

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1534**of 21 October 2020****imposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) By Regulation (EC) No 1355/2008 ⁽²⁾ the Council imposed a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits originating in the People's Republic of China ('PRC'). The measures took the form of a specific duty per company ranging from 361,4 EUR/tonne to 531,2 EUR/tonne net product weight.
- (2) These measures have been annulled by the Court of Justice of the European Union on 22 March 2012 ⁽³⁾ but were re-imposed on 18 February 2013 by Council Implementing Regulation (EU) No 158/2013 ⁽⁴⁾.
- (3) The measures were maintained by Commission Implementing Regulation (EU) No 1313/2014 ⁽⁵⁾ following an expiry review pursuant to Article 11(2) of the basic Regulation.

1.2. Initiation of an expiry review

- (4) Following the publication of a notice of impending expiry of the measure in force ⁽⁶⁾, the Federación Nacional de Asociaciones de Transformados Vegetales y Alimentos Procesados ('Fenaval' or 'the applicant') on behalf of producers representing 100 % of the total Union production of certain prepared or preserved citrus fruits (namely mandarins, etc.), requested the initiation of an expiry review. Fenaval argued that the expiry of the measures would likely result in continuation of dumping and continuation or recurrence of injury to the Union industry.
- (5) On 10 December 2019 the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽⁷⁾ ('the Notice of Initiation'), the initiation of an expiry review of the measures in force pursuant to Article 11(2) of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 (OJ L 143, 7.6.2018, p. 1).

⁽²⁾ Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ L 350, 30.12.2008, p. 35).

⁽³⁾ Judgment of the Court of Justice of the European Union of 22 March 2012 in Case C-338/10, *Grünwald Logistik Service GmbH (GLS) v Hauptzollamt Hamburg-Stadt*.

⁽⁴⁾ Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 re-imposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ L 49, 22.2.2013, p. 29).

⁽⁵⁾ Commission Implementing Regulation (EU) No 1313/2014 of 10 December 2014 imposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 354, 11.12.2014, p. 17).

⁽⁶⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 104, 19.3.2019, p. 10).

⁽⁷⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ C 414, 10.12.2019, p. 14).

1.3. Review investigation period and period considered

- (6) The investigation of a continuation or recurrence of dumping covered the period from 1 October 2018 to 30 September 2019 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 October 2015 to 30 September 2019 ('the period considered').

1.4. Interested parties

- (7) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In particular, it contacted the applicants, the known exporting producers in the PRC, the known unrelated importers in the Union and the authorities of the PRC.
- (8) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request a hearing with the Commission investigation services and/or the Hearing Officer in trade proceedings.

1.5. Sampling

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

1.5.1. Sampling of exporting producers in the PRC

- (10) The applicant reported a list of 33 Chinese exporters/producers of the product concerned ⁽⁸⁾. Therefore, in view of the apparently large number of exporters/producers in the PRC, the Commission envisaged sampling in the Notice of Initiation.
- (11) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the mission of the PRC to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (12) Five producers or group of producers in the PRC provided the requested information and agreed to be included in the sample. Given the high number of known exporters/producers of the product under review in the PRC, the level of cooperation was considered to be low.
- (13) In accordance with Article 17(1) of the basic Regulation, the Commission provisionally selected a sample of one producer and two group of producers with the largest volume of capacity and exports to the European Union. Two of the selected group of companies sold also significant quantities on the PRC's domestic market. This sample covered 69 % of the reported volume exported to the European Union during the period 1 October 2018-30 September 2019. The exporters' questionnaire was made available online ⁽⁹⁾ on the day of initiation and the link to the website was sent to all interested parties. The sampled companies had 30 days to submit the questionnaire reply.
- (14) However, one group and a producer sampled decided to withdraw their cooperation. Therefore, the Commission decided to continue the investigation on the basis of all the remaining cooperating companies (two companies and a group of companies). Soon after been informed by the Commission that all the cooperating exporting companies had to complete the questionnaire for exporting producers, two exporting producers withdrew their cooperation. Only one group of exporting producers provided the required information. This group accounts for about [45 %-65 %] of all PRC exports to the Union.

1.5.2. Sampling of unrelated importers

- (15) To decide whether sampling was necessary and, if so, to select a sample, all known importers/distributors were invited to fill in the sampling form attached to the Notice of Initiation.

⁽⁸⁾ Please refer to the Annex 3 of the Complaint.

⁽⁹⁾ Available at http://trade.ec.europa.eu/tdi/case_details.cfm?id=2425.

- (16) Only four importers replied to the sampling form and therefore sampling was not considered necessary.

1.6. Questionnaires and verification visits

- (17) The Commission sent a questionnaire concerning the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation in the PRC to the Government of the People's Republic of China ('GOC'). The questionnaires for the Union producers, importers, users, and exporting producers in the PRC were made available online ⁽¹⁰⁾ on the day of initiation.
- (18) The Commission received questionnaire replies from the two Union producers, thirteen suppliers of raw materials and one exporting producer in the PRC. One importer and a user submitted incomplete questionnaire replies. The GOC did not reply to the questionnaire concerning the existence of significant distortions in the PRC.
- (19) Due to the lockdown measures and travelling restrictions caused by the COVID – 19 outbreak globally and within the Union, planned verification visits pursuant to Article 16 of the basic Regulation were finally not carried out at the premises of the following legal entities.

Union producers:

- Agricultura y Conservas S.A., Algemés (Valencia), Spain
- Industrias Videca S.A., Villanueva de Castellón (Valencia), Spain

Exporting producers in the PRC and related traders:

- Zhejiang Taizhou Yiguan Food Co., Ltd and its related company Zhejiang Merry Life Food Co., Ltd ('the cooperating group of exporting producers' or 'the Yiguan group')
- (20) Since no on-spot verification visit could be carried out at the premises of the above-mentioned companies due to the COVID-19 outbreak, the Commission considered the information properly submitted by the parties (such as questionnaire replies or replies to deficiency letters) in line with the Notice of 16 March 2020 on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ⁽¹¹⁾.
- (21) The Commission remotely cross-checked all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury and of the Union interest. The Commission carried out remote crosschecks of the two Union producers and the cooperating group of exporting producers.

1.7. Comments on the complaint and on the initiation of the investigation

- (22) On 16 January 2020, two interested parties, namely the *China Chamber of Commerce for Import & Export for Foodstuffs, native produce and animal by-products* ('CCC') on behalf of a number of Chinese exporting producers and the Yiguan group, submitted their comments on the complaint and on the initiation of the investigation ⁽¹²⁾.
- (23) The CCC mainly argued that the initiation of the current expiry proceeding was not justified and that therefore the present proceeding should be immediately terminated for the following reasons:
- The alleged market distortions and applications of Article 2(6a) for determining dumping margins is not in conformity with WTO law.
 - The complaint contains misleading information and misperception of China's economic structure and no substantiated evidence to prove input prices of citrus fruits are being distorted. The CCC also raised the subject of the role of SOEs in certain Chinese markets – state presence and market distortions, of land use rights, of alleged discrimination by policies or measures and of labour costs.
 - The Union common agricultural policy.
 - Subsidies and supporting schemes provided to farmers by the Spanish government in the field of agriculture.

⁽¹⁰⁾ Available at http://trade.ec.europa.eu/tdi/case_details.cfm?id=2425.

⁽¹¹⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

⁽¹²⁾ File case number t20.000686.

- Insufficient evidence to prove there exists likelihood of recurrence or continuation injury.
- (24) The Commission rejected all arguments brought by the CCC. The specific reasoning to reject these arguments is provided in
- Recital (54), concerning the conformity of the methodology used to establish normal value with WTO law, and Sections 3.2.1.2 to 3.2.1.9, concerning the significant distortions of costs and prices in the PRC, including those of inputs used in the production of canned mandarins.
 - Recital (55), concerning the Union common agricultural policy and supporting schemes for Spanish farmers;
 - Section 4, concerning likelihood of recurrence or continuation injury.

1.8. Subsequent procedure

- (25) On 5 August 2020, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure') and invited parties to comment. Only the CCC submitted comments.
- (26) No requests for a hearing were received.
- (27) On 7 September 2020, the Commission submitted to all interested parties an additional final disclosure to include a monitoring clause. All interested parties were granted a period of three days within which they could make comments on the additional final disclosure document. The Commission did not receive any comments.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (28) The product concerned by this review is the same as the one in the original investigation, that is, prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as currently defined under HS heading 2008, originating in the People's Republic of China (the product concerned), currently classified under CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 ('canned mandarins').
- (29) The product concerned is obtained by peeling and segmenting certain varieties of small citrus fruits (mainly satsumas) which are then packaged in a medium of sugar syrup, juice or water in various sizes to meet the specific demands of the different markets.
- (30) Satsumas, clementines and other small citrus fruit are commonly known by the collective name 'mandarin'. Most of these different varieties of fruit are suitable to be used as fresh product or for processing. They are similar and their preparations or preservations are, thus, considered to be one single product.

