

COMMISSION REGULATION (EC) No 1259/2005**of 27 July 2005****imposing a provisional anti-dumping duty on imports of tartaric acid originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ ('the basic Regulation') and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 24 September 2004, the Commission received a complaint lodged pursuant to Article 5 of Council Regulation (EC) No 384/96 on protection of dumped imports from countries non-members of the European Communities ('the basic Regulation') by the following producers ('the complainant'): Legré-Manté SA, Industria Chimica Valenzana S.p.A, Distilleries Mazzari S.p.a., Alcoholera Vinicola Europea S.A. and Comercial Quimica Sarasa s.l., representing a major proportion, in this case more than 50 %, of the total Community production of tartaric acid.
- (2) This complaint contained evidence of dumping of tartaric acid from the People's Republic of China ('PRC') and of material injury resulting there from, which was considered sufficient to justify the opening of a proceeding.
- (3) On 30 October 2004, the proceeding was opened by the publication of a notice of initiation⁽²⁾ in the *Official Journal of the European Union*.

1.2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainants, other Community producers, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of the PRC of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time-limit set in the notice of initiation.
- (5) The complainant producers, other co-operating Community producers, exporting producers, importers, suppliers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned. Claims for MET, or for IT in case the investigation establishes that they do not meet the conditions for MET, were received from three exporting producers.
- (7) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from three exporting producers in the PRC, one producer in the analogue country, Argentina, seven Community producers and two Community users.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ C 267, 30.10.2004, p. 4.

- (8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producers*

- Alcoholera Vinicola Europea 'Alvinesa' SA, Ciudad Real, Spain
- Comercial Quimica Sarasa 'Tydsa' SL, Girona, Spain
- Distillerie Bonollo Srl, Frosinone, Italy
- Distillerie Mazzari SpA, Ravenna, Italy
- Etablissements Legré-Mante SA, Marseille, France
- Industria Chimica Valenzana 'I.C.V.' SpA, Palermo, Italy
- Tartarica Treviso Srl, Faenza, Italy

(b) *Exporting producers in the PRC*

- Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou, PRC.
- Changmao Biochemical Engineering Co., Ltd, Changzhou City, PRC.
- Ninghai Organic Chemical Factory, Ninghai, PRC.

- (9) In view of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, Argentina in this case, took place at the premises of the following company:

(c) *Producers in the analogue country*

- Tarcol S.A., Buenos Aires, Argentina.

1.3. Investigation period

- (10) The investigation of dumping and injury covered the period from 1 July 2003 to 30 June 2004 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2001 to 30 June 2004 ('period considered'). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (11) The product concerned is tartaric acid ('TA'). The product is currently classifiable within CN code 2918 12 00. The product concerned is used mainly by wine producers, the food industry and numerous other industries, either as an ingredient in the final product or as an additive to speed up or slow chemical processes. The product can be obtained either from the by-products of wine making or, via chemical synthesis, from petrochemical compounds. Based on the physical characteristics, the production process and the substitutability of the different types of the product from the perspective of the user, all TA is considered to constitute a single product for the purpose of the proceeding.

2.2. Like product

- (12) The investigation showed that the basic physical characteristics of TA produced and sold by the Community industry in the Community, TA produced and sold on the domestic Chinese market, and TA imported into the Community from the PRC, as well as that produced and sold in Argentina, are the same and that these products have largely the same use.
- (13) It was therefore provisionally concluded that the product concerned and the TA sold on the domestic market of the PRC, the TA produced and sold in Argentina, as well as the TA produced and sold in the Community by the Community industry have the same basic physical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Market economy treatment (MET)

- (14) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (15) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:
1. Business decisions and costs are made in response to market conditions and without significant State interference;
 2. Accounting records are independently audited in line with international accounting standards and applied for all purposes;
 3. There are no significant distortions carried over from the former non-market economy system;
 4. Legal certainty and stability is provided by bankruptcy and property laws;
 5. Currency exchanges are carried out at the market rate.
- (16) In the present investigation, three exporting producers in the PRC made themselves known and requested MET pursuant to Article 2(7)(c) of the basic Regulation. Each MET application was analysed, and on-spot investigations were carried out at the premises of these co-operating companies (see recital (7)). As a result it was found that the three producers fulfilled all of the conditions for MET.
- (17) On this basis, the exporting producers in the PRC which obtained MET are the following:
1. Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou.
 2. Changmao Biochemical Engineering Co., Ltd, Changzhou City.
 3. Ninghai Organic Chemical Factory, Ninghai.

