

**COMMISSION IMPLEMENTING REGULATION (EU) 2018/921****of 28 June 2018****imposing a definitive anti-dumping duty on imports of tartaric acid 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 <sup>(1)</sup> prior to its amendment by Regulation (EU) 2017/2321 of the European Parliament and of the Council <sup>(2)</sup> ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

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

- (1) In 2006, the Council imposed, by means of Regulation (EC) No 130/2006 <sup>(3)</sup>, a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China ('PRC', China or 'the country concerned') ('the original measures'). These measures took the form of individual duty rates ranging from 0 % to 10,1 % for three Chinese exporting producers which received market economy treatment ('MET') and 34,9 % for all other Chinese exporting producers. By Council Regulation (EC) No 150/2008 <sup>(4)</sup>, following an interim review in accordance with Article 11(3) of the basic Regulation, the original measures were amended and the product definition was clarified.
- (2) In April 2012, by Council Implementing Regulation (EU) No 332/2012 <sup>(5)</sup>, following the publication of the Beef and Rice WTO Appellate Body report <sup>(6)</sup>, the Council excluded exports from Hangzhou Bioking Biochemical Engineering Co. Ltd ('Hangzhou Bioking'), an exporting producer benefitting from a 0 % duty rate, from the scope of the measures.
- (3) In April 2012, following an expiry review in accordance with Article 11(2) of the basic Regulation, the Council extended the measures for a further five years by Implementing Regulation (EU) No 349/2012 <sup>(7)</sup> ('previous expiry review').
- (4) In July 2012, following a partial interim review in accordance with Article 11(3) of the basic Regulation, by means of Council Implementing Regulation (EU) No 626/2012 <sup>(8)</sup>, the original measures were amended. The Council withdrew MET for the remaining two companies, Changmao Biochemical Engineering Co. Ltd ('Changmao Biochemical') and Ninghai Organic Chemical Factory ('Ninghai Organic'), and established an individual anti-dumping margin in respect of these companies, respectively 13,1 % and 8,3 %, by using their own export prices

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

<sup>(2)</sup> Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 338, 19.12.2017, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 130/2006 of 23 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China (OJ L 23, 27.1.2006, p. 1).

<sup>(4)</sup> Council Regulation (EC) No 150/2008 of 18 February 2008 amending the scope of the anti-dumping measures imposed by Regulation (EC) No 130/2006 on imports of tartaric acid originating in the People's Republic of China (OJ L 48, 22.2.2008, p. 1).

<sup>(5)</sup> Council Implementing Regulation (EU) No 332/2012 of 13 April 2012 amending Regulation (EC) No 130/2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China, and excluding company Hangzhou Bioking Biochemical Engineering Co., Ltd from the definitive measures (OJ L 108, 20.4.2012, p. 1).

<sup>(6)</sup> 'Mexico – Definitive Anti-Dumping Measures on Beef and Rice', WT/DS295/AB/R, 29 November 2005.

<sup>(7)</sup> Council Implementing Regulation (EU) No 349/2012 of 16 April 2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 110, 24.4.2012, p. 3).

<sup>(8)</sup> Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (OJ L 182, 13.7.2012, p. 1).

- (5) An anti-dumping investigation initiated on 4 December 2014 <sup>(1)</sup> with regard to imports into the Union of tartaric acid originating in the PRC, limited to Hangzhou Bioking on the basis of Article 5 of the basic Regulation, was terminated by Commission Implementing Decision (EU) 2016/176 <sup>(2)</sup> without imposing measures.
- (6) By its judgment of 1 June 2017 in Case T-442/12 *Changmao Biochemical Engineering v Council* <sup>(3)</sup>, the General Court annulled Regulation (EU) No 626/2012 in so far as that regulation applies to Changmao Biochemical.
- (7) On 7 September 2017, the Commission published a Notice in the *Official Journal of the European Union* concerning the judgment of 1 June 2017 in case T-442/12. The Commission decided to reopen the anti-dumping investigation concerning imports of tartaric acid originating in the PRC that led to the adoption of Regulation (EU) No 626/2012, in so far as it concerns the exporting producer concerned, and resumed it at the point at which the irregularity occurred. That reopening was limited in scope to the implementation of the judgment of the General Court with regard to Changmao Biochemical Engineering Co. Ltd. The reopening did not affect other investigations.

## 2. Request for an expiry review

- (8) Following the publication of a notice of impending expiry <sup>(4)</sup>, the Commission received a request for review pursuant Article 11(2) of the basic Regulation ('request for review').
- (9) The request for review was lodged on 24 January 2017 by Distillerie Bonollo S.r.l., Caviro Distillerie S.r.l., Industria Chimica Valenzana SpA, Alvinesa Alcolohera Vinicola SA, and Comercial Química Sarasa SL ('the applicants'), representing more than 25 % of the total Union production of tartaric acid.
- (10) The request was based on the grounds that the expiry of the measures imposed on imports of tartaric acid originating in China would be likely to result in a continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

## 3. Initiation of an expiry review

- (11) Having determined, after consulting the Advisory Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 19 April 2017 the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, by a notice published in the *Official Journal of the European Union* <sup>(5)</sup> ('Notice of initiation').

## 4. Investigation

### 4.1. Review investigation period and period considered

- (12) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 January 2016 to 31 December 2016 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2013 to the end of the review investigation period ('the period considered').

### 4.2. Parties concerned by this investigation

- (13) The Commission officially advised the applicants, other known Union producers, exporting producers, importers, users in the Union known to be concerned and the representatives of the exporting country concerned of the initiation of the expiry review.

<sup>(1)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking Biochemical Engineering Co. Ltd (OJ C 434, 4.12.2014, p. 9).

<sup>(2)</sup> Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd (OJ L 33, 10.2.2016, p. 14) ('Commission Implementing Decision (EU) 2016/176').

<sup>(3)</sup> Case T-442/12 *Changmao Biochemical Engineering v Council* — Judgment of the General Court (Eighth Chamber) of 1 June 2017, ECLI:EU:T:2017:372.

<sup>(4)</sup> OJ C 329, 7.9.2016, p. 5.

<sup>(5)</sup> OJ C 122, 19.4.2017, p. 8.

- (14) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation.

#### 4.3. Sampling

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

##### 4.3.1. Sampling of exporting producers in China

- (16) In view of the apparent large number of exporting producers from China, sampling was envisaged in the Notice of initiation.
- (17) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the Commission asked all known exporting producers to come forward within 15 days of the publication of the Notice of initiation and to provide it with the information requested in this notice. The information requested included production volume and production capacity. In addition, the Commission invited the Mission of the PRC to the European Union to appoint a representative who could cooperate with the Commission in the selection of the sample.
- (18) None of the 22 Chinese exporter/producers that were contacted or any other Chinese exporter/producer came forward and provided the information requested.

##### 4.3.2. Sampling of Union producers

- (19) Prior to initiation, the Commission contacted the Union producers and associations of Union producers identified in the application for review in view of verifying whether the Union producers presenting the application were sufficiently representative. The Commission also collected information necessary to decide on the potential sampling, foreseen on point 5.3 of the Notice of initiation.
- (20) In accordance with Article 17 of the basic Regulation, the Commission provisionally selected a sample of six Union producers having the largest sales volumes in the Union during the period of 1 January to 31 December 2016. These six companies represented 86 % of the total Union industry's sales volume of TA. Interested parties were invited to comment on the provisional sample.
- (21) One Union producer which was not included in the provisional sample claimed that it should be included in the final sample in order to give a better picture of the situation of the Union industry. This company was supported by the Italian trade association of Union producers of TA. Another Union producer stated that it did not wish to participate in the expiry review. No further comments were submitted.
- (22) The Commission considered that in light of the comments received sampling of Union producers was no longer appropriate.

##### 4.3.3. Sampling of unrelated importers

- (23) In order to decide whether sampling was necessary and, if so, to select a sample, all unrelated importers were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information requested in Annex II of the Notice of initiation.
- (24) In addition, 10 importers identified in the request were contacted by the Commission at initiation stage and were invited to explain their activity and to fill in Annex II of the Notice of initiation. Five companies replied to the sampling form for unrelated importers. However they did not qualify as importers of the product under review but were considered as users.