2.2. Like product

- (31) The investigation showed that the following products have the same basic physical characteristics as well as the same basic uses:
- (a) the product concerned;
 - (b) the product produced and sold on the domestic market of the PRC;
 - (c) the product produced and sold in the Union by the Union industry.
- (32) The Commission decided that these products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION/RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (33) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.
- (34) During the review investigation period, imports of canned mandarins continued at similar levels than in the previous expiry review investigation (that is from 1 October 2012 to 30 September 2013). In absolute terms, imports from the PRC amounted to 19 152 tonnes in the review investigation period. The cooperating group of exporting producers accounts for about [17 %-25 %] of the Union market.
- (35) The total declared production capacity of the cooperating group of exporting producers amounted roughly 5 % of the total estimated Chinese production capacity. Given the low level of cooperation, the Commission applied Article 18 and based its findings on the Chinese market of canned mandarins including production, capacity and spare capacity, on facts available.
- (36) The findings in relation to the likelihood of continuation or recurrence of dumping set out below were based in particular on the information contained in the request for review, the statistics based on the data reported to the Commission by the Member States in accordance with Article 14(6) of the basic Regulation ('Article 14(6) database'), as well as the sampling replies provided at the time of initiation, the questionnaire replies provided by the Yiguan group and information provided by the CCC. In addition, the Commission used other sources of publicly available information such as the Global Trade Atlas ⁽¹³⁾ ('GTA') and the Orbis Bureau van Dijk ⁽¹⁴⁾ ('Orbis') databases.

3.1.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (37) In view of the sufficient evidence available in the request for expiry review at the initiation of the investigation pointing to the existence of significant distortions on the domestic market in the PRC within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation concerning the PRC pursuant to Article 2(6a) of the basic Regulation.
- (38) Consequently, in order to collect the necessary data for the possible application of Article 2(6a) of the basic Regulation, the Commission invited in the Notice of Initiation all known producers in the PRC to provide the information requested in Annex III to the Notice of Initiation regarding the inputs used for producing the product under review. Five producers submitted the relevant information.
- (39) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions on the domestic market in the PRC within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the GOC. No reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC. The Commission did not receive any reply from the GOC.
- (40) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation vis-à-vis PRC within 37 days of the date of publication of the Notice in the *Official Journal of the European Union*.
- (41) The CCC and the Yiguan group made a comment on the existence of significant distortions in the PRC. The Commission addressed these claims above in recital (54).
- (42) In the Notice of Initiation the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value for exporting producers based on undistorted prices or benchmarks.

⁽¹³⁾ Global Trade Atlas – GTA (https://www.gtis.com/gta/secure/htscty_wta.cfm).

⁽¹⁴⁾ <https://orbis4.bvdinfo.com/version-201866/orbis/Companies>.

- (43) On 23 January 2020, the Commission informed all interested parties by way of a first note to the file ⁽¹⁵⁾ ('the first FoP Note') seeking their views on the relevant sources that the Commission may use for the determination of the normal value for exporting producers in the PRC, in accordance with Article 2(6a)(e) second indent of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy, labour and waste used in the production of the product concerned by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Turkey as the most appropriate representative country at that stage.
- (44) The Commission gave all interested parties the opportunity to comment. The Commission received comments from FENAVAL and FRUCOM ⁽¹⁶⁾.
- (45) The Commission addressed those comments in a second note on the sources for the determination of the normal value, dated 29 May 2020 ('the second FoP Note'). In that note, the Commission further specified the list of factors of production and reiterated the conclusion that Turkey was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment. No comments were received.

3.2. Normal value for the cooperating exporting producer

- (46) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (47) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'* ('administrative, selling and general costs' is referred hereinafter as 'SG&A'). As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and absence of any substantiated claims from the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

3.2.1.1. Introduction

- (48) Article 2(6a)(b) of the basic Regulation defines 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.

⁽¹⁵⁾ Note for the file – File case number t20.000629.

⁽¹⁶⁾ Frucom represents the interest of European importers of food products including dried fruit, edible nuts and processed fruit & vegetables, including canned mandarins.

- (49) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product concerned. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (50) Article 2(6a)(c) of the basic Regulation provides that *'[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'*.
- (51) Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter 'the Report')⁽¹⁷⁾, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed on the investigation file at the initiation stage. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation.
- (52) As indicated in recital (18), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation to the case at hand.
- (53) As mentioned in recital (23), the CCC and the Yiguan group submitted comments in this regard. Both argued that the application of Article 2(6a) of the basic Regulation was neither legally nor factually justified. According to the CCC and the Yiguan group, this is because Article 2.2 of the WTO ADA does not recognize the concept of significant distortions. Further, the EU's calculation of the constructed normal value was in the CCC and the Yiguan group's view not in conformity with Article 2.2.1.1 of the WTO ADA and with the Appellate Body's interpretation thereof provided in the EU – Biodiesel (Argentina) case, according to which the construction of normal value is only permitted in case that 'there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation (...) sales do not permit a proper comparison'. The CCC claimed that the presence of significant distortions does not fall in either the category of sales not in the 'ordinary course of trade' or a 'particular market situation'. In addition, the CCC and the Yiguan group referred to an alleged lack of demonstration how precisely the government intervention affects prices and, consequently, leads to distortions. Moreover, The CCC and the Yiguan group raised questions, whether supporting schemes existing under the Union Common Agriculture Policy and/or under Spanish national law would not result in government intervention and consequently in the corresponding costs and prices Union canned mandarins producers being distorted. In this connection, the CCC and the Yiguan group request the Commission not apply Article 2(6a) because of the specifics of the agricultural sector which in their view is a unique sector for which all countries in the world implement certain supporting policy.

⁽¹⁷⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter 'Report').

- (54) For the purpose of this investigation, the Commission concluded in recital (110) that it is appropriate to apply Article 2(6a) of the basic Regulation. The Commission did not agree with the submission of the CCC and the Yiguan group that the Commission must not apply Article 2(6a). On the contrary, the Commission considered that Article 2(6a) is applicable and must be applied in the circumstances of this case. The Commission considered that this provision is consistent with the European Union's WTO obligations. The Commission also recalled in this respect that the dispute DS473 EU-Biodiesel (Argentina) did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. Therefore, the Commission rejected this claim.
- (55) As to the CCC and Yiguan's reference to the Union Common Agriculture Policy and/or support schemes allegedly existing under Spanish national law, the Commission recalled that for the purpose of establishing the existence of significant distortions in the sense of 2(6a)(b) of the basic Regulation, potential impact of one or more of elements listed in that provision is analysed on prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, including general qualitative assessments of a sector's specific situation, are not taken into consideration in this context. The argument raised by CCC and the Yiguan group is therefore not relevant and was rejected.
- (56) In their comments on final disclosure, the CCC reiterated its arguments presented in recital (53), submitting that Article 2(6a) of the basic Regulation – unilaterally created by the EU – runs beyond the existing legal provisions of ADA which does not bear a corresponding provision. Moreover, the CCC submitted that the Appellate Body ruling in dispute DS473 set the rules how to determine normal values and that rulings of the Appellate Body must be adhered to by the EU.
- (57) The Commission reiterated, as already stated above in recital (54), that the dispute DS473 did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. According to Article 2(6a)(a) of the basic Regulation, the normal value in the country of origin should reflect the undistorted price of the raw materials in the representative country. Moreover, the Appellate Body ruling in dispute DS473 confirmed that there are circumstances in which the normal value in the country of origin may be constructed by having regard to information from a representative third country.
- (58) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned. On the basis of this analysis, as provided below in Sections 3.2.1.2 to 3.2.1.9 the argument concerning the lack of demonstration how government intervention affects prices in the canned mandarins sector is rejected.

3.2.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (59) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'⁽¹⁸⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership⁽¹⁹⁾.

⁽¹⁸⁾ Report – Chapter 2, p. 6-7.

⁽¹⁹⁾ Report – Chapter 2, p. 10.

- (60) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ("CCP"). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.'⁽²⁰⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within which the boundaries of free market forces are at play.
- (61) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market⁽²¹⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (62) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.2.1.5 below)⁽²²⁾.
- (63) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.2.1.8 below)⁽²³⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP⁽²⁴⁾.
- (64) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies⁽²⁵⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry⁽²⁶⁾.

⁽²⁰⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 15 July 2019).

⁽²¹⁾ Report – Chapter 2, p. 20-21.

⁽²²⁾ Report – Chapter 3, p. 41, 73-74.

⁽²³⁾ Report – Chapter 6, p. 120-121.

⁽²⁴⁾ Report – Chapter 6, p. 122-135.

⁽²⁵⁾ Report – Chapter 7, p. 167-168.

⁽²⁶⁾ Report – Chapter 8, p. 169-170, 200-201.