3.2. Normal value

3.2.1. Determination of normal value for exporting producers granted MET

- (18) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer concerned, whether its total domestic sales of TA were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

- (19) For the exporting producers having overall representative domestic sales, the Commission subsequently identified the types of TA sold domestically which were identical or directly comparable to the types sold for export to the Community.
- (20) For each of those types, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Community.
- (21) An examination was also made as to whether the domestic sales of each type of the product concerned could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question.
- (22) In cases where the sales volume of a type of TA, sold at a net sales price equal to or above its cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above its cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.
- (23) Where the volume of profitable sales of a type of TA represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below its cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.
- (24) Finally, where the volume of profitable sales of any type of TA represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (25) Wherever domestic prices of a particular type sold by an exporting producer could not be used, constructed normal value was used.
- (26) Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to each exporter's manufacturing costs of the exported types a reasonable amount for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.
- (27) Actual domestic SG&A expenses were considered reliable when the total domestic sales volume of the company concerned could be regarded as representative as compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types that were sold in the ordinary course of trade. For this purpose, the methodology set out in recitals (21) to (23) was applied.
- (28) All companies had overall representative sales and it was found that most types of the product concerned, which were exported, were sold on the domestic market in the ordinary course of trade. For those types where this was not the case, normal value was constructed using the methodology set out in recital (26), using the SG&A and profit information for each company concerned.

3.2.2. Determination of normal value for exporting producers not granted MET

(a) Analogue country

- (29) According to Article 2(7) of the basic Regulation, normal value for companies to which MET could not be granted, was established on the basis of the prices or constructed value in an analogue country.
- (30) In the Notice of Initiation, the Commission indicated its intention to use Argentina as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on this.
- (31) No exporting producers in the PRC not granted MET objected to this proposal. In addition, the investigation revealed that Argentina is a competitive market for the product concerned with at least two domestic producers, of different sizes, and with imports from third countries. The domestic producers were found to produce TA similar to that from the PRC albeit with different production methods. The Argentinean market was therefore deemed sufficiently representative for the purpose of establishing normal value.
- (32) All known exporting producers in Argentina were contacted, and one company agreed to co-operate. A questionnaire was therefore sent to this producer and the data submitted in its reply was verified on the spot.

(b) Normal value

- (33) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of prices paid or payable on the domestic market of Argentina, for product types which were found to be made in the ordinary course of trade, in accordance with the methodology set out in recital (23). Where necessary, those prices were adjusted so as to ensure a fair comparison with those product types exported to the Community by the Chinese producers concerned.
- (34) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the co-operating producer in Argentina.

3.3. Export price

- (35) In all cases the product concerned was exported to independent customers in the Community. The export price was therefore established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

3.4. Comparison

- (36) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport and insurance, credit, commission and bank charges were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.
- (37) Adjustments were also made for differences in VAT reimbursement, as it was found that a lower level of VAT was reimbursed on export sales than that which is reimbursed for domestic sales.

