no representativeness test provided by the basic Regulation for constructed normal value and therefore the Commission should use its factors of production. Changmao also stated that the Commission made a mistake for the factors of production as Changmao used both electricity and steam while HSWT used only electricity, which was more expensive than steam. Furthermore, Changmao claimed that the Commission violated the rules of individual treatment according to the second paragraph of Article 9(5) of the basic Regulation. In particular, Changmao stated that as the Commission made an individual dumping margin determination and set an individual duty rate for Changmao in the original investigation, while the original duties could be maintained after the current expiry review investigation, the Commission could not deny such individual determination method without any legal basis.

(158) As stated in recital (75), the Commission applied Article 18 of the basic Regulation concerning the findings with regard to the PRC and not Changmao. Indeed, in the context of an expiry review, the Commission aims to determine continuation or recurrence of dumping with respect to the country as a whole. The information provided by one exporting producer having very limited export volumes to the Union is not representative of the conduct of the total imports from the PRC when these have continued to a significant extent. Furthermore, as explained in recital (77), as the exports of Changmao were found not to be representative of the total imports from the PRC, the individual dumping margin of Changmao would not have been relevant to determine whether dumping had continued country-wide during the review investigation period.

(159) The Commission did not disregard the factors of production submitted by Changmao. However, for the calculation of the normal value for the countrywide dumping margin calculation, the Commission used the consumption factors of the sole Union producer (the Union industry did not use steam) as facts available under Article 18 of the basic Regulation, since the Commission did not obtain such information due to the lack of cooperation of the Chinese exporting producers. Indeed, Changmao exports to the Union were not considered representative for the PRC as a whole since it accounted for less than 3 % of imports from the PRC.

(160) In any event, the Commission noted that even had it relied on the factors of production and consumption ratios submitted by Changmao, the dumping margin calculation would still have yielded a margin of more than 20 %. For the sake of completeness, it is noted that the two factors of production reported by Changmao, i.e. steam and consumables, were not assessed, as they were not included in calculation of the normal value for the country wide dumping margin referred to in recital (156). Had the Commission included these two factors of production, the dumping margin would have been even higher. There was thus clear evidence of continued dumping in the present investigation, regardless of the methodology used.

(161) Finally, Article 9(5) of the basic Regulation refers to the imposition of the individual duties. The current investigation is an expiry review pursuant to Article 11(2) of the basic Regulation, during which the Commission can only conclude whether the measures in force should be continued or terminated. Therefore, the second paragraph of Article 9(5) of the basic Regulation does not apply in the current investigation. Therefore, those claims were rejected.

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

(162) Further to the finding of the existence of dumping during the review investigation period as stated in recital (156), the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be repealed.

(163) As a consequence of the non-cooperation of exporting producers/producers in the PRC accounting for a representative volume of imports, the Commission based its assessment on the facts available in accordance with Article 18 of the basic Regulation, namely on information provided in the request for review, readily available information, and GTA. The following elements were analysed: the production capacity and spare capacity in the PRC and the attractiveness of the Union market and export prices to third countries.

4.1. **Production capacity and spare capacity in the PRC**

(164) The Commission analysed the situation relating to production capacity and spare capacity on the basis of the information in the request for review.

(165) In the request for review, the applicant indicated that existing capacity in the PRC amounted to approximately 30 000 to 35 000 tonnes. No other information was publicly available in this regard. As none of the parties submitted any comments nor did they provide any additional information concerning the existing total capacity in the PRC, the Commission concluded that the current Chinese production capacity was likely to be in the range of 30 000 to 35 000 tonnes.

(166) The domestic demand of aspartame in the PRC is estimated by the applicant to be approximately 10 000 tonnes. The total exports of the PRC amounted to about 16 000 tonnes in the review investigation period. Therefore, the spare capacity of the PRC is approximately 4 000 to 9 000 tonnes, which covers almost the entire Union consumption and it can be even double the Union consumption stated in Table 2.

(167) Therefore, the Commission found that there was substantial spare production capacity in the PRC to increase sales to the Union market in the event that the anti-dumping measures were allowed to expire.

(168) In their comments following final disclosure, Changmao claimed that the applicant overestimated the production capacity of aspartame in the PRC. In particular, Changmao claimed that its production capacity was lower than the 3 000 tonnes estimated by the applicant. Changmao submitted only in the confidential version a document indicating that the Chinese company Shaoxing Yamei Biochemistry Co. Ltd was not a producer of aspartame anymore. Furthermore, Changmao stated that other Chinese producers of aspartame had decreased their production capacity due to the new environment protection policy of the PRC. Changmao thus claimed that considering the domestic demand for aspartame in the PRC and the exports of aspartame to third countries, no spare production capacity for aspartame was available in the PRC which would be used to increase aspartame exports to the Union if the antidumping measures were removed.

(169) The Commission notes that Changmao did not provide any evidence concerning decreases in capacity due to environment protection policies. Absent any evidence, the Commission dismissed this assertion. Furthermore, even after taking into account the decrease in production capacity of Changmao and Shaoxing Yamei Biochemistry Co. Ltd, there would still be spare capacity of more than 2 000 tonnes ([33]), which would cover a significant share of the total consumption of aspartame in the Union.