- (65) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²⁷⁾.
- (66) In their comments on final disclosure, the CCC remarked that the Commission considers socialist market economy under which the state-owned economy takes a predominant position in China and the CCP reinforcing such position as a reason to apply a different methodology of determining normal value. In this connection, the CCC criticised the Commission for taking issue with the development of the country being achieved by 'distorting the market'. In the view of the CCC, any political party in this world would be concerned about the economy of its country and try to improve the domestic living standards. Consequently, CCC considered the Commission's approach to be politically oriented, and to an appreciable extent, biased.
- (67) The Commission rejected the claim of being biased. As already stated in recital ((48)), the analysis under Article 2(6a) of the basic Regulation, focuses solely on significant distortions, that is on those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. The Commission thus based itself on factual circumstances in the exporting country.

3.2.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (68) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (69) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also Section 3.2.1.4), as well as through shaping the corporate structure of the SOE sector ⁽²⁸⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽²⁹⁾.
- (70) In the canned fruit sector, there are many small producers and the sector is generally characterised by a large number of SMEs. Hence it was impossible to establish the ratio of SOEs and privately owned companies. Absent any information showing the contrary, the Commission considered that the State is also quite present in this sector. In any event, irrespective of their ownership, all producers are subject to the policy guidance by the Chinese state as further described in Section 3.2.1.5.

3.2.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (71) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽³⁰⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³¹⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been

⁽²⁷⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

⁽²⁸⁾ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

⁽²⁹⁾ Report – Chapter 5, p. 104-9.

⁽³⁰⁾ Report – Chapter 5, p. 100-1.

⁽³¹⁾ Report – Chapter 2, p. 26

followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³²⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³³⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of canned mandarins and the suppliers of their inputs.

- (72) Even if only limited information on state presence is available about the sector of canned mandarins itself due to its fragmentation, the investigation established that steel accounts for some 21 % of the cost of production, thereby representing, beside the citrus fruits (which accounts for some 25-30 % of the cost of production), the most important raw material to produce canned mandarins. The steel sector, however, is subject to significant state dominance ⁽³⁴⁾. In the steel sector, many of the major steel producers are SOEs. Some are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020' ⁽³⁵⁾ as examples of the achievements of the 12th five-year planning period (such as Baosteel, Anshan Iron and Steel, Wuhan Iron and Steel, etc.). Given the significance of steel as input into the production of cans, the producers of canned mandarins benefit from any price distortions due to the State's interference into the steel sector.
- (73) In their comments on final disclosure the CCC took issue with the Commission's approach. In its view, the Commission admitted that state presence is rather limited in citrus fruits industry, but then side-tracked this issue by talking about the input of steel sector rather than the state presence in citrus fruits sector itself.
- (74) The Commission rejected this comment. As recalled in recitals (96) and (97) below, the relevant features of the Chinese system resulting in significant distortions apply throughout the country and across the sectors, including the factors of production used in the manufacturing of canned mandarins. Given the importance of steel as input and in view of the fact that all inputs but part of sugar are sourced in the PRC, the costs of canned mandarins are clearly exposed to such systemic distortions, including due to the significant state dominance in the steel sector.
- (75) The State's presence and intervention in the financial markets (see also Section 3.2.1.8 below) as well as in the provision of additional raw materials and inputs further have an additional distorting effect on the market ⁽³⁶⁾.
- (76) Thus, the State presence and interventions in firms, including SOEs and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.2.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (77) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽³⁷⁾.

⁽³²⁾ Report – Chapter 2, p. 31-2.

⁽³³⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 15 July 2019).

⁽³⁴⁾ Report – Chapter 14, p. 358.

⁽³⁵⁾ The full text of the plan is available on the MIIT website: <http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c5353943/content.html> (last viewed 8 June 2020).

⁽³⁶⁾ Report – Chapters 14.1 to 14.3.

⁽³⁷⁾ Report – Chapter 4, p. 41-42, 83.

- (78) Specifically in the canned mandarins sector, as already indicated in recital (72) above, steel is an important production input. While the canned mandarins sector as such is a minor branch of the industry, not covered specifically by the main plans of the GOC, its producers benefit from price distortions in the raw materials they use, mainly steel and iron.
- (79) The steel industry is regarded as a key industry by the GOC ⁽³⁸⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the ‘Steel Industry Adjustment and Upgrading plan for 2016-2020’. This Plan states that the steel industry is ‘an important, fundamental sector of the Chinese economy, a national cornerstone’ ⁽³⁹⁾. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ⁽⁴⁰⁾. The ‘Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)’ ⁽⁴¹⁾ (‘the Catalogue’) lists iron and steel as encouraged industries. The applicability of the Catalogue was confirmed by the recent anti-subsidy investigation of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC ⁽⁴²⁾.
- (80) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related to, inter alia: market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation, upgrading, etc. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the steel sector ⁽⁴³⁾.
- (81) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of steel and iron as the main raw material used in the manufacturing of the product concerned. Such measures impede market forces from operating normally.
- (82) In their comments on final disclosure, the CCC submitted that the Commission’s argumentation sounded as if resources are being allocated in the PRC without following any market forces and thereby impeding the overall economic development of the country, which was not true. Moreover, the CCC pointed out that all the EU economic operators, either publicly or privately owned, are also acting according to the EU plans or Member State’s designed policies.
- (83) The Commission reiterated in this connection that issues like overall economic development or improvement of living standards are not subject to the analysis under Article 2(6a) of the basic Regulation. Instead, as stated in recital ((48)), that analysis only focuses on the questions to what extent reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. As to the CCC’s reference to actions of EU economic operators, the Commission recalled, as already stated in recital (55), the analysis of significant distortions in the sense of 2(6a)(b) of the basic Regulation looks at the potential impact of one or more of elements listed in that provision on prices and costs in the exporting country. The actions of economic operators in other markets were not taken into consideration in this context.

⁽³⁸⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽³⁹⁾ Introduction to the Plan for Adjusting and Upgrading the Steel Industry.

⁽⁴⁰⁾ Report, Chapter 14, p. 347.

⁽⁴¹⁾ Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

⁽⁴²⁾ See Recital (56) of Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People’s Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People’s Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽⁴³⁾ Report – Chapter 14, pp. 375-376.

3.2.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (84) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁴⁴⁾.
- (85) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁴⁵⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁴⁶⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁴⁷⁾.
- (86) Much like other sectors in the Chinese economy, the producers of canned mandarin are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question, with the CCC and the Yiguan group merely submitting that land allocation does not equate restriction or forbidding of commercial land use, as well as that all countries protect farmers and since agriculture represents a crucial part of any country economic activities that are closely linked to social stability and security. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available and absent any information showing the contrary, appear to be fully applicable also in the canned mandarins sector.
- (87) Upon final disclosure, the CCC and the Yiguan group submitted that since the Commission was unable to find evidence to support its conclusion of market distortions due to absence of factual elements in citrus fruits industry, it went on to China's overall economic structure characterized by the 'socialist economy', the GOC's administration setup and the role of the CCP. The CCC noted in their comments that elements such as lack of, or a discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws are not found in the citrus fruit sector.
- (88) However, the CCC's arguments were not accepted. The Commission recalled that Chinese bankruptcy, corporate, and property laws are generally applicable ⁽⁴⁸⁾, including in the canned mandarin sector. There is no accurate and appropriate evidence to positively establish that the citrus fruit sector is not affected by the distortions resulting from the lack of, discriminatory application, or inadequate enforcement of bankruptcy, corporate or property laws.
- (89) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the canned mandarin sector, including with respect to the product concerned.

⁽⁴⁴⁾ Report – Chapter 6, p. 138-149.

⁽⁴⁵⁾ Report – Chapter 9, p. 216.

⁽⁴⁶⁾ Report – Chapter 9, p. 213-215.

⁽⁴⁷⁾ Report – Chapter 9, p. 209-211.

⁽⁴⁸⁾ See also Report – Chapter 2, p. 9-10.