3.5. Dumping margin

3.5.1. For the co-operating exporting producers granted MET

- (38) For the three companies which were granted MET, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.
- (39) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Community frontier price duty unpaid are:

Company	Provisional dumping margin
Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou	2,4 %
Changmao Biochemical Engineering Co., Ltd, Changzhou City	13,8 %
Ninghai Organic Chemical Factory, Ninghai.	6,6 %

3.5.2. For all other exporting producers

- (40) In order to calculate the countrywide dumping margin applicable to all other exporters in the PRC, the Commission first established the level of co-operation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of Eurostat and the actual questionnaire replies received from exporters in the PRC. On this basis, it was established that the level of co-operation was low, i.e. 63 % of the overall Chinese exports to the Community.
- (41) The dumping margin was consequently calculated by using export prices and volumes as obtained from Eurostat having first deducted export prices and volumes reported by the co-operating exporters to which MET was granted. The use of Eurostat as facts available pursuant to Article 18 of the basic Regulation was necessary in the absence of more information on export prices for determining the country-wide duty. The export prices obtained in this way were compared with the weighted average normal value established for the analogue country for comparable product types.
- (42) On this basis the countrywide level of dumping was provisionally established at 34,9 % of the CIF Community frontier price.

4. INJURY

4.1. Community production

- (43) The investigation established in the framework of the sampling exercise that the like product is at present manufactured by eight producers in the Community. However, one of them has not cooperated further with the investigation. Furthermore, during the period considered another four Community producers are known to have ceased production, and have not been included in the investigation.
- (44) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding the production of the seven cooperating Community producers plus the volume of production of the other producers as estimated by the complainants.

4.2. Definition of the Community industry

- (45) The complaint was supported by seven Community producers who co-operated fully in the investigation. These producers are estimated to have produced over 95 % of the tartaric acid produced in the Community. It is therefore considered that they constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation

4.3. Community consumption

- (46) Consumption was estimated by adding the EC sales of the co-operating EC producers, the estimated sales of the non-cooperating EC producers plus total imports. The sales of the non-cooperating EC producers, including some companies who have ceased production, were based on the complaint, in the absence of other sources of information. This shows that demand for the product concerned in the Community increased by 15 % over the period considered.

	2001	2002	2003	IP
Community consumption	20 930	21 016	21 717	24 048
Index 2001 = 100	100	100	104	115

4.4. Imports into the Community from the country concerned

4.4.1. Volume and Market share of imports concerned

- (47) The evolution of imports from the country concerned was analysed on the basis of Eurostat data, since the volumes reported by the co-operating exporting producers represented substantially less than those reported in Eurostat for the period considered.

- (48) In terms of volume and market share, the evolution of imports has been the following:

	2001	2002	2003	IP
Import volumes PRC	1 769	1 266	1 570	2 763
Index 2001 = 100	100	72	89	156
Market shares PRC	8,5 %	6,0 %	7,2 %	11,5 %

- (49) While consumption of tartaric acid increased by 15 % during the period considered, imports from the country concerned rose by over 50 % during the same period. After a relatively high volume of imports in 2001 due to the high prices and scarcity in the European market, imports from the PRC returned to a lower level in 2002, but have more than doubled since then thanks to aggressively low prices. Consequently, the market share of the PRC during the period considered increased from 6,0 % to 11,5 % in less than two years.

4.4.2. Prices of imports and undercutting

- (50) The following table shows the development of average import prices from the PRC. Over the period considered these prices fell by nearly 50 %.

	2001	2002	2003	IP
Import prices from the PRC EUR/kg	3,49	1,74	1,83	1,78
Index 2001 = 100	100	50	52	51

- (51) Concerning the selling price on the Community market of the product concerned during the IP, a comparison was made between the prices of the Community industry and those of the exporting producers in the PRC. The relevant sales prices of the Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the sales prices charged by the Chinese exporting producers net of discounts and adjusted where necessary to CIF Community frontier with an appropriate adjustment for the customs clearance costs and post-importation costs.
- (52) The comparison showed that, during the IP, imports of the product concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, by 22 %.