4.2. **Attractiveness of the Union market and export prices to third countries**

(170) The attractiveness of the Union market for Chinese exports was apparent given their continuing presence even with anti-dumping measures – reaching [7 % – 10 %] of the Union market share during the RIP as mentioned in Table 3.

(171) The high production capacity in the PRC provides a powerful incentive to export in this naturally export-oriented sector as Chinese producers have only two competitors outside the PRC: Ajinomoto in Japan and the applicant. If anti-dumping duties were left to expire, the Chinese producers would have an opportunity to increase their sales and market share in the Union.

([33]) Based on total Chinese capacity of [30 000 – 35 000] tonnes, as calculated based on the request for review, adjusted for the alleged reduction presented by Changmao of [3 000 – 6 000] tonnes.

(172) Furthermore, the Commission examined whether it is likely that Chinese exporting producers would increase even more their export sales to the Union at dumped prices should measures be allowed to lapse. Therefore, the Commission examined the price levels of the Chinese exporting producers to other third country markets and compared to the prices of the Union industry.

(173) In the absence of cooperation covering representative volumes from the PRC, the Commission used GTA. It was found that the average sales price of the Union industry ([12 051– 18 377] EUR/tonne) was higher than the average export price from the PRC to third countries during the review investigation period (9 939 EUR/tonne). Therefore, there would be an economic incentive for the Chinese exporting producers to shift exports from third countries to the Union, should the measures lapse, as the Union market is attractive. In such case the Chinese producers would be able to export to the Union at prices higher than those to other third country markets but still below the Union industry's prices.

4.3. **Conclusion**

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

(175) In view of its findings on the continuation of dumping during the RIP and on the likely development of exports should the measures lapse as explained in recital (174), the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from the PRC would result in the continuation of dumping.

5. **INJURY**

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

(176) The like product was manufactured by one producer in the Union during the period considered (Hyet Sweet SAS in 2018 and HSWT as of 2019 onwards as explained in recital (37)). It constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(177) The total Union production during the review investigation period was established in the range of [1 963- 2 909] tonnes.

5.2. **Union consumption**

(178) Aspartame is produced only in the Union, the PRC and Japan. The Commission established the Union consumption on the basis of the sales of the Union industry on the Union market and imports from the PRC and Japan, based on Eurostat.

(179) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2018	2019	2020	Review Investigation period
Total Union consumption	[1 539 – 2 141]	[4 355 – 6 058]	[3 826 – 5 322]	[3 957 – 5 504]
Index (FY2018 = 100)	*100*	*283*	*249*	*257*

Source: Eurostat and Questionnaire reply of the Union producer

(180) Union consumption of aspartame fluctuated during the period considered. It first increased by 183 % from 2018 to 2019, then decreased by 12 % between 2019 and 2020 and then slightly increased again by 3 % in the review investigation period as compared to 2020. Overall, the Union consumption increased by 157 % during the period considered.

(181) The variability of Union consumption reflected the increase in imports from the PRC and Japan in 2019 and then mainly from Japan in 2020 and the RIP as stated in Tables 3 and 6.

(182) In their comments following final disclosure, Changmao asked the Commission to explain why there was a significant difference for the consumption for 2018 between the request for the review and the Table 2.

(183) The Commission noted that the difference is due to the volume of imports from Japan for 2018. The request for review used the volume of imports from Japan from the 14(6) database, while the Commission based its assessment on Eurostat because it includes more detailed information (such as imports under the inward processing system). Nevertheless, even on the basis of 14(6) database, the findings of the investigation would not have changed because the trends for consumption and market shares remain materially the same.

5.3. **Imports from the country concerned**

5.3.1. *Volume and market share of the imports from the country concerned*

(184) The Commission established the volume of imports on the basis of Eurostat. The market share of the imports was established on the basis of Eurostat and data provided by the Union industry.

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

Table 3

Import volume (tonnes) and market share

	2018	2019	2020	Review Investigation period
Volume of imports from the country concerned	[489 – 681]	[1 017 – 1 415]	[426 – 593]	[311 – 433]
Index (FY2018 = 100)	*100*	*266*	*128*	*85*
Market share	[28 % - 39 %]	[20 % – 28 %]	[10 % – 14 %]	[7 % – 10 %]
Index (FY2018 = 100)	*100*	*73*	*35*	*25*

Source: Eurostat and Questionnaire reply of the Union producer

(186) The volume of imports from the PRC fluctuated over the period considered. It increased by 166 % between 2018 and 2019 and then decreased by the end of RIP by 69 % as compared to 2019. Overall, the volume of imports from the PRC decreased by 15 % during the period considered.

(187) The market share of the imports from the PRC had a decreasing trend over the period considered and decreased by 75 % in the review investigation period as compared to 2018. The decrease in market share was due to an increase in Union consumption which was not followed at the same proportion by the volume of imports from the PRC.

5.3.2. *Inward processing system*

(188) Aspartame was imported from the PRC under the normal regime as well as under the inward processing system.