3.2.1.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (90) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining⁽⁴⁹⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary⁽⁵⁰⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration⁽⁵¹⁾. Those findings lead to the distortion of wage costs in the PRC.
- (91) No evidence was submitted to the effect that the canned mandarins sector, would not be subject to the Chinese labour law system described. Rather to the contrary, the CCC and the Yiguan group submitted that a significant portion of the labour force of citrus fruits companies would typically consist of temporary or seasonal workers who are recruited from the countryside, who do not conclude employment contract with the companies and whose payments are entirely based on their performance on the basis of quantity produced or processed. The CCC and the Yiguan group did not submit any information going contrary to the findings in recital (90). Instead, they simply stated that fast growth of China's urbanization is undisputed and that movements of millions of people in numerous cities demonstrates the existence of mobility of people in China. However, as noted in recital (90), rather than the physical mobility of workers itself, it is the consequences of household registration system which results in distortions of wages due to vulnerability of certain categories of workers. Moreover, the CCC and Yiguan's referred to the original investigation but they did not point to any specific finding in that investigation which would put in question the existence of significant distortions of Article 2(6a)(b), fifth indent of the basic Regulation. The Commission noted in this connection that the original investigation, rather than supporting the CCC and Yiguan's position, pointed out a number of irregularities concerning the way that labour contract had been concluded and workers remunerated.
- (92) Following the final disclosure, the CCC repeated their arguments concerning the two groups of workers in the fruit processing industry, namely the full-time employees and the seasonal workers. In this connection, the CCC insisted that the use of seasonal workers from the northern part of the PRC by the fruit processing companies demonstrates both the freedom to employ workers, as well as the freedom to choose to be employed. Consequently, CCC considered the Commission's assessment of wage-related distortions as factually wrong.
- (93) However, the Commission did not argue that the very existence of various categories of workers, such as full-time employees or seasonal workers would result in significant distortions. Instead, it is the particularities of the labour law system which, in combination with the household registration system and lack of collective labour organisations representing the interests of the workers, results in the irregularities and distortion of wages described above in recital ((90)). The arguments of the CCC could not therefore be accepted.
- (94) The canned mandarin sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

3.2.1.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (95) Access to capital for corporate actors in the PRC is subject to various distortions.

⁽⁴⁹⁾ Report – Chapter 13, p. 332-337.

⁽⁵⁰⁾ Report – Chapter 13, p. 336.

⁽⁵¹⁾ Report – Chapter 13, p. 337-341.

- (96) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁵²⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁵³⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁵⁴⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁵⁵⁾.
- (97) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (98) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁵⁶⁾.
- (99) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁵⁷⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (100) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (101) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (102) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (103) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

⁽⁵²⁾ Report – Chapter 6, p. 114-117.

⁽⁵³⁾ Report – Chapter 6, p. 119.

⁽⁵⁴⁾ Report – Chapter 6, p. 120.

⁽⁵⁵⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁵⁶⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparuso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jianguan, October 2016, WP/16/203.

⁽⁵⁷⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (104) No evidence was submitted to the effect that the canned mandarin sector would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (105) In their comments on final disclosure, the CCC submitted that the Commission, following a statement that state ownership of financial institutes in China and the CCP presence distorts financing and interest rate, jumps to the conclusion that agriculture and its processing sector are distorted. The CCC observed a lack of explanation on the Commission's part whether citrus fruits sector has problems accessing to finance, following which they express their view that the purposes and motivation of the EU modified trade defence instrument are to create new provisions that are not contained in WTO ADA.
- (106) In reply to these comments, the Commission pointed out that its above analysis concerning distortions according to Article 2(6a)(b), sixth indent, is based on objective evidence which was placed on the file and on which the CCC was given an opportunity to comment. On the basis of the entire body of evidence available, the Commission did not have accurate and appropriate evidence that access to finance would not be distorted. As to the CCC's comments on WTO compatibility of Article 2(6a) of the basic Regulation, these were already addressed in recitals (54) and (57)) above.

3.2.1.9. Systemic nature of the distortions described

- (107) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.1 to 3.2.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.1.6-3.2.1.8 above and in Part B of the Report.
- (108) The Commission recalls that in order to produce canned mandarin, a broad range of inputs is needed. According to evidence on the file, the cooperating exporting producer sourced all its inputs in the PRC but part of sugar. When the producers of canned mandarin purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (109) As a consequence, not only the domestic sales prices of canned mandarin are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

- (110) The analysis set out in Sections 3.2.1.2 to 3.2.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the canned mandarin sector (including the product concerned) showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (111) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.2. Representative country

(112) The choice of the representative country was based on the following criteria:

- (a) A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income similar to the PRC on the basis of the database of the World Bank;
- (b) Production of the product under investigation in that country;
- (c) Availability of relevant public data in that country;
- (d) Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(113) As explained in recitals (43) to (45), the Commission made available to the interested parties two notes to the file on the sources for the determination of the normal value. In the second FoP Note, the Commission concluded that Turkey was considered an appropriate representative country under Article 2(6a)(a), first indent, of the basic Regulation. The Commission did not receive any comments on the choice of representative country.

3.2.3. Sources used to establish undistorted costs

(114) In the first FoP Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, while for establishing undistorted costs of labour, energy and waste, the source used would depend on the selected representative country.

(115) Furthermore, based on the decision to use Turkey as the representative country as stated in the second FoP Note, the Commission informed the interested parties that it intended to use GTA to establish undistorted costs of the factors of production, the Turkish Statistical Institute for establishing undistorted costs of labour, and cost of energy.

3.2.4. Undistorted costs and benchmarks

3.2.4.1. Data used for the construction of normal value

(116) In the first and second FoP Notes, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it intended to use the following sources:

- (a) the Global Trade Atlas ('GTA') ⁽⁵⁸⁾ for raw materials;
- (b) the Turkish Statistical Institute ('Turkstat') ⁽⁵⁹⁾ for labour and electricity;
- (c) Orbis ⁽⁶⁰⁾ for the financial data of a Turkish company with regard to SG&A and profit.

(117) The following table summarises the factors of production used in the calculations with their corresponding HS codes and unit values from the GTA or the Turkish databases, including import duties and transport cost.

⁽⁵⁸⁾ <https://connect.ihs.com/gta/standardreports>

⁽⁵⁹⁾ Turkish Statistical Institute, <http://www.turkstat.gov.tr>

⁽⁶⁰⁾ <https://orbis4.bvdinfo.com/version-201866/orbis/Companies>

Table 1

Factor of Production	Turkish goods codes	Undistorted value
Raw Materials		
Citrus fruit, fresh or dried, mandarins (including tangerines and satsumas)	0805 21 10 00	5,66 CNY/kg
Cane or beet sugar and chemically pure sucrose, in solid form, not containing added flavouring or colouring matter, white sugar	1701 99 10 00	6,15 CNY/kg
Cartons, boxes and cases of corrugated paper or paperboard used in offices, shops or the like	4819 10 00 00	11,69 CNY/kg
Paper or paperboard labels of all kinds, printed, self-adhesive	4821 10 10 00	118,30 CNY/kg
Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres	4823 90 40 90	38,95 CNY/kg
Cans which are to be closed by soldering or crimping, of a kind used for preserving food, of iron or steel, of a capacity not exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	7310 21 11 00	28,26 CNY/kg
Labour		
Labour costs in manufacturing sector	[N/A]	37,70 CNY/hour
Energy		
Electricity	[N/A]	0,52 CNY/kWh

3.2.4.2. Raw materials and scrap

- (118) For all raw materials, in the absence of any information on the market of the representative country, the Commission relied on import prices. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC. Similarly, import data on imports in the representative country from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and of the Council⁽⁶¹⁾ were also excluded. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible. The Commission decided to exclude imports from the PRC into the representative country as it concluded as stated in Section 3.2.1.10 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. The Commission found that imports from other third countries remained representative ranging from 70 % to 100 % of total volumes imported to Turkey.

⁽⁶¹⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33) and Commission Delegated Regulation (EU) 2017/749 of 24 February 2017 amending Regulation (EU) 2015/755 of the European Parliament and of the Council as regards the removal of Kazakhstan from the list of countries in Annex I thereto (OJ L 113, 29.4.2017, p. 11).

(119) The Commission sought to establish the undistorted price of raw materials used in the production of canned mandarin, as delivered at the gate of the exporting producer's factory as required by Article 2(6a)(a), first indent, of the basic Regulation. To do so, it applied the import duty of the representative country to each respective country of origin and added domestic transport costs to the import price. The domestic transport costs for all raw materials were estimated based on the data provided by the cooperating exporting producers and, for confidentiality reasons, are not included in the list of benchmarks mentioned in Table 1.

3.2.4.3. Labour

(120) The Commission identified labour cost statistics from the Turkish Statistical Institute which publishes detailed information on wages in different economic sectors in Turkey. The Commission used the wages reported in the Turkish manufacturing sector for 2016 (the most recent available), for the economic activity C.10 (Manufacture of food products) according to NACE Rev.2 classification in Turkey to establish the undistorted costs of labour⁽⁶²⁾ according to NACE Rev.2 classification⁽⁶³⁾. This information does not allow a distinction between blue and white collars. As was done in previous investigations, the 2016 average monthly value would be duly adjusted for inflation using the domestic producer price index⁽⁶⁴⁾ as published by the Turkish Statistical Institute.

3.2.4.4. Electricity

(121) To establish a benchmark for electricity the Commission used the electricity tariffs published by Turkish Statistical Institute⁽⁶⁵⁾. The Commission used the data of the industrial electricity prices in the corresponding consumption band.