4.5. Situation of the Community industry

- (53) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports from the PRC on the Community industry included an analysis of all economic factors and indices having a bearing on the state of the industry from 2001 to the IP.
- (54) The Community industry data below represent the aggregated information of the seven co-operating Community producers. However, two of those companies started operations during the period considered, in 2001 and 2003 respectively. It was considered that, given their particular situation, the data for those companies might distort the overall trends, particularly with regard to costs, profitability, cash flow, investment and return on investment. Therefore, where appropriate, the figures for those two companies were excluded from the corresponding aggregate indicators and looked at separately in order to give a correct and representative picture.

4.5.1. Production, production capacity and capacity utilisation

- (55) The evolution of production, production capacity and capacity utilisation for the seven co-operating companies was the following:

	2001	2002	2003	IP
Production (tonnes)	25 341	23 576	25 602	27 324
Index 2001 = 100	100	93	101	108
Production capacity (tonnes)	31 350	33 000	36 000	35 205
Index 2001 = 100	100	105	115	112
Capacity utilisation	81 %	71 %	71 %	78 %
Index 2001 = 100	100	88	88	96

- (56) Total production increased by 8 % between 2001 and the IP. It should be noted, however, that this increase can be attributed exclusively to the two newcomer companies, while for the remaining five companies, production decreased by 6 % in the same period.
- (57) Production capacity increased by 12 %, which is also due to the two newcomers. The figures do not, however, reflect the reduction of several thousand tonnes caused by four Community producers known to have ceased production during the period considered (see recital (43)). Although no precise figures for those producers have been found by the investigation, it is estimated on the basis of the complaint data that overall capacity in the Community remained broadly constant between 2001 and the IP.
- (58) Capacity utilisation decreased over the period, from 81 % in 2001 to 78 % in the IP.

4.5.2. Stocks

- (59) The figures below represent the volume of stocks at the end of each period.

	2001	2002	2003	IP
Stocks (tonnes)	3 464	2 743	3 967	4 087
Index 2001 = 100	100	79	115	118

- (60) Stocks increased by 18 % during the period considered. It should be noted that the IP figure partly reflects a seasonal high in the stock levels during the summer. However, for at least one of the companies investigated, there was an abnormally high level of stocks, which the company attributed to its commercial decision not to sell at unprofitably low market prices.

4.5.3. Sales volume, market shares, growth and average unit prices in the Community

- (61) The figures below represent the Community industry's sales to independent customers in the Community.

	2001	2002	2003	IP
Sales volume in the EC market (tonnes)	16 148	16 848	18 294	20 034
Index 2001 = 100	100	104	113	124
Market share (five established companies)	71,0 %	66,9 %	66,3 %	60,9 %
Index 2001 = 100	100	94	93	86
Market share (all seven companies)	77,2 %	80,2 %	84,2 %	83,3 %
Index 2001 = 100	100	104	109	108
Average sales prices (EUR/tonne)	5 392	3 214	2 618	2 513
Index 2001 = 100	100	60	49	47

- (62) The Community industry's sales volumes increased by 24 % and its market share by 8 % during the period considered.

- (63) The market share of the five established companies decreased significantly, by more than 10 percentage points in the period considered. If the two companies who started production during the period are added, the total market share increases by 6 %. However, as noted under recital (57), these figures do not take into account the four Community producers who ceased production during the same period. Although exact figures concerning the latter are not available, it is estimated by the complainants that these producers could have represented a production of several thousand tonnes. This implies that, if the producers which ceased production were taken into account, the overall market share of the Community producers declined by at least 2,5 % between 2001 and the IP.
- (64) Average sales prices to unrelated buyers in the Community market suffered a sharp decrease of more than 50 % between 2001 and the IP.
- (65) It was pointed out by one importer that in the past, and over a longer period than the period considered, the prices of tartaric acid had known similar fluctuations and that they peaked in 2000-2001. However, after examination, it was found that even by historical standards the price levels in the IP were extremely low, once inflation was taken into account.
- (66) Given the decline in market share, when taking into account Community producers which ceased production, and the sharp drop of sales prices, it was found that the Community industry could not participate in the growth of the market, resulting from the increase in Community consumption of 15 % during the period considered.