#### 4.4. Questionnaires

- (25) The Commission sent the questionnaires to all nine Union producers and six users. Questionnaires were also sent to 10 producers in potential market economy third countries namely in Argentina, Australia, Brazil, Chile and India.

- (26) Questionnaire replies were received from seven Union producers, four users in the Union and one producer in the potential market economy third country Australia.
- (27) None of the Chinese exporting producers cooperated.

#### 4.5. Verification visits

- (28) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury and for assessing whether the imposition of measures would be against the Union interest. Verification visits were carried out at the premises of the following companies:
- (a) Union producers:
- Alvinosa Alcoholic Vinícola SA, Daimiel, Spain
  - Caviro Distillerie S.r.l., Faenza, Italy
  - Comercial Química Sarasa S.L., Girona, Spain
  - Distillerie Bonollo SpA, Formigine, Italy
  - Giovanni Randi SpA, Faenza, Italy
  - ICV — Industria Chimica Valenzana SpA, Padova, Italy
  - Villapana SpA, Faenza, Italy
- (b) Users:
- DuPont Nutrition Biosciences ApS, Copenhagen, Denmark
  - Saint-Gobain Construction Products UK Ltd, Leicestershire, United Kingdom.

## B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

### 1. Product under review

- (29) The product under review is tartaric acid, excluding D-(-)- tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, originating in the PRC, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) ('the product under review').
- (30) The product under review is used in wine, in beverage and food additives, as a retardant in plaster and in numerous other products. It can be obtained either from the by-products of winemaking, as is the case with production in the Union ('natural production') or via chemical synthesis from petrochemical compounds, as is the case with production in the PRC ('synthetic production'). Only L+ tartaric acid is manufactured from the by-products of winemaking. Synthetic production allows the manufacture of both L+ and DL tartaric acid. Both types are the product under review and have overlapping uses.

### 2. Like product

- (31) It was considered that the product under review produced in the PRC and exported to the Union:
- the product produced and sold by the exporting producers on the domestic market of the PRC,
  - the product produced and sold in the analogue country,
  - the product produced and sold in the Union by the Union industry,

have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## C. LIKELIHOOD OF CONTINUATION OF DUMPING

### 1. Preliminary remarks

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

- (33) Exports by Hangzhou Bioking were excluded from the analysis of the likelihood of continuation or recurrence of dumping pursuant to Implementing Regulation (EU) No 332/2012 mentioned in recital (2). The analysis below was solely based on exports of the product under review by exporters/producers subject to the measures.
- (34) As mentioned above in recital (27), none of the Chinese exporters/producers cooperated in the investigation. Therefore, the Commission informed the Chinese authorities that due to the absence of cooperation of any Chinese exporter/producer, the Commission may apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer from the Chinese authorities in this regard.
- (35) On this basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the existence of dumping and the likelihood of continuation or recurrence of dumping were based on facts available, in particular:
- (i) information contained in the request;
  - (ii) data reported to the Commission by the Member States pursuant to Article 14(6) of the basic Regulation (the '14(6) database');
  - (iii) statistics of the Chinese Export Statistics Database ('Chinese database');
  - (iv) Global Trade Atlas ('GTA') database;
  - (v) publicly available information such as corporate websites and excerpts of publications from market intelligence firms available on internet;
  - (vi) information collected during previous investigations <sup>(1)</sup>.

## 2. Dumping

- (36) In the Notice of initiation, the Commission informed interested parties that it envisaged Argentina as a market economy third country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation and invited them to comment on this choice. No comments were received in this respect.
- (37) The Commission contacted the Argentinian authorities and the two known producers of the product under review in Argentina and invited them to cooperate. It was found that one Argentinian producer ceased to produce the product under review during the RIP and the other declined to cooperate.
- (38) In parallel, the Commission sought cooperation of eight known producers and two producers' associations in other potential analogue countries (Australia, Brazil, Chile and India) and also contacted the relevant authorities in these countries inviting them to provide the contact information of producers' associations and producers known to produce and sell the product under review on their market.
- (39) One Australian producer first agreed to cooperate but finally submitted a deficient reply that did not contain any quantitative data and had to be disregarded.
- (40) No other producer in any potential analogue country came forward.
- (41) In the absence of cooperation from any analogue country producer, the Commission determined the normal value on any other reasonable basis, in accordance with Article 2(7)(a) of the basic Regulation.
- (42) The Commission therefore based normal value on the information provided in the expiry review request that is on prices of domestic invoices of the product under review from one Argentinian producer. The use of Argentina as a source for the normal value is in line with the use of Argentina as analogue country in the previous investigations <sup>(2)</sup>. This was considered the most reasonable methodology given the lack of more reliable information due to the lack of cooperation.

<sup>(1)</sup> That is, the investigations concluded by the previous expiry review, Implementing Regulation (EU) No 626/2012, and Implementing Decision (EU) 2016/176.

<sup>(2)</sup> Investigations concluded by Regulation (EC) No 130/2006, Implementing Regulation (EU) No 349/2012 and Implementing Regulation (EU) No 626/2012.

- (43) The investigation established that the product under review in Argentina was produced by using the natural process, while in China the cheaper synthetic process was used. The cost of the raw materials used in Argentina was therefore adjusted to take into account the cost differences in production methods.
- (44) After disclosure, one Chinese exporting producer claimed that the analogue country methodology applied in the present review was inconsistent with the EU's obligations under the World Trade Organisation ('WTO'). In particular, it referred to the expiry of Section 15 of the Protocol of Accession of the People's Republic of China to the WTO on 11 December 2016, after which the analogue country methodology was no longer warranted.
- (45) The Commission recalled that in line with Article 2(7) of the applicable basic Regulation, normal value was determined on the basis of data from the analogue country. This claim was therefore rejected.

### 2.1. *Changmao Biochemical*

#### 2.1.1. Normal value

- (46) Due to the absence of cooperation from any Chinese exporting producer, and notably from Changmao Biochemical, which benefitted from an individual duty rate, no information on their sales prices or cost on the domestic Chinese market was available to establish normal value. It was therefore established on the basis of Article 18 of the basic Regulation, by using facts available, as stated above in recital (34).
- (47) In this regard, the Commission first examined whether normal value could be established on the basis of Changmao Biochemical's export prices to third countries by application of Article 2(3) of the basic Regulation. To establish such export prices, the information recorded in the Chinese export database was considered. However, though information on Chinese companies' export sales is recorded in the Chinese database, this database only reports the volume exported by each company but not the corresponding values. For that reason, it was not possible to calculate export prices for Changmao Biochemical on this basis.
- (48) Therefore, in the absence of more reliable information available, the Commission based normal value on the information provided in the expiry review request, that is on prices of domestic invoices of the product under review from one Argentinian producer.

#### 2.1.2. Export prices

- (49) Due to the non-cooperation of Changmao Biochemical the export prices were established on the basis of the 14(6) database in accordance with Article 18 of the basic Regulation.

#### 2.1.3. Comparison

- (50) The Commission compared the normal value and the export price thus established on an ex-works basis. Where justified for the purpose of a fair comparison, the export price and the normal value were adjusted for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (51) Adjustments to the export price were made for ocean freight (0,07 EUR/kg), handling costs (0,007 EUR/kg) and inland freight (0,014 EUR/kg) based on data from the expiry review request.
- (52) According to the Customs Import and Export Tariffs published by the Chinese Customs Authorities, the value added tax ('VAT') on Chinese exports of the product under review was only partially refundable during the RIP: a 17 % tax was charged on export and 9 % of it was then refunded. Therefore, the Commission took both normal values and export prices with VAT included and adjusted the normal value to match the VAT rate applicable on exports after reimbursement, where applicable. The normal value was adjusted accordingly by 8 %.
- (53) According to its 2016 annual report <sup>(1)</sup>, Changmao Biochemical was manufacturing the product under review using the 'synthetic' production method while the Argentinian producer was using the 'natural' production method. According to a market intelligence study <sup>(2)</sup> published shortly after the RIP synthetic tartaric acid is

<sup>(1)</sup> Changmao Biochemical's synthetic production flowchart is described on page 2 of its 2016 annual report which is available at [http://www.cmbec.com.hk/html/investor\\_report.php](http://www.cmbec.com.hk/html/investor_report.php) (accessed on 24 April 2018).