3.2.4.5. Consumables/negligible quantities

(122) Due to the large number of factors of production and the total negligible weight of some of the raw materials in the total cost of production (such as citric acid, liquid alkali, hydrochloric acid, calcium lactate, various packing materials), representing in total less than 2 % of the total manufacturing costs and the fact that dumping was already established on the basis of the other main factors of production, the Commission calculated the normal value on the basis of the following factors: satsumas, sugar, tin can, cover, carton, paper tray and paper label. The remaining factors of production were grouped under consumables.

(123) The Commission calculated the percentage of the consumables on the total cost of raw materials on the basis of the cooperating exporting producer and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

3.2.4.6. Manufacturing overhead costs, SG&A and profits

(124) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the cost of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted cost of manufacturing.

(125) For SG&A and profit, the Commission used the financial data of a Turkish producer⁽⁶⁶⁾ publicly available for the period January-December 2019 as announced in the second FoP Note.

(126) As a result, the following items were added to the undistorted cost of manufacturing:

(a) SG&A of 10,40 % expressed on the cost of goods sold applied to the sum of costs of manufacturing;

(b) A profit of 18,30 % expressed on the cost of goods sold applied to the costs of manufacturing.

⁽⁶²⁾ http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab_id=2090, as last accessed on 24 March 2020.

⁽⁶³⁾ This is a statistical classification of economic activities used by Eurostat, <https://ec.europa.eu/eurostat/web/nace-rev2>, as last accessed on 24 March 2020.

⁽⁶⁴⁾ http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab_id=2104, as last accessed on 24 March 2020.

⁽⁶⁵⁾ <http://www.turkstat.gov.tr> => Press releases => select Electricity and Natural Gas prices as last accessed on 24 March 2020.

⁽⁶⁶⁾ FRİGO-PAK GIDA MADDELERİ SANAYİ VE TİCARET A.Ş.

3.2.4.7. Calculation of the normal value

- (127) In order to establish the constructed normal value, the Commission took the following steps:
- (128) Firstly, the Commission established the undistorted costs of manufacturing of canned mandarin. It applied the undistorted unit costs to the actual consumption of the individual factors of production to the cooperating group of exporting producers.
- (129) Secondly, the Commission added to the undistorted costs of manufacturing of canned mandarin the manufacturing overheads determined as described above to arrive at the undistorted costs of production.
- (130) Finally, to the undistorted costs of production established, the Commission applied SG&A and profit as explained in recital (126).
- (131) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.3. Export price for the cooperating group of exporting producers

- (132) During the review investigation period, the cooperating group of exporting producers exported the product under review directly to independent customers in the Union. Therefore, the export price was the price actually paid or payable for the product under review when sold for export to the Union in accordance with Article 2(8) of the basic Regulation.

3.4. Comparison and dumping margin

- (133) The Commission compared the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation with the export price on an ex-works basis.
- (134) Where justified by the need to ensure a fair comparison, the Commission adjusted the export price for differences affecting price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for inland transport, handling, loading and ancillary expenses ranging from 2 % to 8 %, credit cost ranging from 0,1 % to 3 %, commissions ranging from 0,1 % to 3 % and bank charges ranging from 0,1 % to 3 %.
- (135) When justified, the Commission adjusted the constructed normal value with the percentage of VAT not refunded on its export sales.
- (136) The Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (137) On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 184 % for the Yiguan group.

3.5. Dumping by the non-cooperating exporting producers

- (138) The Commission also computed the average dumping margin for the non-cooperating exporting producers. The Commission used facts available in accordance with Article 18 of the basic Regulation.
- (139) First, to establish the normal value, the Commission used the average normal value of the cooperating group of exporting producers. Second, to establish the export price the Commission used the Article 14(6) database after deducting the exports of the cooperating group of exporting producers. For the purpose of comparison, the Commission adjusted the export price to the ex-works level by using the average verified allowances, including the transport costs, of the cooperating group of exporting producers.
- (140) On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 206 %.
- (141) There is therefore no doubt that dumping continued during the review investigation period.

3.6. Conclusion on continuation of dumping

(142) The Commission therefore concluded that dumping continued during the review investigation period.

3.7. Evidence of likelihood of continuation of dumping from the PRC

(143) Further to the finding of the existence of continuation of dumping during the review investigation period, the Commission analysed whether there was a likelihood of continuation of dumping should the measures be allowed to lapse. When doing so, it looked into the Chinese production capacity and spare capacity, the behaviour of Chinese exporters on other markets, the situation on the domestic market of PRC and the attractiveness of the Union market.

(144) As mentioned above, only five Chinese exporting producers or groups of exporting producers came forward and filled in the Annex I of the Notice of Initiation. The information available to the Commission on production and spare capacity from Chinese exporting producers was, therefore, limited.

(145) For this reason, most of the findings set out below concerning the continuation or the recurrence of dumping had to be based on other sources, that is, Eurostat and GTA databases and the information submitted by the CCC and the Union Industry in the review request. The analysis of that information revealed the following.

3.7.1. Production and spare capacity in the PRC

(146) China is by far the world's largest canned mandarin producing country with estimated production between 540 000 to 700 000 tonnes ⁽⁶⁷⁾.

(147) As concerns the total Chinese production capacity and spare capacity, the Commission did not obtain overall information for PRC. Thus, the Commission made its findings based on the information submitted by the five producers/group of producers that replied to the sampling questionnaire. The Chinese spare capacity reported by the five producers/group of producers was around 40-60 000 tonnes (i.e. around 40 % of their production capacity) which is already higher the total sales volume of the Union industry.

3.7.2. Behaviour of Chinese exporters on the third countries' markets

(148) The Chinese export price to third country markets was established during the RIP on the basis of data available from GTA export statistics ⁽⁶⁸⁾, namely on the basis of the quantities and values of exports from the PRC (at FOB level). The Union is the third most important export market for the Chinese exporting producers. The average unit price to the Union is USD 1,17 per kilo. The first and the second most important export markets are the USA and Japan. The average unit price is USD 1,19 and 1,15 per kilo respectively.

(149) According to GTA and the CCC, the volume of exports to the USA decreased significantly between 2018 and 2019, from 195 066 tonnes to 139 682 tonnes (a difference of 55 384 tonnes equivalent to the total Union consumption). This decrease is mainly explained by the imposition of the additional tariff of 25 % on canned mandarin (part of the larger package of tariffs imposed by the US Section 301 measures on Chinese imports) ⁽⁶⁹⁾.

⁽⁶⁷⁾ Information provided by China Chamber of Commerce of Import & Export for Foodstuffs, Native produce and Animal by-products stated that China is the largest manufacturer and exporter of canned mandarin with an annual production of around 600 000-700 000 tonnes while a USDA Foreign Agricultural Service estimated the consumption for processing in 2018/2019 at around 540 000 tonnes. In April 2020, they were about 160 canned mandarin manufacturers in China (they were more than 270 in 2015).

⁽⁶⁸⁾ The database lists more than 200 export destinations.

⁽⁶⁹⁾ <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/200-billion-trade-action>.

3.7.3. Attractiveness of the Union market

- (150) The Union market is significantly smaller than the available spare capacities of the Chinese producers. Moreover, due to the trade issues with the USA ⁽⁷⁰⁾, the Chinese producers have lost around 55 000 tonnes of exports to the USA which can be easily redirected to the Union market. This volume is significantly higher compared to the Union consumption. Before the introduction of the AD measures, the Union was a traditional market for China, they exported more than three times the volume they are currently exporting to the Union. The average export price to the Union market (USD 1,17/kg) is slightly higher than to Japan (USD 1,15/kg) but significantly higher as compared to the price to Thailand (USD 1,04/kg). Note also that the price to the USA (USD 1,19/kg) is in a similar range as the one to the Union.
- (151) In summary, in view of the large production capacity available in China (and thus the ability to increase rapidly its production volumes) and its past dumping practice, it is reasonable to conclude that the repeal of the current measures would result in an increase of Chinese dumped imports into the Union market.

3.8. Conclusion on the likelihood of continuation of dumping

- (152) In view of the above, the Commission concluded that there is a likelihood that dumping would continue if the current measures were allowed to lapse. In particular the level of the normal values established for the Chinese exporters/producers, the level of export prices of the cooperating producer to third country markets, the attractiveness of the Union market and the availability of significant production capacity in the PRC point to a strong likelihood of continuation of dumping in case the current measures were repealed.

3.9. Likelihood of recurrence of dumping

- (153) As mentioned in recital (165), the Chinese imports remained significant compared to Union consumption during the review investigation period. The investigation showed that Chinese imports continued to enter the Union market at dumped prices. Moreover, the dumping margins found are confirmed by the analysis of export prices to other third countries, which appear to be even lower as described in recital (150). In view of the elements examined in Sections 3.7.2 and 3.7.3, the Commission also concluded that it is highly likely that Chinese producers would export significant quantities of the product concerned to the Union at dumped prices, should the measures lapse. Thus, there is evidence of likelihood of continuation of dumping and, in any event, of likelihood of recurrence of dumping should the measures lapse.