4.5.4. Profitability

- (67) The profitability shown below is expressed as a percentage of turnover, in terms of sales to independent buyers on the Community market. The figures are also given for the five co-operating companies which were already operating at the beginning of the period considered ('the established companies'). During this period the other two companies were in a transitory situation regarding costs and revenues, which strongly impacts the evolution of overall profitability.

	2001	2002	2003	IP
Profitability of sales (five established companies)	1,9 %	- 3,5 %	- 3,6 %	- 6,7 %
Profitability of sales (all seven companies)	1,8 %	- 9,7 %	0,5 %	- 5,9 %

- (68) For the five established companies, profitability decreased substantially between 2001 and 2003 due to the strongly reduced prices, which coincided with increases of dumped imports from the PRC. The trends for the total Community industry, i.e. including the two producers established during the period considered, are largely similar. After seeing profits fall dramatically in 2002, the industry overall saw an improvement in 2003 when the producer established in 2001 was well-established and the other new producer arrived on the market. However, in the IP the two new producers saw their profits fall back into losses at a comparable rate to that of the five established companies.
- (69) This decline in prices was, to a large extent, also reflected in the prices of the suppliers of raw materials, given that the contracts for supply of raw material are often indexed to the price of tartaric acid. However this reduction in costs of raw materials was not enough to prevent a decline in the profitability of the Community industry, from 1,9 % to - 6,7 % over the period considered.

4.5.5. Return on investments, cash flow, investments and ability to raise capital

- (70) The trends for the return on investments (net assets in this case), cash flow and investments are shown in the following table. For the reasons evoked under recital (67), the figures are given for the five co-operating producers active in 2001.

	2001	2002	2003	IP
Return on net assets (five established companies)	4,2 %	- 4,4 %	- 3,9 %	- 7,0 %
Return on net assets (all seven companies)	3,4 %	- 11,7 %	0,5 %	- 6,3 %
Cash flow (EUR) (five established companies)	2 076 591	6 020 127	6 413 005	- 278 607
Cash flow (EUR) (all seven companies)	2 076 591	788 732	9 045 219	22 835
Investments (EUR) (five established companies)	5 285 432	7 078 796	8 794 719	7 255 251
Investments (EUR) (all seven companies)	14 394 918	7 390 503	9 282 258	8 944 785

- (71) The trend for return on net assets reflects to a large extent that on profitability of sales. The cash flow deteriorated between 2001 and the IP, although there are some fluctuations due mainly to stock variations. For the two new companies the cash flow experienced particularly strong fluctuations due to the starting of operations which coincided with a rapidly changing market situation. For all the companies, the falling return on investments and cash flow resulted from the fact that average sales prices were falling more quickly than the average costs for products sold.
- (72) The Community industry has maintained a high level of investment throughout the period considered and there was even an increase compared to 2001 for the five established companies. These investments were mostly related to modernisation, replacement of obsolete equipment and technical upgrades required by environmental legislation. As for the fixed investments of the two new companies, they are felt mostly in 2001 and the IP.
- (73) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was not found to be seriously affected during the period considered. In most cases, particularly those of the two new companies, this was because the companies belong to larger groups, who take a longer term view of the business and believe that a recovery from the current difficult situation in which the industry finds itself will be possible.

4.5.6. Employment, productivity and wages

- (74) The following table gives the evolution of employment, productivity and labour costs in the seven Community producers investigated.

	2001	2002	2003	IP
Number of employees	210	203	220	217
Productivity (tonne/employee)	100	97	105	103
Labour costs	29 717	34 297	31 822	34 323

- (75) As seen above, the number of employees in the seven Community producers investigated increased between 2001 and the IP. This increase is due, as mentioned in paragraphs 5.1 and 5.3, to the fact that these figures include two companies who started production during the period considered and do not take into account the four Community producers who ceased production during the same period. Even so, a decline in employment levels was beginning to be felt towards the end of the IP.
- (76) Productivity was relatively stable over the period, with a slight overall increase between 2001 and the IP. Labour costs increased between 2001 and the IP, despite some fluctuations. These fluctuations were due to temporary costs associated with restructuring in some of the companies.