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

Table 4

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

	2018	2019	2020	Review Investigation period
Volume of imports from the PRC under the normal regime	[292 – 407]	[776 – 1 080]	[374 – 521]	[249 – 346]
Index (FY2018 = 100)	*100*	*266*	*128*	*85*
Market share	[17 % – 23 %]	[16 % – 22 %]	[9 % – 12 %]	[6 % – 8 %]
Index (FY2018 = 100)	*100*	*94*	*52*	*33*
Volume of imports from the PRC under the inward processing regime	[197 – 274]	[241 – 335]	[52 – 72]	[63 – 87]
Index (FY2018 = 100)	*100*	*122*	*26*	*32*
Market share	[11 % – 16 %]	[5 % – 7 %]	[0 % – 2 %]	[0 % – 3 %]
Index (FY2018 = 100)	*100*	*43*	*11*	*12*

Source: Eurostat and Questionnaire reply of the Union producer

(190) 25 % of total imports from the PRC were imported via the inward processing system in the review investigation period. Their volume decreased by 68 % over the period considered.

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

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

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

Table 5

Import prices (EUR/tonne)

	2018	2019	2020	Review Investigation period
The PRC	[8 452 – 11 758]	[9 104 – 12 665]	[8 976 – 12 486]	[8 859 – 12 323]
Index (FY2018 = 100)	*100*	*108*	*106*	*105*

Source: Eurostat (without imports under inward processing)

(193) The average prices of imports from the PRC increased by 5 % during the period considered.

(194) In view of the non-cooperation of the Chinese exporting producers accounting for a representative volume of imports as stated in recital (36), the Commission determined the price undercutting during the review investigation period by comparing the weighted average sales price of the sole Union producer charged to unrelated customers in the Union market, adjusted to an ex-works level and the weighted average export prices from the 14(6) database, including the anti-dumping duty, with appropriate adjustments for the post-importation costs. The price of the volumes of aspartame imported under the inward processing system were not taken into account as these volumes are not released in free circulation into the Union market.

(195) The result of the comparison was expressed as a percentage of the sole Union producers' turnover during the review investigation period and showed no undercutting.

(196) In their comments following final disclosure, Changmao claimed that HSWT offered significant additional sales services to its clients which would be reflected in the sales prices and therefore brought HSWT's sales to a different level of trade than the sales prices of Chinese exporters. Changmao considered that the Chinese and the Union industry's prices should be compared at the same level of trade in the price undercutting calculations.

(197) Changmao's claim is speculative. As stated in recital (75), Changmao was the only Chinese exporting producer who cooperated in the investigation; however, its exports to the Union were not found to be representative for the PRC and Article 18 of the basic Regulation was applied. Therefore, the Commission could not assess the level of trade of the Chinese exporters. Finally, as stated in recital (195), there was no undercutting during the investigation period even without making any level of trade adjustments. Therefore, the claim was rejected.

5.3.4. *Imports from third countries other than the PRC*

(198) The imports of aspartame from third countries other than the PRC were almost exclusively from Japan.

(199) The imports of aspartame from third countries other than the PRC and Japan represent less than 2 % of total imports over the period considered. As aspartame is produced only in the PRC, Japan and in the Union, the Commission considered that these imports were wrongly classified as aspartame, or their origin was wrongly declared. For this reason, the Commission did not consider these imports further in its injury analysis.

(200) Aspartame was imported from Japan under the normal regime as well as under the inward processing system.

(201) The (aggregated) volume of imports as well as the market share and price trends for imports of aspartame from Japan developed as follows:

Table 6

Imports from third countries

Country		2018	2019	2020	Review Investigation period
Japan	Total volume of imports (tonnes)	[312 – 434]	[2 478 – 3 447]	[2 383 – 3 315]	[2 579 – 3 587]
	Index (FY2018 = 100)	*100*	*795*	*764*	*827*
	Market share (%)	[18 – 25]	[50 – 69]	[55 – 76]	[57 – 80]
	Volume of imports under the inward processing system	[0 – 0]	[1 049 – 1 459]	[1 152 – 1 602]	[1 529 – 2 127]
	Index (FY2018 = 100)	-	*100*	*110*	*146*

	Market share of Japanese imports under inward processing system (%)	[0 – 0]	[21 – 29]	[26 – 37]	[34 – 47]
	Average price (EUR/tonne) without inward processing regime	[11 431 – 15 901]	[11 904 – 16 560]	[11 987 – 16 676]	[11 438 – 15 912]
	Index (FY2018 = 100)	*100*	*104*	*105*	*100*

Source: Eurostat

(202) The total volume of imports from Japan increased by 727 % over the period considered. 60 % of total imports from Japan were imported under the inward processing regime in the review investigation period. The imports from Japan under the inward processing system were inexistent in 2018 and increased by 46 % in the review investigation period as compared to 2019.

(203) The market share of imports from Japan increased during the period considered, reaching [57 % – 80 %] in the review investigation period. The market share of the imports from Japan under the inward processing system increased as well during the period considered and reached [34 % – 47 %] during the review investigation period.

(204) The average price of the imports from Japan increased by 5 % between 2018 and 2020. In the review investigation period, the prices return to similar levels to 2018.