4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

4.1. General remarks

- (154) Mandarins are harvested in autumn and winter, with the harvesting and processing season starting early October and finishing around the end of January (for certain varieties, February or March) the following year. Most purchase sales contracts are negotiated in the first months of each season. The practice in the canned mandarin industry is to use the season (the period from 1 October in one year to 30 September in the following year) as the basis for comparisons. As in the original investigation, the Commission adopted this practice in its analysis.

4.2. Definition of the Union industry and Union production

- (155) During the review investigation period, two cooperating Union producers manufactured the like product. Until the end of 2017/2018 season there were three Union producers. The third Union producer ⁽⁷¹⁾ ceased production as of the end of the 2017/2018 season. Data concerning this former producer was included in some macro indicators in accordance with the standard practice of the Commission to include all known figures related to the period considered for the purpose of the injury analysis in order to achieve the best-informed representation of the economic situation of the Union industry as prescribed in Article 4(1) of the basic Regulation.

⁽⁷⁰⁾ In September 2018, the United States imposed additional tariffs of 25 percent on preserved citrus from PRC as part of a larger package of tariffs on \$200 billion of Chinese imports.

⁽⁷¹⁾ COFRUSA

- (156) The total Union production of the like product was established based on the questionnaire replies provided by the two cooperating Union producers for the period considered. The production of the former producer was based on the information submitted in the complaint by Fenaval and is reflected until the 2017/2018 season.
- (157) On the basis of the above the Commission concluded that the two cooperating Union producers accounting for the total Union production constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (158) As the Union industry is constituted of only two producers, all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality.
- (159) During the review investigation period the Union production was established to be between 18 000 and 24 000 tonnes.

4.3. Apparent Union consumption

- (160) The Commission established the Union consumption based on the sales volumes of the Union industry on the Union market and import data from Eurostat. While the production of the product subject to investigation is seasonal, the consumption is evenly spread during the year.
- (161) On this basis, during the period considered the Union consumption developed as follows:

Table 2

Union consumption

	2015/2016	2016/2017	2017/2018	RIP
Union consumption (tonnes)	48 000-64 000	56 000-60 000	45 000-60 000	47 000-63 000
<i>Index (2015/2016 = 100)</i>	100	118	94	99

Source: The complaint, the questionnaire replies of Union producers, Eurostat

- (162) During the period considered the Union consumption fluctuated in function of the quality of the harvest in the Union.

4.4. Imports from the country concerned

4.4.1. Volume and market share of the imports from the country concerned

- (163) The Commission established the volume of imports on the basis of the Eurostat database. The market share of the imports was established by comparing import volumes with the Union consumption as reported in Table 2 above.
- (164) Imports into the Union from the PRC developed as follows:

Table 3

Import volume and market share

	2015/2016	2016/2017	2017/2018	RIP
Volume of imports from the PRC (tonnes)	29 392	27 604	23 527	19 152
<i>Index (2015/2016 = 100)</i>	100	94	80	65
Market share PRC (in %)	61-46	49-37	52-39	41-30
<i>Index (2015/2016 = 100)</i>	100	80	85	66

Source: Eurostat

- (165) In the period considered, import volumes from PRC decreased by 35 %. Similarly to the import volume, the Chinese market share followed a downward trend during the period considered, dropping by 34 %. Despite this decreasing trend, the market share of the product concerned remained significant.

4.4.2. Prices of the imports from the country concerned and price undercutting

- (166) The Commission established the trend of the prices of Chinese imports on the basis of Eurostat statistics. The average price of imports into the Union from the PRC developed as follows:

Table 4

Import prices

	2015/2016	2016/2017	2017/2018	RIP
Average price of Chinese imports (EUR/tonne)	968	994	1 025	1 123
Index (2015/2016 = 100)	100	103	106	116

Source: Eurostat

- (167) As reflected in the above table, over the period considered the prices of Chinese imports increased steadily, and overall by 16 %.
- (168) Since the import volume of the only cooperating exporter represented around 45-65 % (ranges given for reason of confidentiality) of the Chinese imports during the review investigation period, the existence of price undercutting has been examined also for the overall Chinese exports, based on import statistics.
- (169) For this purpose, the weighted average sales prices of the cooperating Union producers to unrelated customers on the Union market were compared to the corresponding weighted average CIF (cost, insurance and freight) prices of imports from PRC as reported by Eurostat. These CIF (cost, insurance and freight) prices were adjusted to cover costs related to customs clearance, namely customs tariff and post-importation costs. In reply to a comment received from the CCC on final disclosure, the Commission confirmed that for its undercutting analysis the applicable anti-dumping duty was not added to the weighted average CIF values.
- (170) On that basis, the comparison showed that during the review investigation period the imports of the product concerned undercut the Union industry's prices by 9-11 % when import prices are considered without anti-dumping duties. When taking into account anti-dumping duties the Commission found no undercutting for the review investigation period.
- (171) When considering the import prices reported by the Chinese cooperating exporter only, duly adjusted, an undercutting margin ranging between 9-11 % could be established during the review investigation period, without taking into account anti-dumping duties in force. Once again, when taking into account anti-dumping duties the Commission found no undercutting.

4.5. Imports into the Union from other third countries

- (172) Over the period considered the volume of imports from other third countries grew significantly. Most of these imports (82 % during period considered) were from Turkey.

Table 5

Imports from other third countries

	2015/2016	2016/2017	2017/2018	RIP
Volume of imports from other third countries (tonnes)	9 416	12 660	15 552	21 827
Index (2015/2016 = 100)	100	134	165	232
Market share (in %)	20-15	23-17	35-26	46-35
Index (2015/2016 = 100)	100	114	175	233

Source: Eurostat

- (173) The sales of Turkish exporters and producers in the Union market have increased over the period considered. However, despite this growth, Chinese exporting producers remain the largest supplier of the product concerned in the Union in the review investigation period.

4.6. Economic situation of the Union industry

4.6.1. General remarks

- (174) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (175) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, growth, market share, employment, productivity and magnitude of dumping margins) were determined at the level of the whole Union industry. To this end the Commission used information provided in the complaint, data collected from the Union producers before and after the initiation of the investigation, and the questionnaire responses of the Union producers. As mentioned in recital (156), in case of the third producer that ceased operating as of the end of the 2017/2018 season, the Commission took into consideration data provided by Fenaval in the complaint.
- (176) The analysis of microeconomic indicators (sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, inventories, wages and cost of production) was carried out at the level of the two cooperating Union producers in the review investigation period.

4.6.2. Macroeconomic indicators

4.6.2.1. Production, production capacity and capacity utilisation

- (177) The total Union production, production capacity and capacity utilisation developed for the three Union producers active over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation

	2015/2016	2016/2017	2017/2018	RIP
Production volume (tonnes)	18 000-25 000	25 000-34 000	12 000-16 000	18 000-24 000
<i>Index (2015/2016 = 100)</i>	100	137	67	97
Production capacity (tonnes)	66 000-88 000	66 000-88 000	66 000-88 000	46 000-62 000
<i>Index (2015/2016 = 100)</i>	100	100	100	71
Capacity utilisation (%)	28,3	38,8	19,1	38,9

Source: The complaint and questionnaire replies of Union producers.

- (178) During the period considered, the Union aggregated production volume remained on average stable, with fluctuations linked to the quality of harvest (2016/2017 had a particularly good harvest and following one had a bad one) and the fact that the third Union producer ceased production at the end of the 2017/2018 season. Therefore, in the review investigation period only the two cooperating Union producers produced the product concerned.
- (179) The capacity utilisation rate systematically remained below 50 % during the period considered. This relatively low rate is explained by the fact that the main raw material used by the producers of canned mandarins is fresh fruit, which deteriorates quickly. Consequently, capacity has to be available at the peak of the harvest to be able to process the fresh fruit in a relatively short period of time.

4.6.2.2. Sales volume and market share

- (180) The Union industry's sales volume and market share on the Union market developed for the three Union producers active over the period considered as follows:

Table 7

Sales volume and market share

	2015/2016	2016/2017	2017/2018	RIP
Sales volume (tonnes)	15 000-20 000	22 000-30 000	12 000-16 000	13 000-17 000
<i>Index (2015/2016 = 100)</i>	100	146	81	86
Market share (in %)	32	40	28	28

- (181) Sales by the Union industry have, in general, followed a similar pattern as Union production. Overall, the Union industry's sales dropped by 14 % between the season 2015/2016 and the review investigation period, even though consumption remained relatively stable during that same period. In addition, the market share of the Union industry decreased by 4 percentage points.

4.6.2.3. Employment and productivity

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

Table 8

Employment and productivity

	2015/2016	2016/2017	2017/2018	RIP
<i>Index (2015/2016 = 100)</i>	100	120	106	118
Productivity (tonne per employee)	60-80	60-90	30-50	50-60
<i>Index (2015/2016 = 100)</i>	100	114	64	83

Source: Complaint and questionnaire replies of Union producers.