4.5.7. *Magnitude of the actual margin of dumping*

- (77) The dumping margins are specified above in the dumping section. These margins are clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

4.5.8. *Conclusion on injury*

- (78) It is recalled that import volumes from the PRC have increased considerably, both in volume terms and market share. Furthermore, the average unit price of those imports decreased by almost 50 %, which is reflected in the price undercutting found in the investigation.
- (79) While sales volumes and market share in the Community increased for the seven companies investigated, they remained relatively stable if the two newcomer companies are not included. On the other hand, the Community industry suffered average price decreases of 51 % in the period considered. Notwithstanding the decline in the prices of raw materials and the efforts made to increase productivity, profit levels became strongly negative in the IP.
- (80) The deteriorating situation of the Community industry in the period considered is also confirmed by the negative development of indicators regarding capacity utilisation, stock levels, return on investment and cash-flow. It has also to be noted that four Community producers went out of business in recent years. While two new producers have also commenced trading since 2001, these producers have been established on the basis of business plans that were taking account of the growing consumption in the Community. However, it was found that, in terms of the trends in prices, profitability, and return on investments the situation of these companies is comparable to that of the other Community producers.
- (81) The above negative developments occurred at a time of fairly stable productivity, increased investments and expanding EC consumption.
- (82) Bearing in mind all indicators it is concluded that the Community industry suffered material injury during the IP within the meaning of Article 3 of the basic Regulation.

5. CAUSATION

5.1. **Preliminary remark**

- (83) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether there was a causal link between the dumped imports from the PRC and the material injury suffered by the Community industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

5.2. Impact of the imports from the PRC

- (84) Volumes of imports from the PRC increased by 56 % and their market share increased by 3 percentage points during the period considered. In addition, the prices of imports from the PRC fell by around 50 % and substantial price undercutting took place. The Community industry was forced to react to these imports by lowering its prices in parallel by 53 %, in order to maintain its sales volume. The reduction in the costs of raw materials was not enough to prevent a decline in the profitability of the Community industry of around 8 % to a negative figure of around - 6 %. This profitability was well below that expected for this type of industry but, most of all, being negative, is no longer sustainable.
- (85) It is therefore provisionally concluded that the pressure exerted by the dumped imports, which significantly increased their volume and market share from 2001 onwards, and which were made at sharply decreasing, dumped prices, played a determining role in the price decreases and price depression for the Community industry and, as a consequence, its negative profitability and ensuing deteriorating financial situation.

5.3. Impact of imports from third countries

- (86) Apart from the PRC, the two next largest suppliers of tartaric acid to the Community market were Argentina and Chile.

	2001	2002	2003	IP
Market share of Argentina	1,9 %	1,8 %	0,1 %	0,8 %
Argentina unit selling price (EUR/tonne)	5,33	2,75	2,47	2,09
Market share of Chile	0,5 %	0,4 %	1,1 %	0,9 %
Chile unit selling price (EUR/tonne)	6,21	3,24	3,39	3,55
Market share of other countries	0,1 %	0,7 %	1,4 %	0,2 %
Other countries unit selling price (EUR/tonne)	10,82	2,91	4,78	5,36

- (87) These figures show that all suppliers other than the PRC accounted together for only 2,5 % of Community consumption and that their market share declined between 2001 and the IP. Their average prices were also higher than those of the PRC, although Argentinean prices dropped to a rather low level in the IP. The pressure of Chinese imports on the market is certain to have played a role in the drop in the prices of these exporting countries.
- (88) In view of the above, it is considered that the evolution of imports originating in other third countries such as Argentina and Chile were not sufficiently important to have contributed to the injury suffered by the Community industry.