<sup>(2)</sup> <https://ihsmarkit.com/products/tartaric-acid-chemical-economics-handbook.html> (accessed on 24 April 2018).

a 'much cheaper option' than natural tartaric acid. In the current investigation no detailed information on manufacturing cost was available. Therefore, in order to take into account the difference in production methods, the normal value as established on the basis of the expiry review request was lowered by [30 % - 40 %] <sup>(1)</sup> to reflect the difference between costs of the natural process and the synthetic process on the basis of findings of the partial interim review concluded by Implementing Regulation (EU) No 626/2012. In this regard, the difference between the sales price of the product under review and the constructed value in Argentina as established in the partial interim review was applied to the normal value as established in the current review set out in recital (48). The constructed value established in the partial interim review was based on the production cost in Argentina, by replacing the raw material used in Argentina by the average market price for benzene (used in the synthetic production method) and adding a ratio for selling, general and administrative (SG&A) expenses and profit.

- (54) It must be noted that in the present investigation, unlike in Implementing Regulation (EU) No 626/2012, possible differences for product types L+ and DL mentioned in recital (30) were not taken into account in the calculation of the dumping margin. This is due to the lack of cooperation of the Chinese exporting producer and the resulting absence of any information regarding the product types exported.

#### 2.1.4. Dumping margin

- (55) The Commission compared the weighted average normal value to the weighted average export price as established above in accordance with Article 2(11) and (12) of the basic Regulation.
- (56) On this basis, the weighted average dumping margin for Changmao Biochemical expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid exceeded 70 %.
- (57) If no adjustment to the normal value for differences in the production method was made, normal value established for Changmao Biochemical would be based solely on the information in the expiry review request. In that case, by comparing the normal value thus established to the export price, the dumping margin would exceed 170 %. As above, the dumping calculation would be based on a comparison of the weighted average normal value to the weighted average export price as established above in accordance with Article 2(11) and (12) of the basic Regulation. However, as stated above in recital (53), the Commission considers that the adjustment to the normal value is warranted.
- (58) After disclosure, the applicants and an association of EU producers contested the approach taken by the Commission in view of the General Court's judgment of 3 May 2018 in Case T-431/12 *Distillerie Bonollo SpA and Others v Council* <sup>(2)</sup>. However, as the period for filing an appeal against that judgment is still ongoing, no definitive findings can be made on that basis at this point in time.

#### 2.2. Ninghai Organic

- (59) Although MET was withdrawn from Ninghai Organic by Implementing Regulation (EU) No 626/2012 as explained in recital (4), it still benefits from an individual duty rate. As set out in recital (18), Ninghai Organic did not cooperate with this investigation.

##### 2.2.1. Normal value

- (60) As set out in recitals (41) and (42) in the absence of cooperation from any analogue country producer, the Commission determined the normal value on any other reasonable basis, in accordance with Article 2(7)(a) of the basic Regulation, i.e. on prices of domestic invoices of the product under review from one Argentinian producer provided in the expiry review request.

##### 2.2.2. Export prices

- (61) Due to the non-cooperation from Ninghai Organic, the export prices for this company were established on the basis of the 14(6) database for imports made to the Union during the RIP in accordance with Article 18 of the basic Regulation.

<sup>(1)</sup> A range was used for confidentiality reason because the exact figure was calculated using data from a single Argentinian exporting producer.

<sup>(2)</sup> Judgment of 3 May 2018, ECLI:EU:T:2018:251.

### 2.2.3. Comparison

- (62) The Commission compared the normal value and the export price thus established on an ex-works basis. Where justified for the purpose of a fair comparison, the export price and the normal value were adjusted for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (63) Adjustments to the export price were made for ocean freight (0,07 EUR/kg), handling costs (0,007 EUR/kg) and inland freight (0,014 EUR/kg) based on the basis of data from the expiry review request.
- (64) According to the Customs Import and Export Tariffs published by the Chinese Customs Authorities, VAT on Chinese exports of the product under review was only partially refundable during the RIP: a 17 % tax was charged on export and 9 % of it was then refunded. Therefore, The Commission took both normal values and export prices with VAT included and adjusted the normal value to match the VAT rate applicable on exports after reimbursement, where applicable. Therefore the normal value was adjusted by 8 %.
- (65) According to the request and the previous expiry review, Ninghai Organic was manufacturing the product under review using the 'synthetic' production method while the Argentinian producer was using the 'natural' production method. Therefore an adjustment to the normal value was made as described in recital (53).
- (66) No adjustment in respect of the L+ and DL product types was made for the reasons explained in recital (54).

### 2.2.4. Dumping margin

- (67) The Commission compared the normal value to the weighted average export price as established above in accordance with Article 2(11) and (12) of the basic Regulation.
- (68) On this basis, the weighted average dumping margin for Ninghai Organic expressed as a percentage of the CIF Union frontier price, duty unpaid exceeded 70 %.
- (69) In case normal value should not be adjusted for differences in the production method, normal value could be compared to the export price as established in recitals (60) and (61) duly adjusted as described in recitals (62) to (64). The dumping margin thus calculated would exceed 170 %. However, as stated above, the Commission considers that the adjustment to the normal value is warranted.
- (70) As above, in both cases, the dumping calculation would be based on a comparison of the weighted average normal value to the weighted average export price as established above in accordance with Article 2(11) and (12) of the basic Regulation.
- (71) The claim of the applicants and an association of EU producers described in recital (58) in respect of Changmao Biochemical, i.e. that no adjustment for differences in the production method should be made, was also made regarding the adjustment for differences of production method made for Ninghai Organic in recital (65). These parties therefore also contested the correctness of the dumping margin established in recital (68). The claim was rejected for the same reason as mentioned in recital (58).

### 2.3. All other exporting producers

- (72) According to the 14(6) database, less than 7 tonnes of the product under review were exported by the Chinese producers subject to the residual duty. In view of this negligible quantity which represents only 0,4 % of the exports of Chinese exporting producers subject to measures to the Union during the RIP, no dumping margin for the remaining companies in China was calculated.

### 2.4. Conclusion on dumping

- (73) In recitals (56) and (68), continuation of dumping during the RIP was established for the two companies benefitting from an individual dumping margin. The level of dumping established exceeded 70 % for both companies. Since these two companies together represented more than 99 % of the Chinese exports subject to measures, it was concluded that there was continuation of dumping from China during the RIP.

### 3. Development of imports should measures be repealed

- (74) Further to the findings of dumping during the RIP, the Commission analysed whether there was a likelihood of a continuation of dumping should the measures be repealed. The following elements were analysed: the production and spare capacity in China, the Chinese export behaviour in other third countries and the attractiveness of the Union market.
- (75) Given the non-cooperation of the Chinese exporting producers, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of recurrence of dumping set out below were based on facts available, namely the sources mentioned in recital (35).
- (76) As already set out in recital (33) the analysis of likelihood of continuation of dumping was based on data exclusively relating to 'producers subject to measures' i.e. all Chinese producers except Hangzhou Bioking.

#### 3.1. Production capacity and spare capacity in China

- (77) Based on data from the expiry review request cross-checked and completed when applicable using corporate websites of Chinese producers and information collected in previous investigations <sup>(1)</sup>, the total production capacity of the Chinese producers subject to measures during the RIP was 54 000 tonnes.
- (78) On the basis of publicly available information, the Chinese domestic consumption during the RIP was estimated to be around 8 500 tonnes per year <sup>(2)</sup>. Taking into account the imports of the product under review in China as recorded in the GTA database (i.e. around 300 tonnes), it is estimated that total Chinese domestic sales (including Hangzhou Bioking) amounted to around 8 200 tonnes. In the absence of more reliable information available, it is estimated that the proportion of domestic sales of Chinese producers subject to measures in the total Chinese domestic sales was the same as their share in the total Chinese production capacity. Under this assumption, the domestic sales of the Chinese producers subject to measures were estimated to be [6 200 – 6 600] <sup>(3)</sup> tonnes during the RIP.
- (79) During the RIP, the total Chinese exports (including Hangzhou Bioking) amounted to 33 300 tonnes while the exports of Chinese producers subject to measures amounted to [20 000 – 25 000] tonnes, according to the Chinese database. Taking into account the domestic sales as established above, this translates into a total Chinese production of around 41 500 tonnes from which [26 000 – 30 000] tonnes are manufactured by the Chinese producers subject to measures.
- (80) The spare capacity of the producers subject to measures was [24 000 – 28 000] tonnes.
- (81) Based on the above findings in recitals (77) to (80) regarding Chinese domestic consumption, production capacity, production and Chinese exports, the following conclusions were drawn:
- The Chinese domestic consumption represents only 16 % of the production capacity of the Chinese exporting producers subject to measures.
  - The Chinese exporting producers subject to measures are very export-oriented as demonstrated by the fact that they exported more than 75 % of their production.
  - The capacity utilisation rate of the producers subject to measures during the RIP was less than 55 %. In view of the limited size of the domestic market, any attempt to increase this low utilisation rate will translate into increased exports.
  - The spare capacity of the producers subject to measures represented [110 % - 120 %] of the Union consumption.