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

5.4.1. *General remarks*

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

5.4.2. *Production, production capacity and capacity utilisation*

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

Table 7

Production, production capacity and capacity utilisation

	2018	2019	2020	Review Investigation period
Production volume (tonnes)	[1 181 – 1 750]	[1 379 – 2 043]	[1 971 – 2 921]	[1 963- 2 909]
Index (FY2018 = 100)	*100*	*117*	*167*	*166*
Production capacity (tonnes)	[2 656 – 3 936]	[2 656 – 3 936]	[2 656 – 3 936]	[2 656 – 3 936]
Index (FY2018 = 100)	*100*	*100*	*100*	*100*
Capacity utilisation (%)	[37-55]	[43-64]	[62-91]	[61-91]
Index (FY2018 = 100)	*100*	*117*	*167*	*166*

Source: Questionnaire reply of the Union producer

(207) Production volume increased by 67 % between 2018 and 2020. In the review investigation period the production volume remained at similar levels to the production volume in 2020. The production volume increased following the change in the business strategy of the applicant that took over the assets of the previous Union producer of aspartame in 2019 as explained in recital (37).

(208) The production capacity of the Union industry was maintained at the same level during the period considered, as the applicant took over the production assets of the previous Union producer as explained in recital (37).

(209) The capacity utilisation increased in line with the increase of the annual production volume described in recital (207), by 66 %.

5.4.3. *Sales volume and market share*

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

Table 8

Sales volume and market share

	2018	2019	2020	Review Investigation period
Sales volume on the Union market (tonnes)	[699 – 1 035]	[814 – 1 206]	[962 – 1 425]	[1 009 – 1 496]
Index (FY2018 = 100)	*100*	*116*	*138*	*144*
Market share	[40-59]	[16-24]	[22-33]	[22-33]
Index (FY2018 = 100)	100	41	55	56

Source: Questionnaire reply of the Union producer and Eurostat

(211) The sales volume of the Union industry on the Union market had an increasing trend during the whole period considered. Overall, the sales volume increased by 44 %.

(212) Despite the increase in the sales volume, the market share of the Union industry decreased by 44 % over the period considered, reaching [22 % – 33 %] in the review investigation period.

5.4.4. *Growth*

(213) As stated above, the sales volume of the Union industry increased by 44 % over the period considered. However, the Union consumption increased even more, by 157 % over the period considered and as a result the market share of the Union industry decreased by 44 %.

5.4.5. *Employment and productivity*

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

Table 9

Employment and productivity

	2018	2019	2020	Review Investigation period
Number of employees	[76-112]	[63-94]	[65-96]	[68-100]
Index (FY2018 = 100)	*100*	*84*	*86*	*89*

Productivity (tonnes/FTE)	[13-19]	[18-27]	[25-37]	[24-36]
Index (FY2018 = 100)	*100*	*139*	*194*	*186*

Source: Questionnaire reply of the Union producer

(215) The number of employees fluctuated during the period considered. It first decreased by 16 % in 2019 as compared to 2018 when the applicant took over the assets and certain employees of the former Union producer of aspartame as explained in recital (37). The gradual increase in the number of employees from 2019 to the review investigation period occurred at the same time as increasing production and sales levels for the Union industry.

(216) Productivity increased by 94 % between 2018 and 2020 reflecting the increase in production volume as explained in recital (207) and then decreased by 4 % in the review investigation period as compared to 2020. Overall, the productivity increased by 86 %.

5.4.6. *Magnitude of the dumping margin and recovery from past dumping*

(217) The dumping margin during the review investigation period was significantly above the *de minimis* level as stated in recital (156) and the volume and market share of the imports from the PRC as described in Tables 3 and 4 were still significant during the period considered.

(218) However, despite the fact there was still dumping from the PRC, the Union industry managed to recover from past dumping practices, notably because of the new business strategy of the sole Union producer and increased domestic consumption.

5.4.7. *Prices and factors affecting prices*

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

Table 10

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

	2018	2019	2020	Review Investigation period
Average unit sales price in the Union	[10 699 – 16 316]	[11 954 – 18 229]	[12 293 – 18 747]	[12 051 – 18 377]
Index (FY2018 = 100)	*100*	*112*	*115*	*113*
Unit cost of production *Index (FY2018 = 100)*	*100*	*81*	*73*	*71*

Source: Questionnaire reply of the Union producer

(220) The Union industry's average unit sales price to unrelated customers increased by 13 % over the period considered.

(221) The unit cost of production decreased by 29 % over the period considered. This was due to an increase in efficiency concerning the consumption of certain key raw materials and lower prices for electricity and gas.

5.4.8. **Labour costs**

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

Table 11

Average labour costs per employee

	2018	2019	2020	Review Investigation period
Average labour costs per employee (EUR)	[55 774 – 85 056]	[61 652 – 94 019]	[59 792 – 91 182]	[54 112 – 82 521]
Index (FY2018 = 100)	*100*	*111*	*107*	*97*

Source: Questionnaire reply of the Union producer

(223) The average labour costs per employee increased by 11 % in 2019 as compared to 2018 and then decreased by 12 % in the review investigation period as compared to 2019. Overall, the Union average labour costs per employee decreased by 3 %.

(224) The fluctuation of the labour cost was due to changes in the mix of employees over the period considered.