5.4. Impact of the regulatory framework

- (89) Some interested parties have pointed out that the industry's profitability is affected by the EC regulatory framework, which establishes a minimum purchasing price for the main raw materials as well as a selling price for alcohol, as part of the Common Agricultural Policy in this sector. While the regulatory parameters may influence the situation of the industry as a whole, they have remained stable throughout the period and cannot account for the deterioration in the industry's situation.

5.5. Impact of exports by the Community industry

- (90) During the IP around 25 % of Community industry production volume was exported outside the Community. The volume of exports increased slightly over the period considered.
- (91) It was found that the profitability of these exports was somewhat higher than that of sales on the Community market, despite the fact that they had also suffered from declining prices and competition from Chinese exports to third country markets.
- (92) In view of the above it is considered that the evolution of export performance cannot have been a substantial cause of the injury suffered by the Community industry.

5.6. Impact of sales by other Community producers

- (93) Sales by other Community producers, including those who went out of business during the period considered, have decreased sharply between 2001 and the IP. Accordingly, those sales cannot have been responsible for the injury suffered by the Community industry.

5.7. Conclusion on causation

- (94) It must be underlined that the injury in this case was primarily in the form of price depression causing reduced profitability. This coincided with the rapidly increasing imports at dumped prices from the PRC which undercut substantially the Community industry prices. There is no indication that the above-mentioned other factors could have been a significant cause of the material injury suffered by the Community industry. No further other factors have been found in the course of the investigation that could have caused material injury.
- (95) Based on the above analysis of the effects of all known factors on the situation of the Community industry, it is provisionally concluded that there is a causal link between the dumped imports from the PRC and the material injury suffered by the Community industry.

6. COMMUNITY INTEREST

6.1. General considerations

- (96) It has been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping duties against imports from the country concerned. The Commission sent questionnaires to importers, traders and industrial users. Partial replies to the questionnaire were received from two users. Other users did not submit a reply to the questionnaire but made their views known in writing.
- (97) On the basis of the information received from the co-operating parties, the following conclusions were reached.

6.2. Interest of the Community industry

- (98) It is recalled that the Community industry consisted of seven producers employing over 200 people in the production and sale of the product concerned. It is also recalled that the economic indicators of the Community industry showed deteriorating financial results during the period considered, leading to the closure of four Community producers in recent years.

- (99) If measures are not imposed it is likely that following the price pressure from the dumped imports, the financial situation of the Community industry will continue to deteriorate and more Community producers will be forced to cease production, with adverse consequences for the broader wine-making sector (see below). If however measures are imposed, it can be expected that prices and profitability will reach a more sustainable level, and that the economic viability of the European industry will be ensured.
- (100) It is therefore clear that anti-dumping measures would be in the interests of the Community industry.

6.3. Interest of suppliers

- (101) Two suppliers of raw materials wrote to the Commission in support of the proceeding. Some of the complainants also have related companies in the wine industry, and took the opportunity of expressing the interest of those companies during the investigation.
- (102) All these parties stressed the economic importance of the tartaric acid industry from the point of view of the Community wine-makers.
- (103) First, the wine industry needs a reliable source of tartaric acid of guaranteed quality.
- (104) Second, by using such by-products as wine marc and wine lees, the tartaric acid industry is a significant source of income for the wine sector. It is recalled that this sector is covered by the Common Agricultural Policy and is currently experiencing serious economic difficulties.
- (105) Third, should there be no viable tartaric acid industry in the Community, the wine sector would be forced to incur extra costs in order to dispose of those by-products in the face of ever more stringent environmental regulations.
- (106) It is therefore concluded that the imposition of anti-dumping measures would be in the interests of Community suppliers.