<sup>(1)</sup> Investigations concluded by Implementing Regulation (EU) No 626/2012 and Implementing Decision (EU) 2016/176.

<sup>(2)</sup> Based on information published by a market intelligence firm (<https://globenewswire.com/news-release/2016/02/09/808759/0/en/Tartaric-Acid-Market-Is-Expected-To-Reach-USD-425-Million-By-2020-Radiant-Insights-Inc.html> accessed on 19 April 2018) the world market for TA in 2013 was 60 560 tonnes and was growing at a rate of 5,3 % per year. This translates into a world market of around 70 700 tonnes during the RIP. According to a pie-chart published by another market intelligence firm (<https://ihsmarkit.com/products/tartaric-acid-chemical-economics-handbook.html> accessed on 19 April 2018) the Chinese market represented around 12 % of the world market. It results from these sources that the Chinese domestic demand amounted to around 8 500 tonnes during the RIP.

<sup>(3)</sup> In recitals (78) to (83) figures are presented as ranges to preserve confidentiality when they pertain to only two exporting producers (since exact figures would allow these exporting producers to deduct each other's data) or when exact figures would allow the calculation of Hangzhou Bioking's data.

- (82) According to market intelligence <sup>(1)</sup> the annual growth rate of the Asia Pacific Region domestic demand for the product under review is expected to be 6,8 % from 2014 to 2020. An extrapolation based on that rate and on the Chinese domestic demand established for the RIP would result in an estimated Chinese domestic demand of 13 500 tonnes by 2022. This would still fall significantly short of the Chinese production capacity in the RIP.
- (83) In addition, it must be noted that Hangzhou Bioking increased its capacity by [8 000 – 13 000] tonnes/year after the review investigation period. Indeed, it replaced its existing factory by a new 25 000 tonnes/year production line <sup>(2)</sup>. This will further increase the imbalance between production capacity and demand on the Chinese domestic market.
- (84) For the above reasons, it is concluded that there is an incentive for the Chinese exporting producers subject to measures to maintain or increase their position on their export markets.

### 3.2. Chinese export behaviour in other third countries

- (85) In absence of cooperation from the Chinese exporting producers subject to measures, it was not possible to analyse Chinese export prices to third countries in complete isolation from Hangzhou Bioking. This is due to the fact that the Chinese export statistics database only reports the volume exported by each company but not the corresponding values. However, since according to the Chinese export statistics database Hangzhou Bioking's exports to third countries represented less than a fifth of the total Chinese exports to these countries, it was considered that findings on the total Chinese exports to other third countries were nonetheless representative for the behaviour of the Chinese exporting producers subject to measures.
- (86) A comparison of the average Chinese export price to the rest of the world as reported in the Chinese database adjusted to an ex-works level with the normal value established above for Changmao Biochemical and Ninghai Organic resulted in a dumping margin that could amount to more than 70 %, after applying the adjustment for differences in the production method as described in recital (53). As concerning the five main third country markets for Chinese exporting producers, namely India, Russia, USA, Turkey and Australia in order of importance, representing 69 % of total exports from China to other third countries, the dumping margins calculated were also higher than 70 % in each market (between 72 % and 87 %).
- (87) Should normal value be based on the normal value contained in the expiry review request without adjusting for differences in the production processes, the dumping margin would be higher than 170 %. However, as stated above, the Commission considers that the adjustment to the normal value is warranted.
- (88) Therefore, it was concluded that Chinese producers subject to measures were exporting at dumped prices on third country markets.

### 3.3. Attractiveness of the Union market

- (89) There is a significant overcapacity on the Chinese domestic market which might compel the Chinese producers subject to measures to find alternative markets for their spare capacity.
- (90) The Union market is by far the biggest in the world and represented 35 % of the global consumption for the product under review during the RIP according to market intelligence <sup>(3)</sup>. The GTA database also shows that the average FOB price of Chinese exports to the Union during the RIP was between 6 % and 8 % higher than the average price of Chinese exports to the rest of the world <sup>(4)</sup> during the same period. Therefore, the Commission concluded that the Union market is an attractive market for Chinese exports, because it might generate higher profits on the sales to the Union market than on their sales to other export markets.
- (91) In addition, the fact that despite the existence of anti-dumping measures, the Chinese exporting producers subject to measures have continued to export significant quantities to the Union, representing 8 % of the Union consumption during the RIP, confirms their continued strong interest in the Union market.

<sup>(1)</sup> <https://globenewswire.com/news-release/2016/02/09/808759/0/en/Tartaric-Acid-Market-Is-Expected-To-Reach-USD-425-Million-By-2020-Radiant-Insights-Inc.html> (last accessed 24 April 2018).

<sup>(2)</sup> According to Hangzhou Bioking's corporate website (<http://biokingco.web.testwebsite.cn/En/About/#about4> accessed on 19 April 2018) a new line with a capacity of 25 000 tonnes/year was started after the RIP.

<sup>(3)</sup> <https://ihsmarkit.com/products/tartaric-acid-chemical-economics-handbook.html> (accessed on 24 April 2018).

<sup>(4)</sup> Prices at FOB level of Chinese exports to the Union were in the range [1,9-2,0] EUR/kg while prices of exports to third countries were in the range [1,75-1,85] EUR/kg.

- (92) During the RIP, less than 30 % of the exports of the two Chinese producers subject to individual measures were directed to the Union. It can be reasonably expected that in case measures were repealed, the two producers currently subject to individual duties would increase their exports directed to the Union. It can also be reasonably expected that the other Chinese producers who currently export very little (7 tonnes during the RIP) to the Union market due to a high residual duty would start exporting to the Union in significant quantities.

#### 3.4. Conclusion

- (93) In conclusion, the dumping margins established during the review investigation period, the large production capacity, the high spare capacity in combination with China's export behaviour in other third countries and the attractiveness of the Union market, indicate that a repeal of the measures would likely result in significant increase of exports to the Union. Given the dumping margins found during the review investigation period it is also likely that future exports will be made at significantly dumped prices. The Commission therefore concluded that there is a strong likelihood of a continuation of dumping should the measures be repealed.

### D. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

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

- (94) During the RIP, the like product was produced by nine producers in the Union. Of these nine producers, seven producers cooperated with the investigation. These seven producers were found to account for a major proportion, in this case more than 60 % of the total Union production of the like product. They are hereafter referred to as the 'Union industry' within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (95) Union production was established at 18 900 tonnes representing 64 % of the estimated total production in the Union including the other two Union producers (29 661 tonnes <sup>(1)</sup> in total).
- (96) For the purpose of the injury analysis, the injury indicators were assessed at the level of major proportion of the Union production, on the basis of verified information collected from the producers that cooperated with the investigation.
- (97) The Union market for the product under review is characterised by a relatively small number of producers, mostly small and medium enterprises. With the exception of one producer which only produces TA, all other producers are vertically integrated, their main activity being producing alcohol from wine lees, a process for which the product under review is a by-product.
- (98) The period considered of the current investigation partially overlaps with the one of the investigation referred to in the recital (5) for the year 2013 and partly for 2014. As mentioned in the recital (96), the injury aspects in the investigation at hand were assessed at the level of major proportion of the Union production, on the basis of verified information collected from the cooperating Union producers. In the investigation referred to in the recital (5), the macroeconomic injury indicators such as production and sales volume and market share were assessed based on data from all Union producers. Therefore, the values for some indicators differ between this investigation and the investigation referred to in recital (5).