5.4.9. *Inventories*

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

Table 12

Inventories

	2018	2019	2020	Review Investigation period
Closing stocks (tonnes)	[102 – 155]	[126 – 192]	[171- 261]	[127 – 193]
Index (FY2018 = 100)	*100*	*124*	*168*	*124*
Closing stocks as a percentage of production	[7 % - 11 %]	[8 % – 12 %]	[7 % – 11 %]	[5 % – 8 %]
Index (FY2018 = 100)	*100*	*106*	*101*	*75*

Source: Questionnaire reply of the Union producer

(226) The volume of inventories increased by 68 % from 2018 to 2020 and then decreased by 26 % to the end of the review investigation period. Overall, the stocks level increased by 24 %.

(227) Closing stocks as a percentage of production volume increased by 6 % in 2019 as compared to 2018 and then decreased by 29 % by the end of the review investigation period as compared to 2019.

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

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

Table 13

Profitability, cash flow, investments and return on investments

	2018	2019	2020	Review Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover) *Index (FY2018 = 100)*	*- 100*	*- 16*	*110*	*112*
Cash flow (EUR)	[- 12 979; - 8 511]	[- 3 690; - 2 420]	[249 – 380]	[443 – 676]
Index (FY2018 = 100)	*- 100*	*- 28*	*103*	*105*
Investments (EUR)	[292 – 445]	[1 302 – 1 985]	[1 476 – 2 250]	[1 750 – 2 669]
Index (FY2018 = 100)	*100*	*446*	*505*	*599*
Return on investments (%)	[- 37; - 25]	[- 224; - 147]	[19 – 28]	[6 – 10]
Index (FY2018 = 100)	*- 100*	*- 599*	*176*	*126*

Source: Questionnaire reply of the Union producer

(229) The Commission established the profitability of the Union producer by expressing the pre-tax net profit or loss of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(230) The profitability situation of the Union industry improved over the period considered moving from a substantial loss in 2018 to a lower loss in 2019 and a profit in the review investigation period. However, the Union industry did not manage to achieve the target profit margin specified in the original investigation ([34]).

(231) The net cash flow is the ability of the Union producers to self-finance their activities. Cash flow was negative in 2018 when the Union industry producer went into bankruptcy. As the new Union producer, the applicant, increased sales, cash flow gradually improved from 2019 to the RIP.

(232) There were limited investments in 2018, the year that the former Union producer entered bankruptcy. However, under new ownership investments increased by 346 % in 2019 and then increased steadily reaching a 499 % increase compared to 2018 in the RIP. The investments were mainly made to replace old equipment with new, more efficient equipment.

(233) The return on investments is the profit or loss in percentage of the net book value of investments.

(234) When the applicant acquired the production site in 2019 it implemented a comprehensive restructuring program, with substantial capital investments by HSWT and its shareholders for the following years, in order to try to make the plant profitable again.

(235) The return on investments was substantially negative in 2018 and again in 2019. The return on investment improved in 2020 and the review investigation period.

([34]) Commission Implementing Regulation (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China (OJ L 50, 26.2.2016, p. 4), recital 150.

5.5. **Conclusion on injury**

(236) Most injury indicators, such as production, capacity utilisation, unit cost of production, sales volumes, sales prices, labour costs, productivity, profitability, employment investments, return on investments and cash flow developed positively and do not indicate material injury.

(237) Based on the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

(238) However, given Chinese imports continued at substantial volumes and the Union industry enjoyed profits only in 2020 and the RIP but still below the target profit level identified in the original investigation, the Union industry was not able to fully recover from the previous injurious dumping within the meaning of Article 3(5) of the basic Regulation by the review investigation period.

(239) Changmao claimed that the Commission has not received any information from the applicant on the reasons for Hyet Sweet SAS's bankruptcy. Furthermore, Changmao claimed that the Commission has not received any information on Hyet Sweet Group's substantial and self-injurious imports in the Union of aspartame and raw materials from the PRC and Japan and on why both Hyet Sweet and HSWT groups did not submit such information to the Commission while HSWT continues to argue that injury has been caused by imports of aspartame from the PRC.

(240) The Commission concluded above that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period. Therefore, the reasons for Hyet Sweet SAS's bankruptcy are not relevant for the current investigation. Furthermore, as explained in recital (176), Hyet Sweet Group is not involved any more in the production of aspartame in the Union and is not related to HSWT. Therefore, the Commission can only encourage unrelated importers to cooperate in the investigation. Moreover, HSWT has provided information in the questionnaire reply regarding the purchases of raw materials and the investigation did not reveal that the purchases of the raw materials caused injury. Changmao failed to explain why the imports of raw materials from the PRC and Japan would be self-injurious or submit any evidence in this regard. Therefore, these claims were rejected.

(241) Changmao argued that it was doubtful whether HSWT produced aspartame rather than purchasing a large number of finished and semi-finished products, mainly from Ajinomoto Inc. and certain Chinese companies. It was stated that according to HSWT's 2019 annual report, HSWT purchased a lot of finished products, and there was a big change in the cost data compared with the data before the bankruptcy of Hyet Sweet SAS.