6.4. Interest of users

- (107) Questionnaires were initially sent to all the parties named as users in the complaint. Information obtained during the investigation has allowed the Commission to identify the most important industrial sectors which use tartaric acid. As a result, additional questionnaires were sent to a number of food, drink and gypsum producers, as well as to the pharmaceutical industries' federation.
- (108) One gypsum and one food industry company reacted by stating that tartaric acid was too unimportant a cost for them to reply to the questionnaire.
- (109) One gypsum company co-operated by submitting a reply to the questionnaire. Another gypsum company submitted a partial reply. From these data, it may be concluded that the product concerned represents less than 2 % of the costs of the gypsum products produced by the co-operating companies. It may therefore be concluded that the proposed anti-dumping duties would have relatively little influence on the costs and competitive position of those user industries. Given that this is a major gypsum group, the information can be considered fairly representative for the whole sector. It should also be noted that building materials are produced mainly for local or national markets, and are not exposed to global competition thereby allowing companies in the building sector to pass on any cost increases to their customers.
- (110) Comments were also received from two food industry companies who manufacture emulsifiers for the baking industry. These companies opposed the investigation and indicated that tartaric acid was an important cost in their products. However, these companies did not submit a reply to the questionnaire so their claims could not be verified on the basis of quantified data.

- (111) In the comments received, the user industries emphasised the instability of the natural tartaric acid market and recurrent shortages in the European market in the past. Security of supply, more than the costs of tartaric acid appear to be the primary concern for those industries.
- (112) In view of the above it is not likely that anti-dumping measures would lead to a shortage of supply or to a non-competitive situation of the user industries. The proposed measures would merely contribute to restoring European market prices to a level closer to the long-term trend and preventing further companies going out of business. As regards the cost increase, it was found that it would only be marginal and would not affect the competitiveness of the user industries materially. It is therefore provisionally considered that users' interests are not such as to prohibit the imposition of measures.

6.5. Conclusion on Community interest

- (113) The imposition of measures on imports of tartaric acid originating in the PRC would clearly be in the interests of the Community industry. As regards both the importers/traders and the user industries, any impact on prices of tartaric acid is expected to be only marginal. In contrast, the losses suffered by the Community industry and the supplier industries, and the risks of further closures are clearly of greater magnitude.
- (114) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties on imports of tartaric acid originating in the PRC.

7. ANTI-DUMPING MEASURES

7.1. Injury elimination level

- (115) In view of the conclusions reached with regard to dumping, resulting injury and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (116) The measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 8 % of turnover based on profit levels obtained prior to the existence of dumped imports. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price was obtained by adding the above-mentioned profit margin of 8 % to the cost of production. One product type exported from the PRC in the IP was not produced and sold by the Community industry during the IP. In calculating the level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found, account was taken of the relationship in price between this type and other types exported by Chinese exporters.
- (117) The necessary price increase was then determined on the basis of a comparison of the weighted average import price with the weighted average non-injurious price of the like product sold by the Community industry on the Community market.
- (118) Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value.

7.2. Provisional measures

- (119) In light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not, in accordance with Article 7(2) of the basic Regulation, be higher than the injury margin calculated above.
- (120) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this document with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (121) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (122) On the basis of the above, the provisional duty rates are:

Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou	2,4 %
Changmao Biochemical Engineering Co., Ltd, Changzhou City	13,8 %
Ninghai Organic Chemical Factory, Ninghai.	6,6 %
All other companies	34,9 %

8. FINAL PROVISION

- (123) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time-limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of tartaric acid, falling within CN code 2918 12 00, originating in the People's Republic of China.

⁽¹⁾ European Commission, Directorate-General for Trade, Direction B, B-1049 Brussels, Belgium.

2. The rate of the provisional anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price shall be:

Company	Anti-Dumping Duty	TARIC Additional Code
Hangzhou Bioking Biochemical Engineering Co., Ltd, Hangzhou, People's Republic of China.	2,4 %	A687
Changmao Biochemical Engineering Co., Ltd, Changzhou City, People's Republic of China.	13,8 %	A688
Ninghai Organic Chemical Factory, Ninghai, People's Republic of China.	6,6 %	A689
All other companies	34,9 %	A999

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 27 July 2005.

For the Commission
Peter MANDELSON
Member of the Commission