#### 2. Union consumption

- (99) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the import volumes from third countries into the Union based on the 14(6) database, Chinese imports based on the 14(6) database and the sales volume of other Union producers, based on information provided in the expiry review request.
- (100) Union consumption decreased between 2013 and the RIP by 11 %. Demand went down from 2013 to 2014 by 10 % and stayed on 2014 level thereafter. In principle, the demand for the product under review is dependent on external elements, such as the climatic conditions affecting the consumption of the product under review in the wine sector. At the construction sector the consumption may vary according to the volume of construction output in general and also due to use of substituting products.

<sup>(1)</sup> Established on the basis verified questionnaire replies for cooperating Union producers and on the basis on data in the application for the remaining two producers.

Table 1

**Union consumption**

	2013	2014	2015	RIP
Total consumption (tonnes)	25 455	22 931	23 767	22 610
<i>Index (2013 = 100)</i>	100	90	93	89

Source: Expiry review request, 14(6) database, verified questionnaire replies.

**3. Volume, market share and prices of imports from China****3.1. Volume and market share****(i) All imports of China**

- (101) In order to assess the overall situation on the Union market the Commission also estimated the volume of all imports of the product under review (i.e. including imports from the company that is not subject to the measures Hangzhou Bioking). It was found that the volume of all imports from China into the Union decreased by 47 % during the period considered. It fell from [9 000 - 11 000] tonnes in 2013 to [5 000 - 6 000] tonnes the RIP corresponding to a market share of [20 - 30] %. Given the fact that only one exporting producer was not subject to measures, the total figures and also those related to exporters subject to measures have to be presented as ranges or indexes for reasons of confidentiality.

Table 2

**Import volume and market share of all imports from China**

	2013	2014	2015	RIP
Volume of all imports from China (tonnes)	[9 000 - 11 000]	[8 000 - 9 000]	[6 000 - 8 000]	[5 000 - 6 000]
<i>Index (2013 = 100)</i>	100	82	65	53
Market share of all imports from China (%)	[40 - 50]	[30 - 40]	[25 - 35]	[20 - 30]
<i>Index (2013 = 100)</i>	100	91	70	60

Source: 14(6) database

**(ii) Imports of China subject to measures**

- (102) Similarly, the volume of imports from Chinese exporting producers being subject to anti-dumping measures into the Union decreased by 49 % to [1 600 - 1 900 tonnes] in the RIP corresponding to a market share of [7 - 10 %], down from [11 - 14 %] at the beginning of the period considered.

Table 3

**Import volume and market share of Chinese imports subject to measures**

	2013	2014	2015	RIP
Volume of imports subject to measures from China (tonnes)	[3 100 - 3 700]	[2 300 - 2 800]	[1 900 - 2 300]	[1 600 - 1 900]
<i>Index (2013 = 100)</i>	100	82	66	51

	2013	2014	2015	RIP
Market share of imports subject to measures from China (%)	[11 - 14]	[10 - 13]	[8 - 11]	[7 - 10]
<i>Index (2013 = 100)</i>	100	91	70	58

Source: 14(6) database

(iii) **Imports of China not subject to the measures**

- (103) During the period considered, the volume of imports from China into the Union not subject to the measures developed as follows:

Table 4

**Import volume and market share of imports from China not subject to the measures**

	2013	2014	2015	RIP
Volume of imports not subject to measures from China (tonnes)	[7 000 - 8 000]	[6 000 - 7 000]	[4 000 - 5 000]	[3 000 - 4 000]
Import volume				
<i>Index (2013 = 100)</i>	100	82	65	54
Market share of imports not subject to measures from China (%)	[25 - 35]	[20 - 30]	[20 - 30]	[10 - 20]
Market share				
<i>Index (2013 = 100)</i>	100	91	70	60

Source: 14(6) database

- (104) The volume of imports from the PRC not subject to the measures represents the biggest part of Chinese imports. It decreased by 46 % during the period considered, following very closely the trend of the imports subject to the measures. Thus, its share in total Chinese exports to the Union remained stable during the period considered.

3.2. *Prices and undercutting*

(i) **Prices and undercutting of imports subject to the measures**

- (105) The following table shows the development of average CIF EU frontier prices of imports under measures from China.

Table 5

**Average price of imports from China subject to the measures**

	2013	2014	2015	RIP
Price of Chinese imports subject to measures (EUR/tonne)	2 731	2 706	2 443	1 895
<i>Index (2013 = 100)</i>	100	99	89	69

Source: 14(6) database

- (106) Average unit selling prices of Chinese imports subject to measures at CIF level were 1 895 EUR/tonne in the RIP, corresponding, over the period considered, to a decrease of 31 %.
- (107) Price undercutting during the review investigation period by comparing (a) the weighted average sales price of the cooperating Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and (b) the average price of the imports subject to measures from the country concerned to the first independent customer on the Union market, established on a CIF basis on the basis of the 14(6) database, and adding the applicable customs and anti-dumping duties and post-importation costs.
- (108) As mentioned in recital (27), in the absence of cooperation from the Chinese exporting producers, the product types exported from China could not be determined. Therefore, a comparison on a per-type basis was not possible. The result of the comparison was expressed as a percentage of the cooperating Union producers' turnover during the review investigation period. It showed a weighted average undercutting margin of 19 %.

(ii) **Prices of imports not subject to the measures**

- (109) During the period considered, prices of imports from the PRC not subject to the measures of the product under review decreased by 34 %. Throughout the period considered the prices of imports not subject to the measures were slightly higher or at the same level than the prices of dumped imports <sup>(1)</sup>. During the whole period considered, the prices of imports not subject to the measures were lower than the prices of the Union industry.

Table 6

**Prices of imports from China not subject to the measures**

	2013	2014	2015	RIP
Price of Chinese imports subject to zero duty (EUR/tonne)	[2 900 - 3 100]	[2 800 - 3 000]	[2 300 - 2 500]	[1 900 - 2 100]
<i>Index (2013 = 100)</i>	100	94	79	66

Source: 14(6) database

**4. Imports from other third countries**

- (110) The following table shows the development of imports from third countries during the period considered in terms of volume and market share, as well as the average price of these imports.

Table 7

**Imports from third countries other than China**

	2013	2014	2015	RIP
Volume of imports from third countries (tonnes)	250	139	20	4
<i>Index (2013 = 100)</i>	100	56	8	2
Market share of imports from third countries (%)	1	1	0	0
<i>Index (2013 = 100)</i>	100	62	9	2
Price of imports (EUR/tonne)	3 307	2 931	Not applicable	Not applicable

Source: 14(6) database

<sup>(1)</sup> The prices are related to one exporting producer. Therefore, to preserve the confidentiality they are presented as ranges

- (111) Imports from third countries were at very low levels and virtually ceased during the RIP. They dropped from 250 tonnes in 2013 to practically zero in the RIP. Prices of these imports were above the prices from imports of China. They were below the average price level of the Union industry in 2013 and 2014. In 2015, the quantity imported was very low (9 tonnes) and in the RIP it was virtually zero. Therefore, the resulting average prices for these years were not considered representative or meaningful. In any event, exports from third countries were marginal since during the whole period considered they represented only a market share of 1 % or less.

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

- (112) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing of the state of the Union industry.
- (113) As set out in recitals (94), this assessment was based on a major proportion of the Union production, on the basis of data provided by the cooperating Union producers.

#### 6. Production

- (114) Overall, Union production increased by 22 % between 2013 and the RIP. It remained stable from 2013 to 2014, increased by 10 percentage points between 2014 and 2015, and by another 11 % between 2015 and RIP. Since the cost of production of the product under review mainly depends on the price of the raw material, which is subject to seasonal variations, the increased production levels had no observable correlation with the total production costs or the overall Union industry profitability.