(242) As stated in recital (207), the investigation revealed that HSWT manufactured aspartame during the period considered. Furthermore, the investigation did not reveal any purchases of aspartame from the PRC or Japan. As stated in recital (221), the unit cost of production decreased by 29 % over the period considered due to an increase in efficiency concerning the consumption of certain key raw materials and lower prices for electricity and gas. Therefore, the claim was rejected.

(243) In their comments following final disclosure, Changmao stated that certain essential information was not disclosed properly by the Commission or HSWT such as (1) the volume of imports of aspartame from the PRC and Japan, (2) the volume of imports of aspartame from the PRC and Japan under inward processing system, (3) the market shares (4) average prices of aspartame imports originating in the PRC and Japan, (5) whether Hyet Sweet SAS was officially dissolved at the moment of the initiation of the expiry review, (6) the asset purchase agreement between HSWT and Hyet Sweet SAS, (7) the cooperation plan agreement between HSWT and Hyet Sweet SAS and (8) the stock evaluation and management accounts of HSWT. Changmao also asked the Commission to disclose the methodology for creating the ranges.

(244) The Commission could not disclose the data regarding volume of imports, market share and import prices from the PRC and Japan as it is market sensitive and confidential under Article 19 of the basic Regulation given the limited number of the parties operating on the Union market (one Union producer, one Japanese exporter, two predominant Chinese exporters). The disclosure of this information could allow parties to calculate back company-specific confidential data. The Commission provided this information in ranges and indexes which gave sufficient meaningful information to all interested parties to understand the Commission's analysis and conclusions and provide comments in this regard. The data was also provided in the form of meaningful trends so that all interested parties could defend their interests. The Commission could not disclose the method for creating the ranges as this would allow the parties to retrieve the exact numbers from the ranges.

(245) Regarding whether Hyet Sweet SAS was officially dissolved at the moment of the initiation of the expiry review, no explanation was provided as to why this information was relevant for the current expiry review investigation. In any event, as stated in recital (37), Hyet Sweet SAS stopped manufacturing aspartame in the Union in 2018 and entered into bankruptcy. Finally, as regard the other three documents requested by Changmao, these documents are confidential by nature and cannot be disclosed to parties under Article 19 of the basic Regulation. The Commission provided detailed information with regard to Hyet Sweet SAS, which allow interested parties to understand the factual situation without disclosing confidential information. The level of disclosure allowed parties to fully exercise their right of defence. Therefore, these claims were rejected.

(246) Changmao also claimed that the Commission's conclusion that the Union industry did not suffer material injury was wrong as there was no assessment on the impact of the increase in low priced imports from Japan during the period considered.

(247) The Commission disagreed with this claim. The injury determination involves an examination of the situation of the Union industry regardless of its cause. The Commission found that the industry did not suffer material injury and therefore it was not appropriate to assess the cause of (inexistent) injury. Absent injury, imports for Japan were of course not relevant for the determination of likelihood of recurrence of injury should measures on imports from the PRC be allowed to lapse. It should also be noted that imports from Japan appeared to have replaced imports from the PRC subject to the current measures. Should measures be allowed to lapse, imports from Japan are likely to be replaced by imports from the PRC made at lower prices. The claim was therefore rejected.

6. **LIKELIHOOD OF RECURRENCE OF INJURY**

(248) The Commission concluded in recitals (236) and (237) that the Union industry did not suffer material injury during the review investigation period, although it had not been able to fully recover from the material injury previously suffered. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of material injury caused by the dumped imports of aspartame from the PRC, if the measures were allowed to lapse.

(249) For the likelihood of recurrence of material injury caused by the dumped imports of aspartame from the PRC, the Commission examined the production capacity and spare capacity in the PRC, the likely price levels of imports from the PRC in the absence of anti-dumping measures and their impact on the Union industry, including the level of undercutting in the absence of anti-dumping measures.

(250) As explained in recitals (164) to (173), based on the spare capacity in the PRC and the high attractiveness of the Union market for Chinese exporting producers, there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of exports to the Union.

(251) Regarding the likely effect of such imports, the Commission examined their likely price levels should measures be allowed to lapse. In this regard, the Commission considered the import price levels during the review investigation period without anti-dumping duty to be a reasonable indication. On this basis, the Commission established significant undercutting of the Union industry prices of [25 % – 50 %].

(252) In the absence of the measures, it is likely that the market share of Chinese producers would increase significantly. In the short term, as the Union producer is a rather small producer as compared to the Japanese exporter, the Chinese exporters would likely take over the market share of the Union industry as the Union industry would not be able to survive the price pressure from the Chinese exporters and thus the economic situation of the Union industry would quickly deteriorate resulting in material injury.

(253) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury would be likely to recur.

(254) In their comments following final disclosure, Changmao claimed that because there was no spare capacity in the PRC (see recital (168)), the conclusions of the Commission regarding the likelihood of recurrence of injury due to likelihood of increase of exports of aspartame to the Union in the absence of the antidumping measures were not based on positive evidence, nor involved an objective examination in accordance with Article 3(2) of the basic Regulation as well as Article 3.1 of Anti-dumping Agreement.