- (183) The overall employment increased by 18 % over the period considered. Productivity expressed by production volume per employee decreased during the period considered and dipped to its lowest point in season 2017/2018 when one of the Union producers ceased its activity. In this respect, the Commission noted that the productivity of this industry is influenced by the quality and the quantity of the available fresh fruit meaning that in a year when the harvest is good productivity goes up and when the harvest is bad productivity goes down. The season 2016/2017 was a particularly good one for citrus fruit, hence productivity was the highest in that season.

4.6.2.4. Growth

- (184) The Union consumption fluctuated during the period considered, while the sales volume of the Union industry on the Union market decreased by 14 %, partially due to one producer closing down during the period considered. The Union industry thus lost market share (4 percentage points), as did the market share of the imports from the country concerned (17 percentage points).

4.6.3. Microeconomic indicators

4.6.3.1. Prices and factors affecting prices

- (185) The average unit sales price (EUR/tonne) of the Union producers on the Union market developed over the period considered as follows:

Table 9

Sales prices on the free market in the Union

	2015/2016	2016/2017	2017/2018	RIP
Sales price (EUR/tonne)	1 340-1 450	1 330-1 450	1 390-1 510	1 410-1 530
<i>Index (2015/2016 = 100)</i>	100	99	103	104
Unit cost of production (EUR/tonne)	1 310-1 420	1 300-1 410	1 580-1 710	1 320-1 430
<i>Index (2015/2016 = 100)</i>	100	99	120	100

Source: Questionnaire replies of Union producers

- (186) The table above also shows the evolution of the average unit sales price on the Union market as compared with the corresponding cost of production. Sales price increased by 4 % during the period considered, while the cost of production remained relatively stable during the same period. The cost of production exceptionally peaked in the 2017/2018 season because of a bad harvest.
- (187) Overall the Union industry managed to contain production costs and increase their sales prices during the period considered by 4 %, thereby ensured that their profitability improved significantly during the period considered.

4.6.3.2. Labour costs

- (188) The average labour cost of the Union producers developed over the period considered as follows:

Table 10

Average labour cost per employee

	2015/2016	2016/2017	2017/2018	RIP
Average labour cost per employee (EUR)	21 380-23 200	21 450-23 270	20 850-22 630	21 680-23 530
<i>Index (2015/2016 = 100)</i>	100	100	97	101

Source: Questionnaire replies of Union producers

- (189) The average labour cost per employee remained stable throughout the period considered, largely escaping the adversities related to season 2017/2018.

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

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

Table 11

Profitability, cash flow, investments and return on investment

	2015/2016	2016/2017	2017/2018	RIP
Profitability of sales in the Union on the free market (% of sales turnover)	1,6-2,2	1,8-2,4	- 11,7- - 12,9	4,2-5,8
<i>Index (2015/2016 = 100)</i>	100	109	- 583	262
Cash flow-	550 000-600 000	780 000-850 000	-1 440 000- -1 320 000	1 590 000- 1 730 000

<i>Index (2015/2016 = 100)</i>	100	141	- 238	287
Investments	920 000- 1 140 000	1 260 000- 1 550 000	430 000- 530 000	1 500 000- 1 840 000
<i>Index (2015/2016 = 100)</i>	100	137	47	161
Return on investment	100	119	- 460	280

Source: Questionnaire replies of Union producers

- (191) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product on the Union market as a percentage of the turnover of those sales.
- (192) Profitability improved significantly over the period considered. Profitability figures show a steep decrease in season 2017/2018. In line with what has been explained before, the 2017/2018 season was loss making largely due to particularly harsh weather conditions, and the corresponding higher costs incurred. However, the Union industry returned to profitability during the review investigation period, and nearly reached its target profit of 6,8 %.
- (193) The net cash flow is the ability of the Union producers to self-finance their activities. During the period considered the evolution of the cash flow mainly corresponded to the development of the profitability of the Union industry for the product concerned.
- (194) During the period considered the Union industry made investments for the maintenance and optimisation of the existing production machinery, in order to contain costs. The level of investment increased especially in the review investigation period, most likely favoured by the level of profit expected during that season, anticipated by early prospects of a good harvest. Investments were also made to improve the compliance with environmental regulations.
- (195) The return on investments during the period considered followed closely the profitability trend.

4.6.3.4. Inventories

- (196) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 12

Inventories

	2015/2016	2016/2017	2017/2018	RIP
Closing stocks (tonnes)	2 300-2 700	3 100-3 610	1 800-2 110	4 400-5 060
<i>Index (2015/2016 = 100)</i>	100	133	78	187

Source: Questionnaire replies of Union producers

- (197) The Union producers increased their stock significantly during the RIP. While the Union industry built up significant stocks during the review investigation period, it is also noted that they reached healthy profit at the same time. Maintaining certain level of stocks are necessary in order to cover sales just before the production starts from the new harvest. Hence, it cannot be considered as a sign of injurious situation.

4.6.3.5. Magnitude of the dumping margin and recovery from past dumping

- (198) The dumping margins found were significantly above the *de minimis* level and the current level of measures (see recital (137) above). Moreover, given the spare capacity and prices of imports from the PRC (see recitals (147) and (167)), the impact of the actual margins of dumping on the Union industry cannot be considered negligible.

(199) The original measures were imposed in December 2008. In the review investigation period the Union industry achieved for the first time since then a yield close to the 6,8 % target profit as determined in the original investigation. Taking into account the overall situation of the Union industry as well and the still significant volumes of imports from the PRC in recent years, it can be concluded that the Union industry is still fragile and vulnerable.

4.6.4. Conclusion on material injury

(200) The Union industry has recovered from the effects of past injurious dumping. The measures in force have helped curbing dumped imports, and with that concern considered contained, the Union industry is looking up again. As such, measures have also helped the Union industry to focus on fair competing in an environment where the number of international newcomers is growing rapidly. Lastly, the duties in force were a factor in the investments decisions made throughout the period considered.

(201) Nevertheless, it cannot be concluded that the situation of the Union industry is secure. While certain injury indicators relating to the financial performance of the Union producers – notably profitability, investments and return on investments and cash-flow – indicate a more stable picture, these are not consolidated achievements. Other injury indicators – in particular sales volume, market share and production – have hardly changed. Globally assessed, the indicators clearly show that there are signs of improvement but the industry remains rather fragile.

(202) Given the above, it is concluded that the Union industry has not suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation.

(203) In its submission to the final disclosure the CCC submitted several comments regarding the economic situation of the Union industry and pointed to factors, such as the general climate, imports from Turkey, that could have contributed to the Union industry's injurious situation. However, as stated above in recital (202) the Commission established that the Union industry did not suffer material injury. Therefore, these comments are moot.

5. LIKELIHOOD OF RECURRENCE OF INJURY

(204) Since the Union industry did not suffer material injury during the review investigation period, the Commission assessed whether there would be a likelihood of recurrence of injury originally caused by dumped imports from the PRC should measures against the PRC be allowed to lapse in accordance with Article 11(2) of the basic Regulation.

(205) The Union market for canned fruit is currently stable and competitive. The investigation showed that there do not appear to be any factors threatening the domestic industry such as a contraction in demand, changes in the pattern of consumption, developments in technology or export performance. In addition, during the investigation the Union industry claimed not to fear from the recent rise of imports from third countries other than the PRC because producers from third countries compete at fair prices and their capacity is limited.

(206) To determine whether this fear is genuine, the Commission examined the production volumes and spare capacities in the PRC, the attractiveness of the Union market and the possible impact of the price development of Chinese import volumes and prices as well as the impact of such development on the Union industry's sales volumes, prices and profitability.

5.1. Production and spare capacity in the PRC

(207) As already detailed in recitals (146) to (147) above, significant spare capacities are available at the PRC. The PRC is the largest producer of fresh mandarins in the world, and its exporting producers are capable of supplying markets several times the size of the Union's. These producers have a strong orientation and an incentive to sell their products in large volumes on export markets. The recent past also shows that Chinese exporting producers can adapt swiftly to supply the Union market with dumped imports. It must be recalled that imports of the product concerned originating in PRC rose exponentially after the annulment judgment that rendered the original Regulation invalid in March 2012 ⁽⁷²⁾.

⁽⁷²⁾ Implementing Regulation (EU) No 1313/2014, recital (63).