Table 8

#### Production volume

	2013	2014	2015	RIP
Production in volume (tonnes)	15 432	15 580	17 055	18 900
<i>Index (2013 = 100)</i>	100	101	111	122

Source: Questionnaire replies

#### 7. Production capacity and capacity utilisation

- (115) The production capacity of the Union industry increased by 6 % throughout the period considered. This increase was mainly attributable to an investment made by one Union producer in 2015.
- (116) Capacity utilisation increased continuously from 43 % in 2013 to 50 % in the RIP (i.e. by 7 percentage points over the period considered). This increase of the capacity utilisation rate is a result from the increase in production volumes while the production capacity increased at a lower rate. Capacity utilisation did not however have a decisive role in the material decrease in the average cost of production observed in the period considered for the reasons set out in recital (127).

Table 9

#### Production capacity and capacity utilisation

	2013	2014	2015	RIP
Production capacity (tonnes)	35 604	35 604	36 804	37 590
<i>Index (2013 = 100)</i>	100	100	103	106
Capacity utilisation (%)	43	44	46	50
<i>Index (2013 = 100)</i>	100	101	107	116

Source: Questionnaire replies

## 8. Sales volume

- (117) The total sales volume of the Union industry to unrelated customers on the Union market increased in the period considered by 33 %. The most pronounced increase took place from 2014 to 2015 when it increased by 43 %. Between 2015 and the RIP the trend reversed and sales volumes decreased by 11 %.

Table 10

### Sales volume of the Union industry

	2013	2014	2015	RIP
Sales to unrelated parties in the Union (tonnes)	6 984	7 265	10 367	9 273
Index (2013 = 100)	100	104	148	133

Source: Questionnaire replies

- (118) Sales volume was also established for all Union producers on the basis of the actual sales volume of the Union industry established as above in recital (96) and, for the other Union producers on the basis of the information provided in the expiry review request <sup>(1)</sup>.

Table 11

### Total sales volume of all Union producers

	2013	2014	2015	RIP
Sales to unrelated parties in the Union (tonnes)	[13 500 - 15 500]	[12 500 - 15 000]	[15 000 - 17 000]	[16 500 - 17 500]
Index (2013 = 100)	100	[90 - 100]	[110 - 120]	[115 - 125]

Source: Questionnaire replies, expiry review request

- (119) The increase of total sales was less pronounced than the increase of sales volume from the Union industry. Sales volume established on this basis as compared to the previous expiry review investigation mentioned in recital (3) has decreased. Thus, between 2010 (which was the RIP of the previous expiry review investigation) and 2013 sales volumes decreased by [25 - 35 %] from 20 623 tonnes in 2010 to [13 500 - 15 500 tonnes] in 2013. Therefore, despite the increase in sales volume observed during the period considered of the present investigation, sales volumes in the RIP remained below the average sales volumes during the previous review investigation.

## 9. Market share

- (120) During the period considered, the Union industry gained 14 percentage points in market share, i.e. it increased from 29 % in 2013 to 43 % in the RIP. This increase reflects the fact that despite a decrease in consumption, the Union industry's sales increased in the period considered.

Table 12

### Market share of the Union industry

	2013	2014	2015	RIP
Market share (%)	27	32	44	41
Index (2013 = 100)	100	115	152	146

Source: Questionnaire replies, expiry review request and 14(6) database

<sup>(1)</sup> Given the fact that only two Union producers did not cooperate, the figure pertaining to all Union producers have to be presented in ranges for reasons of confidentiality

- (121) The increase of the market share of all Union producers was less pronounced than the increase of market share of the Union industry. During the period considered, the market share of all Union producers increased by 32 % from [50 - 60 %] to [70 - 80 %].

Table 13

**Market share of all Union producers**

	2013	2014	2015	RIP
Market share of the Union producers (%)	[50 - 60]	[60 - 70]	[65 - 75]	[70 - 80]
Market share of all Union producers <i>Index (2013 = 100)</i>	100	107	124	132

Source: Questionnaire replies, review request and 14(6) database.

**10. Growth**

- (122) Between 2013 and the RIP, whilst the Union consumption decreased by 11 %, the volume of sales by the Union industry on the Union market increased and their market share increased by 14 percentage points.

**11. Employment**

- (123) The employment level of the Union industry showed an increase of 9 % between 2013 and 2015 and remained practically stable in the RIP, partly reflecting the increase in production and production capacity.

Table 14

**Employment**

	2013	2014	2015	RIP
Employment (persons)	153	154	167	167
<i>Index (2013 = 100)</i>	100	101	109	109

Source: Questionnaire replies

**12. Productivity**

- (124) Productivity of the Union industry, measured as output (tonnes) per person employed per year, increased by 12 % in the period considered. This reflects the higher increase in production (by 22 %), compared to employment (by 10 %).

Table 15

**Productivity**

	2013	2014	2015	RIP
Productivity (tonnes per employee)	101	101	102	113
<i>Index (2013 = 100)</i>	100	100	101	112

Source: Questionnaire replies

**13. Magnitude of dumping margins and recovery from the effects of past dumping**

- (125) Substantial level of dumping was found in this investigation. Although the Union industry showed a positive development regarding sales volumes and market shares during the period considered, the financial indicators, as set out in recitals (126) to (137) deteriorated. Therefore, it was considered that the Union industry has not fully

recovered from the effects of dumped imports. It is recalled that in the original investigation, dumping margins of 4,7 % and 10,1 % were found for the two Chinese exporting producers that were granted individual duty rates. The dumping margin for all other companies was set at 34,9 %. In addition, as stated in recitals (74) to (93) above, a likelihood of continuation of dumping was established mainly based on available excess production capacity in China, the price behaviour of the Chinese exporters on the markets and the attractiveness of the Union market. Therefore, it is considered that the Union industry remains vulnerable to the injurious effects of any dumped imports in the Union market.

#### 14. Prices and factors affecting prices

- (126) The average sales prices of the Union industry on the Union market to unrelated customers decreased by 47 % between 2013 and 2015 and remained on that level during the RIP. In absolute terms, sales prices decreased from 5 239 EUR/tonne in 2013 to 2 761 EUR/tonne in RIP.
- (127) The availability of calcium tartrate, which is produced out of wine lees and represents most of total costs of manufacturing of TA, varies according to the quality of the grape wine harvest. Therefore, favourable or poor climatic conditions have an effect on the overall supply of calcium tartrate and its sales prices, which in turn has an impact on the annual averages sales prices. Thus, the Union prices observed in 2013 have been exceptionally high considering the long term trends. Also, the years from 2014 to RIP have been better wine harvesting years in the Union and the annual average sale prices have been lower. It should also be noted that as mentioned in the recital (100), the climatic/harvest-related conditions play a role not only for the supply of calcium tartrate but also for the demand of the product under review within the wine producing industry. Thus there is an element of variability in the prices and cost of production of tartaric acid which was also observed during the period considered.
- (128) The decrease in the average unit sales price (47 % over the period considered) was more rapid and also more pronounced than the decrease in the cost of production during the same period (44 % over the period considered). Consequently, the average cost of production exceeded the average unit sales price in 2014 and 2015, with a negative effect on profitability as shown below in Table 16.

Table 16

#### Average sales prices and unit cost

	2013	2014	2015	RIP
Average sales price EU market (EUR/tonne)	5 239	3 490	2 768	2 761
<i>Index (2013 = 100)</i>	100	67	53	53
Unit cost of production	4 865	3 534	2 880	2 738
<i>Index (2013 = 100)</i>	100	73	59	56

Source: Questionnaire replies

#### 15. Labour costs

- (129) The average labour costs of the Union industry developed over the period considered as follows:

Table 17

#### Average labour cost per employee

	2013	2014	2015	RIP
Average labour costs per employee (EUR)	44 705	43 685	42 999	42 847
<i>Index (2013 = 100)</i>	100	98	96	96

Source: Questionnaire replies

(130) During the period considered, the Union industry's average labour costs per employee decreased by 4 %.

## 16. Inventories

(131) Overall, the volume of stock remained stable during the period considered. It increased by 10 % from 2013 to 2014 and sharply decreased in 2015 by 60 %. This was due to the fact that the Union industry's sales volume increased faster than its production volume in that year, as described in recitals (114) to (119). However, between 2015 and the RIP, the volume of stock returned to the levels of 2013 as the production volume caught up with the increased sales volumes.