(255) As stated in recital (169), after taking into account the decrease in production capacity of Changmao and Shaoxing Yamei Biochemistry Co. Ltd there would still be spare capacity which could cover a significant share of the total consumption of aspartame in the Union. Furthermore, the findings of the likelihood of recurrence of injury were not based solely on the volume of spare capacity in the PRC but also on the likely price levels of imports from the PRC in the absence of anti-dumping measures and their impact on the Union industry, including the level of undercutting, which Changmao did not dispute. Even if there is no spare capacity in the PRC, the Union market is more attractive than third markets. Therefore, the Chinese exporting producers have an incentive to redirect volume from third markets to the Union as concluded in recital (173). Therefore, the Commission's conclusions were based on the positive evidence collected during the investigation and constitute an objective examination, in accordance with Article 3(2) of the basic Regulation, as well as Article 3.1 of the Anti-dumping Agreement. The claim was rejected.

(256) Changmao claimed that when assessing the likelihood of recurrence of injury the Commission should also assess the injurious effect of the commercial disputes between the former Union producer and HSWT and the reasons for the bankruptcy of Hyet Sweet SAS. Furthermore, Changmao stated that HSWT failed to disclose several documents/information. Changmao stated that only such complete disclosure could reflect how the cooperation and subsequent conflict between Hyet Group and HSWT influenced the situation and state of the Union industry.

(257) The Commission disagreed with these claims. The analysis of likelihood of recurrence of injury that needs to be carried out pursuant to Article 11(2) of the basic Regulation is focused on how the injury picture at present (in this case a situation of no material injury) would evolve if measures were allowed to lapse. In such an assessment the causal link between dumping and injury, established in the original investigation, would exist and need not be established anew ([35]). Consequently, this assessment in this case is centred on the dumped imports of aspartame from the PRC and the effect of the removal of measures on the situation in the future. Therefore, these claims were rejected.

(258) In their comments following final disclosure, Changmao claimed that the Commission should also assess the likelihood of recurrence of self-inflicted injury to the Union industry. In particular, Changmao claimed that because of HSWT's small investment in land, building and other assets as well as low capitalization, HSWT's shareholders have not taken any commercial risk regarding the ongoing operations of the aspartame plant and made no great efforts to the viable and continuing aspartame production operations in the Union. Furthermore, given HSWT's low profitability and dependence on financial means for raw materials supplies, HSWT might go bankrupt at any moment. Changmao also stated that as HSWT received considerable subsidies from local government, it might lack motivation and dynamics. Changmao considered that the support from the local government distorted the Union market price and production cost for aspartame. Furthermore, labour disputes and trade union strikes against the former Union producer, Hyet Sweet SAS, might have been a major cause of self-inflicted injury and therefore, if the new Union producer was still facing the pressure of large imports from Japan together with labour struggle, it was likely that it would go bankrupt in the future.

([35]) See Appellate Body Report, US – Anti-Dumping Measures on Oil Country Tubular Goods (WT/DS282/AB/R), 2 November 2005, paras. 121 and 123.

(259) The Commission noted that those claims were simply baseless speculations. As explained in recital (51), Hyet Sweet SAS's assets were sold under a bankruptcy procedure. The sale of these assets was made at a lower value than their book value which explains the low capitalization of HSWT. Furthermore, as stated in recital (232), the investment of HSWT increased by 499 % in the RIP as compared to 2018 and these investments were made to replace old equipment with new, more efficient equipment. This clearly indicates commitment on the part of HSWT to maintain production of aspartame in the Union. Furthermore, it is not clear from Changmao's submission what dependence on financial means for raw materials supplies means in this case. Moreover, as indicated in recital (230) the profitability situation of the Union industry improved over the period considered moving from a substantial loss in 2018 to a profit in the review investigation period. Furthermore, Changmao simply speculates when claiming that the subsidies allegedly received by HSWT have a demotivating effect on HSWT. Changmao's claim regarding the distorting effect of the alleged subsidies received by HSWT on the Union market price and production cost for aspartame is not based on any concrete evidence. Furthermore, government intervention within the meaning of Article 2(6a)(b) of the basic Regulation that the Commission demonstrated in recitals (87) to (108), and baseless allegations of the distorting effect on Union market price and production cost for aspartame of subsidies received by HSWT, are not comparable. Finally, the fact that the former Union producer was faced with labour disputes and trade union strikes does not mean that the current Union producer will face such issues. Therefore, the claims were rejected.

7. **UNION INTEREST**

(260) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

7.1. **Interest of the Union industry**

(261) As stated in recitals (237) and (238), the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation, during the review investigation period. However, given Chinese imports continued at substantial volumes and the Union industry did not achieve the target profit level identified in the original investigation, the Union industry remained in a fragile situation.

(262) Should the measures be allowed to lapse, the situation of the Union industry would likely to deteriorate quickly, as explained in recital (252).

(263) It was therefore, concluded that extending the measures in force against the PRC would be in the interest of the Union industry.

7.2. **Interest of unrelated importers and traders**

(264) As indicated in recital (36), no unrelated importer cooperated during the investigation.

(265) The previous investigation concluded that in general, importers have quite a wide product portfolio out of which aspartame is only one item.