5.2. Impact of Chinese dumping on the Union industry

- (208) Regarding import price levels, the investigation showed that should the measures in force be repealed and assuming that import price from the country concerned and the price of the Union industry would remain the same as during the review investigation period, the import prices would undercut the prices of the Union industry 9-11 % (all types of product concerned). As a consequence, the Union industry is likely to lose sales volume as well as market shares on the Union market.
- (209) The Commission performed a simulation to assess the likely impact of an increase of Chinese import volumes were likely to have on the Union industry. As soon as the Union industry's sales and production volume decrease by 6 200 tons as a result of an increase in Chinese canned mandarins imports, the unit cost of production increases by 7,1 %, deteriorating the situation of the Union producers and rendering them loss-making. This volume increase would be easily achievable for the Chinese exporting producers given their large spare capacity, as established in Section 3.7.1 above.
- (210) Given that 82 % of imports from third countries other than the PRC come from Turkey, it cannot be excluded that the dumped Chinese canned mandarins would replace some of these import volumes. At the same time, the average sales price of Turkish imports to the Union is below the average sales price of the Union industry meaning that if dumped Chinese canned mandarins would increase on the Union market, it would most likely first increase market share at the expense of the Union industry, before taking over the market share of the exports from Turkish producers to the Union. However, in any event, given the spare capacity of the Chinese producers they could easily overtake both the market share of the other third countries (including Turkey) and the Union producers'.

5.3. Attractiveness of the Union market

- (211) The size of the Union market – being the third biggest in the world – is clearly an important factor contributing to its attractiveness. In addition, the fact that imports from the PRC have continued despite the measures in force shows that Chinese exporting producers find the Union market attractive and are keen to continue selling on it. Furthermore as observed after the annulment judgment that rendered the original Regulation invalid in March 2012, there is an incentive for Chinese exporting producers to shift exports from other third countries to the higher priced Union market in case of repeal of the measures in force. Moreover, Chinese exporting producers are now subject to additional tariffs of 25 % on shipments to their largest export market, the United States⁽⁷³⁾. These new tariffs are the result of the ongoing trade tensions between PRC and the United States. They are part of the tariff actions undertaken by the United States under its current Section 301 investigation concerning China⁽⁷⁴⁾.
- (212) In view of the above, the repeal of measures would in all likelihood result in immediate and drastic price pressure from the PRC, backed with significant available stocks and capacities. This would force the Union industry to reduce its prices or volumes. If the industry reduced its prices, it would see its profits turning into losses in the short term. If the industry lost sales volumes, its unit costs would increase and reduce profitability even further. In the long term the Union industry would have to adapt (reduce) its production capacities.
- (213) Given the relatively fragile situation of the Union industry as explained in recital (201) above, combined with the increase in the current volumes of dumped Chinese imports at a high rate is likely to have an injurious impact on the state of the Union industry, leading to a rapid deterioration of its the financial situation.

⁽⁷³⁾ See 'China: Citrus Annual', FAS (USDA), 14 December 2018, cited above in fn. 67, p. 9.

⁽⁷⁴⁾ See 'Section 301 – China', Office of the United States Trade Representative (the 'USTR'); available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china> and accessed on 24 July 2019.

5.4. Conclusion

- (214) In view of the above, the repeal of measures would in all likelihood result in immediate and drastic volume and price pressure from the PRC, due to significant available free capacities. This would force the Union industry to reduce its prices or volumes. If the industry reduces its prices, it would see its profits turning into losses in the short term. If the industry loses sales volumes, it will lose market share and its unit costs would increase and reduce or erase its profitability.
- (215) Given the situation of the Union industry as described, should measures be allowed to lapse, the Union industry is likely to suffer a rapid deterioration of its financial situation – no matter whether they choose to compete on volume or on price. Therefore, the Commission concluded that the repeal of the measures would in all likelihood result in a recurrence of injury to the Union industry.

6. UNION INTEREST

6.1. Preliminary remarks

- (216) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing measures against the PRC 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.

6.2. Interest of the Union industry

- (217) Throughout the period considered, the Union industry was able to return to profitable figures again. Should measures be repealed, the Union industry would be in a much worse situation, as described under Section 5 above (Likelihood of recurrence of injury). Indeed considering the expected volumes and prices of imports of the product concerned from the PRC, the Union industry would be put at serious risk in terms of lower sales prices (price depression) and a likely return to lossmaking (see recital (212)). New investments aimed at consolidating the companies and improving their competitiveness on the market of the like product would be hindered as well.
- (218) Thus, the continuation of measures would be in the interest of the Union industry, which could in this case further recover from the effect of continuous dumping. In contrast, the discontinuation of the measures would put a stop to the rehabilitation of the Union industry, seriously threatening its viability, and, as a result, putting its existence at risk, thus reducing supply and competition in the market.

6.3. Interest of unrelated importers/traders

- (219) The Commission sent questionnaires to four unrelated importers/traders. Only one of these companies partially replied.
- (220) On this basis, there were no indications that the maintenance of the measures would have a significant negative impact on the importers outweighing the positive impact of the measures on the Union industry.

6.4. Interest of users

- (221) The Commission sent questionnaires to two users of the product concerned. Only one of these users sent back an incomplete questionnaire.
- (222) On this basis, there were no indications that the maintenance of the measures would have a significant negative impact on the users outweighing the positive impact of the measures on the Union industry.

6.5. Conclusion on Union interest

- (223) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC.
- (224) The Commission informed all interested parties of the essential facts and considerations based on which it intended to maintain the existing measures of the current anti-dumping measures on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the PRC.

7. ANTI-DUMPING MEASURES

- (225) It follows from the above that the anti-dumping measures applicable to certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in China should be maintained.
- (226) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (227) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (228) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, [a percentage may be introduced, depending on the case] such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (229) If a company with an individual anti-dumping rate subsequently changes the name of its entity, it may request the continued application of this rate. The request must be addressed to the Commission ⁽⁷⁵⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it.
- (230) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁷⁶⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (231) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

⁽⁷⁵⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁷⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of prepared or preserved mandarins (including tangerines and satsumas), clementines, wilkings and other similar citrus hybrids, not containing added spirit, whether or not containing added sugar or other sweetening matter, and as currently defined under HS heading 2008, currently falling under CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67 and 2008 30 90 69) and originating in the People's Republic of China.
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	EUR/Tonne net product weight	TARIC additional code
Yichang Rosen Foods Co., Ltd, Yichang, Zhejiang	531,2	A886
Zhejiang Taizhou Yiguan Food Co. Ltd, Huangyan, Zhejiang	361,4	A887
Hubei Xinshiji Foods Co., Ltd, Dangyang City, Hubei Province	489,7	A888
Zhejiang Juzhou Foods Co., Ltd, Sanmen, Zhejiang	499,9	C528
Cooperating exporting producers not included in the sample listed in the Annex	499,6	A889
All other companies	531,2	A999

3. The application of the individual duty rate specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States 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 [product concerned] sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

Article 2

1. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted for the determination of the customs value pursuant to Article 132 of Commission Implementing Regulation (EU) 2015/2447 ⁽⁷⁾ the amount of anti-dumping duty, calculated on the basis of Article 1 above, shall be reduced by a percentage which corresponds to the adjustment of the price actually paid or payable.
2. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

Article 1(2) may be amended by adding a new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 499,6 EUR/Tonne net product weight where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that it:

- (a) did not export to the Union the product described in Article 1(1) during the original investigation period (1 October 2006 to 30 September 2007);

⁽⁷⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

- (b) is not related to any of the exporting producers in the People's Republic of China which are subject to the measures imposed by this Regulation; and
- (c) has either actually exported to the Union the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the review investigation period.

Article 4

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

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

Done at Brussels, 21 October 2020.

For the Commission
The President
Ursula VON DER LEYEN

—

ANNEX

Cooperating Chinese exporting producers not included in the sample:

- Hunan Pointer Foods Co., Ltd., Yongzhou, Hunan
 - Ningbo Pointer Canned Foods Co., Ltd, Xiangshan, Ningbo
 - Yichang Jiayuan Foodstuffs Co., Ltd, Yichang, Hubei
 - Ninghai Dongda Foodstuff Co., Ltd, Ningbo, Zhejiang
 - Huangyan No 2 Canned Food Factory, Huangyan, Zhejiang
 - Zhejiang Fomdas Foods Co., Ltd, Xinchang, Zhejiang
 - Toyoshima Share Yidu Foods Co., Ltd, Yidu, Hubei
 - Guangxi Guiguo Food Co., Ltd, Guilin, Guangxi
 - Zhejiang Juda Industry Co., Ltd, Quzhou, Zhejiang
 - Zhejiang Iceman Group Co., Ltd, Jinhua, Zhejiang
 - Ningbo Guosheng Foods Co., Ltd, Ninghai
 - Yi Chang Yin He Food Co., Ltd, Yidu, Hubei
 - Yongzhou Quanhui Canned Food Co., Ltd, Yongzhou, Hunan
 - Ningbo Orient Jiuzhou Food Trade & Industry Co., Ltd, Yinzhou, Ningbo
 - Guangxi Guilin Huangguan Food Co., Ltd, Guilin, Guangxi
 - Ningbo Wuzhouxing Group Co., Ltd, Mingzhou, Ningbo
-