Table 18

### Inventories

	2013	2014	2015	RIP
Closing stock (tonne)	2 436	2 683	1 070	2 424
<i>Index (2013 = 100)</i>	100	110	44	100

Source: Questionnaire replies

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

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

Table 19

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

	2013	2014	2015	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	7,1	- 1,2	- 4,0	0,8
<i>Index (2013 = 100)</i>	100	- 18	- 56	12
Cash flow (EUR)	6 292 920	1 624 457	-619 997	154 944
<i>Index (2013 = 100)</i>	100	26	- 10	2
Investments (EUR)	901 901	906 141	4 405 499	2 099 201
<i>Index (2013 = 100)</i>	100	100	488	233
Return on investments (%)	2,9	- 0,3	- 0,3	0,1
<i>Index (2013 = 100)</i>	100	- 12	- 9	3

Source: Questionnaire replies

(133) Profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered, the profitability of the Union industry's sales of the like product on the Union market to unrelated customers decreased from 7,1 % close to zero (0,8 %), which corresponds to an overall decrease of 88 %. This is

in line with the fact that the selling prices decreased more rapidly than the cost of production. Profitability thus dropped most significantly between 2013 and 2014 when the Union industry realised losses of – 1,2 %. The losses increased in 2015 reaching – 4,0 %. During the RIP, profitability increased again and reached slightly positive levels. This positive development correlates with increases of production, capacity utilisation rate and productivity, which contributed to the decrease of cost of production per tonne. While the average sales prices remained constant, this helped to improve the profitability between 2015 and RIP. During the whole period considered, the profitability was below the 8 % target profit for this industry.

- (134) The net cash flow is the ability of the Union producers to self-finance their activities. In line with deteriorated profitability the cash flow decreased by 98 % during the period considered: it dropped 75 % in 2014 and became negative in 2015. During the RIP it was only marginally above zero.
- (135) The Union industry's investments in the production of the like product increased overall by 133 % during the period considered. This is due to some major investments especially during 2015 and RIP. However, these investments were made by only few companies. The biggest individual investment which represented over 50 % of total investments made in 2015 was linked to relocation of activities.
- (136) The return on investments is the profit in percentage of the net book value of investments. In line with the decreased profitability, it became negative in 2014 and 2015 and was only 0,1 % during RIP. The overall return on investments was weak over the whole period considered.
- (137) The weakening of the cash flow has reduced the ability of the Union industry to raise capital through internally generated funds. Consequently, the ability to raise capital had deteriorated from the previous expiry review. However, there were no indications that this had an impact on the ability to continue business activities or carry out investments.

#### 18. Conclusion on injury

- (138) Injury indicators such as production, sales volume and market share showed positive trends during the period considered. However, these trends did not have a positive impact on the overall financial situation of the Union industry. To the contrary, the Union industry's profitability showed a strong negative trend during the period considered and the industry was even loss-making in 2014 and 2015. During the RIP, the Union industry was only slightly above break-even. Moreover, other financial indicators such as cash flow and return on investment also deteriorated and showed negative values during the period considered.
- (139) As mentioned in recital (2), the current anti-dumping duties were in place on imports of tartaric acid from the PRC, except from Hangzhou Bioking. Nevertheless, the Union industry suffered from the effects of the dumped imports from the PRC. In particular, there was significant price pressure from the dumped imports undercutting the Union industry prices by 19 % despite the anti-dumping duties in place. Due to this price pressure, the Union industry was unable to keep its prices above the production cost. This had a negative impact on the situation of the Union industry, as demonstrated by the decrease in sales prices and profitability as well as other financial injury indicators. Thus, despite the increase of sales volume and market share of the Union industry, the profitability deteriorated during the period considered (although increasing again in the RIP, it only reached levels slightly above break-even), as well as cash flow and return of investments. On this basis, it was established that the existing measures were not fully achieving the intended effects and that the Union industry remains vulnerable to the injurious effects of dumped imports in the Union market.
- (140) Following disclosure, one Chinese exporting producer made the several claims as regards the injury analysis:
- (141) First, this party considered certain injury indicators unreliable on the grounds of differences between the indicators in this investigation and in the investigation mentioned in recital (5). This party referred in particular to the Union consumption, inventories and the Union industry's profitability. It was claimed that the Commission did not sufficiently explain these differences and alleged that using a different set of data would have led to different conclusions on injury.
- (142) In this respect, it is noted that the reason for the differences of data is set out in recitals (94) to (98). Thus, in the investigation referred to in the recital (5), the macroeconomic injury indicators such as production and sales volume as well as market share were assessed based on data from all Union producers whereas the current investigation assessed these indicators on the basis of a major proportion of the Union industry. Therefore, the values for some indicators differ between these investigations. This party did not provide further elements to support its claim. Therefore, the claim is rejected.

- (143) Second, the same party claimed that certain indicators such as sales volume, market share, production volume, production capacity and utilization, employment, productivity, labour cost, cash flow and investment showed positive trends. Therefore, it could not be concluded that the Union industry suffered material injury. In this respect, first, the Commission did not find that the Union industry suffered material injury, but merely considered that it remained vulnerable to the injurious effects of dumped imports in the Union market, and, second as mentioned in recital (138) the positive trends in certain indicators did not have a positive impact on the overall financial situation of the Union industry. Therefore, this claim is rejected.
- (144) Third, it was claimed that the injury could not be caused by the imports subject to measures. One party claimed that other possible factors allegedly causing injury to the Union industry were the decrease in consumption and the investments made by the Union industry. This party also claimed that a separate analysis should have been made for tartaric acid obtained from natural production on the one hand and tartaric acid obtained from synthetic production on the other hand. In this respect, it should be pointed out that the investigation did not reveal that the Union industry suffered material injury. The Commission merely considered that it remained vulnerable to the injurious effects of dumped imports in the Union market. Accordingly, the Commission analysed whether there is a likelihood of recurrence of injury in accordance with Article 11(2) of the basic Regulation. Therefore, the above claims were rejected.
- (145) In summary, none of the above claims could devalue the findings and conclusions as described in recital (139), which are hereby confirmed.

## F. LIKELIHOOD OF RECURRENCE OF INJURY

### 1. Preliminary remarks

- (146) The investigation showed that Chinese imports were made at dumped price levels during the review investigation period and that there was a likelihood of continuation of dumping should the measures be allowed to lapse.
- (147) During the period considered, the Union industry was in a vulnerable situation, still exposed to the injurious effect of the dumped imports from the PRC.
- (148) In accordance with Article 11(2) of the basic Regulation, it was therefore assessed whether there would be a likelihood of recurrence of injury should measures against China be allowed to lapse in accordance with Article 11(2) of the basic Regulation.
- (149) To establish the likelihood of recurrence of injury, the following elements were analysed: the production and spare capacities in China, the attractiveness of the Union market, the expected price level of Chinese imports into the Union market and the foreseen impact on the Union industry.
- (150) As mentioned above in recitals (34) and (35), in view of the non-cooperation of the Chinese exporting producers, the below analysis concerning the Chinese domestic market and the exports from the PRC to other third countries had to rely on information available in accordance with Article 18 of the basic Regulation, i.e. information contained in the request, the 14(6) database, the Chinese database, the GTA database, publicly available information such as corporate websites and excerpts of publications from market intelligence firms and data collected during previous investigations <sup>(1)</sup>.

### 2. Production and spare capacities in China and attractiveness of the Union market

- (151) The total production capacity of Chinese producers subject to the measures was 54 000 tons, while spare capacity amounted to between 24 000 and 28 000 tons. The spare capacity was between 6 % to 24 % higher than the total Union consumption during the RIP.
- (152) It should also be noted that there are no significant constraints in production volumes for Chinese production given their synthetic production methods, unlike the Union industry producers using natural raw materials, i.e. wine lees. Therefore, the Chinese capacity and potential for further exports is not limited to the current levels.

<sup>(1)</sup> Investigations concluded by Implementing Regulation (EU) No 349/2012, Implementing Regulation (EU) No 626/2012 and Implementing Decision (EU) 2016/176.