(266) As no importer cooperated it is reasonable to assume that, like in the original investigation, aspartame does not represent a major proportion of the importers/traders' turnover and that there are no factors suggesting that importers/traders would be disproportionally affected if measures were to be maintained.

(267) On these grounds, the Commission concluded that should measures be maintained, the impact on the economic situation of the importers is likely not to be significant.

7.3. **Interest of users**

(268) Only one user submitted a questionnaire response and cooperated in the investigation.

(269) This user was buying aspartame from the PRC and it was profitable. It also stated that it would not be in favour of the continuation of the measures. The share of aspartame in its cost of production was below 2 % and therefore the impact of the measures was rather low.

(270) In view of the above observation that in the absence of measures the Union industry may be forced to cease the production of aspartame and as the import price from the PRC (without anti-dumping duties) is around 30 % lower than the import price from Japan, and therefore in the longer term, the Chinese are also likely to take over the market share from the Japanese exporter, the measures are likely to benefit users in so far as they preserve the production of aspartame in the Union and the choice for users to source aspartame produced by different competing producers.

(271) On these grounds, the Commission concluded that should the measures be maintained, the impact on the economic situation of these operators is likely not to be significant.

7.4. **Conclusion on Union interest**

(272) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of aspartame originating in the People's Republic of China.

8. **CLAIMS THAT MEASURES BE SUSPENDED/REQUEST FOR AN INTERIM REVIEW**

(273) In their comments following final disclosure, Changmao claimed that due to the uncertainties related to HSWT's viable future operation and the lack of recurrence of injury caused by the Chinese exports of aspartame, in case the Commission decided to maintain anti-dumping measures in place, it should also simultaneously adopt a decision to suspend the antidumping duties pursuant to Article 14(4) of the basic Regulation. Changmao claimed that the suspension of the duties would allow the Commission sufficient time to evaluate the impact on the Union producer of several factors that cast doubt on the Union producer's viability and was thus in the Union's interest.

(274) The Commission noted that Changmao did not provide any evidence that market conditions had temporarily changed and that injury was unlikely to resume if the measures were suspended, as required by Article 14(4) of the basic Regulation. Furthermore, the claims regarding the alleged lack of likelihood of recurrence of injury and uncertainties related to HSWT viable future operation were addressed in recitals (254) to (259). Therefore, the claim was rejected.

(275) Changmao also claimed that if the likelihood of recurrence of injury by imports from the PRC was very small, while the imports from the PRC were important to cover the Union market shortage or to make up for the Union producer's lower capacity utilization, the Commission should initiate an interim review allowing it to reduce the current levels of antidumping duties or to accept a price undertaking.

(276) The Commission noted that Changmao did not provide sufficient evidence of lasting change of circumstances as required by Article 11(3) of the basic Regulation for the Commission to assess whether the initiation of an interim review was warranted. Furthermore, as explained in recitals (248) to (259), the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices and material injury would be likely to recur. Moreover, the investigation did not reveal any shortages of aspartame on the market. The Union industry is not using its full capacity and imports are available from Japan as well as the PRC. It is recalled that despite the measures in force, the market share of the Chinese imports was [7 % – 10 %] in the review investigation period. As concerns price undertakings, the Commission notes that no exporter submitted a price undertaking offer. Therefore, the claims were rejected.

9. **ANTI-DUMPING MEASURES**

(277) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on aspartame from the PRC should be maintained.

(278) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(279) 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 ([36]). 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*.

(280) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([37]), 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.

(281) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of aspartame (N-L-α- Aspartyl-L-phenylalanine-1-methyl ester, 3-amino-N-(α-carbomethoxy-phenethyl)-succinamic acid-N-methyl ester), CAS RN 22839-47-0, currently falling under CN code ex 2924 29 70 (TARIC code 2924 29 70 05) and originating in the People's Republic of China.

2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Anti-dumping duty	TARIC additional code
Changmao Biochemical Engineering Co., Ltd	55,4 %	C067
Sinosweet group: Sinosweet Co., Ltd, Yixing city, Jiangsu Province, the PRC, and Hansweet Co., Ltd, Yixing city, Jiangsu Province, the PRC.	59,4 %	C068
Niutang group: Nantong Changhai Food Additive Co., Ltd, Nantong city, the PRC, and Changzhou Niutang Chemical Plant Co., Ltd, Niutang town, Changzhou city, Jiangsu Province, the PRC.	59,1 %	C069

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

([37]) 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).

All other cooperating companies:		
Shaoxing Marina Biotechnology Co., Ltd, Shaoxing, Zhejiang Province, the PRC	58,8 %	C070
Changzhou Guanghui Biotechnology Co., Ltd, Chunjiang Town, Changzhou city, Jiangsu Province, the PRC	58,8 %	C071
Vitasweet Jiangsu Co., Ltd, Liyang City, Changzhou City, Jiangsu Province, the PRC	58,8 %	C072
All other companies	59,4 %	C999

3. Article 1(2) may be amended to add new exporting producers from the PRC 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) originating in the PRC during the period between 1 April 2014 to 31 March 2015 (original investigation period);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product under review or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

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

Article 2

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

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

Done at Brussels, 21 October 2022.

For the Commission
The President
Ursula VON DER LEYEN