- (153) It was also established that Chinese producers were strongly export oriented and had a significant potential to increase their export volumes in particular to the Union should measures be allowed to lapse.
- (154) As established under recitals (89) to (93) the Union market is attractive for Chinese exports and there is therefore a strong incentive to increase exports to the Union in substantial quantities should measures be allowed to lapse.

### **3. Prices of Chinese imports**

- (155) Chinese imports were undercutting the Union industry's sales price by 19 %. As an indication of the price level at which it is likely that Chinese the product under review will be imported into the Union market should the measures be repealed, the level of Chinese import prices to the Union without anti-dumping duties were taken into account. The comparison during the review investigation period showed that Chinese prices without anti-dumping duties would undercut the Union industry sales prices on average by 26 %.
- (156) Furthermore, the price levels at which the product under review was exported from China to other third countries was analysed. As explained in the recitals (85) to (88) above, Chinese producers exported significant quantities of the product under review to third countries other than the Union. Chinese prices to other third countries were found on average to be lower than the Union industry's prices also by 26 %.
- (157) On this basis, it is concluded that imports from China will very likely exert an even higher price pressure on the Union industry than the one they exerted during the review investigation period, should the measures be repealed.

### **4. Likely impact on the Union industry**

- (158) Based on the above circumstances, in the absence of anti-dumping measures, Chinese exporting producers will have an incentive to increase significantly the volume of their imports into the Union market at low dumped prices exerting a downward pressure on the prices prevailing in the Union.
- (159) An increasing volume of Chinese imports — which is likely, given the available spare capacities — coupled with the expected further price pressure in absence of anti-dumping duties, will likely have a significant negative impact on the situation of the Union industry.
- (160) Indeed, should this scenario materialise, it is unlikely that the Union industry will be able to decrease its prices without incurring significant losses to match the further decreased Chinese prices in absence of anti-dumping duties. An indication in this respect is given by the fact that during the period considered the Union industry did not decrease its sales prices to the levels that would have matched prices of the Chinese imports, even in a situation of decreasing cost of production, since they were already below costs.
- (161) Furthermore, in such a scenario, should the Union industry keep its price levels, it is likely that it would lose sales volume and market share as significant larger volumes of imports from China would likely enter the market at even lower prices. This would cause further losses to the Union industry.

### **5. Conclusion on the likelihood of recurrence of injury**

- (162) On this basis, it is concluded that the repeal of the measures would in all likelihood result in an increase of dumped imports originating in China resulting in a downwards pressure on Union industry prices and a further worsening of the already dire economic situation of the Union industry. Therefore it is concluded that the repeal of the measures against China would in all likelihood result in the recurrence of injury to the Union industry.
- (163) One exporting producer claimed that there would be no likelihood of recurrence of injury should anti-dumping duties be repealed. In support of this claim, it was argued that the price pressure in the Union is driven by the Union industry and that Chinese exporting producers did not decrease their sales prices in line with their decrease in import volume which would show that they had no intention to decrease prices in order to gain market share.

- (164) In this respect, it should be pointed out that such claims overlook the fact that the production capacity and spare capacity in China, the attractiveness of the Union market for Chinese imports, the possible price levels of Chinese imports all contribute to the Commission's findings on likelihood of recurrence of injury, should the measures be repealed. These aspects are sufficiently explained in recitals (151) to (161). In addition, no new factual elements were submitted in support of these claims. Therefore, this claim was rejected.

## G. UNION INTEREST

### 1. Introduction

- (165) In accordance with Article 21 of the basic Regulation, it was examined whether maintaining the existing anti-dumping measures against China 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.
- (166) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (167) It should be recalled that, in the original investigation as well as in the subsequent expiry review investigation, the adoption and maintenance of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (168) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

### 2. Interest of the Union industry and other Union producers

- (169) Based on the above, the Commission concluded that the situation of the Union industry would deteriorate, should the measure be repealed, and lead to a recurrence of material injury. The Union industry would not be in a position to compete with the increased volume of Chinese imports sold at injurious dumped prices. Therefore, should measures be allowed to lapse, any recovery would be unlikely and the mere existence of some of the companies would be put in danger, leading to closures and job losses on the Union market.
- (170) As mentioned in recital (127), climatic/harvest-related conditions have an impact on the cost of production and the prices of the Union industry. During the previous investigations, the Union industry has been able to be profitable in favourable conditions and has proven to be viable. However, in this investigation, during the period considered, the Union industry had become loss-making as despite the measures, the dumped imports from China have continued to enter the Union market undercutting the Union industry prices and suppressing the prices below the Union industry's cost of production as explained in recitals (133) and (139).
- (171) It can be reasonably expected that the Union industry will continue to benefit from the measures and the maintenance of the anti-dumping measures would help the Union industry to increase its prices to reasonable levels covering its cost of production and thus improve its profitability.
- (172) Accordingly, the Commission concluded that the maintenance of anti-dumping measures against China would clearly be in the interest of the Union industry.

### 3. Interest of importers

- (173) No importers cooperated in the case at hand. It is recalled that in the previous investigations it was found that the impact of the imposition of measures would not be significant. No traders/importers cooperated in the current investigation. Bearing in mind that there is no evidence suggesting that the measures in force considerably affected importers, the Commission concluded that the continuation of measures will not affect the Union importers.

#### 4. Interest of users

- (174) The product under review is mainly used in the wine and food industry as a food and beverage additive, and in the construction industry as a retardant in the production of gypsum.
- (175) Ten known users have been contacted in this investigation and invited to cooperate. Four users replied to the questionnaire, two were active in the construction industry, while the other two were active in the food industry.
- (176) In the previous expiry review investigation it was established that the product under review does not represent a material portion of the costs of the gypsum products where it is used <sup>(1)</sup>. On the basis of the replies from users from the construction industry it was established that the situation is not materially different during this investigation. Therefore the Commission concluded that the continuation of the measures would have a negligible influence on the costs and the competitive position of the construction industry.
- (177) Two major users from the food sector cooperated in the proceeding. It was determined that on the group level both companies were profitable. Moreover, in the previous expiry review investigation <sup>(2)</sup> it was established that also the product lines using the product under review as one of the raw materials was profitable and that the sales of products manufactured using the product under review represented only a minor percentage of their total turnover. None of the cooperating users on the food sector could demonstrate that the situation would be materially different during this investigation. Thus the Commission concluded that the continuation of the measures would not unduly affect the users of the food industry.
- (178) It should also be kept in consideration that the viability of Union industry is necessary in order to maintain diverse supply sources for the product under review, which is also in the interest of the users. Furthermore, a considerable part of the Chinese imports are made from Hangzhou Bioking with no anti-dumping duties. Even if measures against China as a whole were maintained, Hangzhou Bioking will not fall within the scope of these measures.

#### 5. Conclusion on Union interest

- (179) Taking into account all of the factors outlined above, the Commission concluded that there are no compelling reasons against the maintenance of the anti-dumping measures in force.

#### H. ANTI-DUMPING MEASURES

- (180) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained on imports of the product under review. They were also granted a period to make representations subsequent to this disclosure.
- (181) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of the product under review originating in the PRC should be maintained.
- (182) In view of the recent case-law of the Court of Justice <sup>(3)</sup>, it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties, because the relevant provisions in force concerning customs duties do not provide for such an interest rate, and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.
- (183) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tartaric acid, excluding D-(-)- tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) and originating in the People's Republic of China.

<sup>(1)</sup> See recital 108 of the previous expiry review, which states that 'TA represents less than 2 % of the costs of the gypsum products where it is used'.

<sup>(2)</sup> See recital 109 of Implementing Regulation (EU) No 349/2012.

<sup>(3)</sup> Judgment of the Court of 18 January 2017, Case C-365/15, *Wortmann*, EU:C:2017:19, paragraphs 35 to 39.

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

Company	Duty rate	TARIC additional code
Changmao Biochemical Engineering Co., Ltd, Changzhou	10,1 %	A688
Ninghai Organic Chemical Factory, Ninghai	8,3 %	A689
All other companies (except Hangzhou Bioking Biochemical Engineering Co. Ltd, Hangzhou — TARIC additional code A687)	34,9 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall 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*, in force on the first calendar day of the month in which the deadline falls, increased by one percentage point.

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

#### 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, 28 June 2018.

For the Commission  
The President  
Jean-Claude JUNCKER