

**COMMISSION IMPLEMENTING DECISION (EU) 2016/176****of 9 February 2016****terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> and in particular Article 9 thereof,

Whereas:

**1. PROCEDURE****1.1. MEASURES IN FORCE**

- (1) Following an anti-dumping investigation under Article 5 of Regulation (EC) No 1225/2009 ('the basic Regulation') concerning imports of tartaric acid originating in the People's Republic of China ('the PRC' or 'the country concerned'), anti-dumping measures were imposed by Council Regulation (EC) No 130/2006 <sup>(2)</sup> ('the original investigation'). The measures applied to all exporting producers of tartaric acid originating in the PRC, with the exception of Hangzhou Bioking Biochemical Engineering Co. Ltd, for which a zero duty rate was applied.
- (2) In line with the WTO Appellate Body report in case Mexico — Definitive Anti-dumping Measures on Beef and Rice ('the WTO Appellate Body report') <sup>(3)</sup>, by Council Implementing Regulation (EU) No 332/2012 <sup>(4)</sup> the Chinese exporting producer Hangzhou Bioking Biochemical Engineering Co. Ltd was excluded from subsequent reviews of the measures as imposed by Regulation (EC) No 130/2006.
- (3) The original measures were subsequently subject to different review investigations <sup>(5)</sup>. As a result, the measures in force are a countrywide duty of 34,9 % and two individual duty rates for two individual Chinese exporting producers of 4,7 % and 10,1 %, respectively <sup>(6)</sup>.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> Council Regulation (EC) No 130/2006 of 23 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China (OJ L 23, 27.1.2006, p. 1).

<sup>(3)</sup> WT/DS295/AB/R, 29 November 2005, AB-2005-6

<sup>(4)</sup> Council Implementing Regulation (EU) No 332/2012 of 13 April 2012 amending Regulation (EC) No 130/2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China, and excluding company Hangzhou Bioking Biochemical Engineering Co., Ltd from the definitive measures (OJ L 108, 20.4.2012, p. 1).

<sup>(5)</sup> Council Regulation (EC) No 150/2008 of 18 February 2008 amending the scope of the anti-dumping measures imposed by Regulation (EC) No 130/2006 on imports of tartaric acid originating in the People's Republic of China (OJ L 48, 22.2.2008, p. 1), Council Implementing Regulation (EU) No 349/2012 of 16 April 2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 110, 24.4.2012, p. 3), Council Implementing Regulation (EU) No 626/2012 of 26 June 2012 amending Implementing Regulation (EU) No 349/2012 imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (OJ L 182, 13.7.2012, p. 1).

<sup>(6)</sup> MET was denied to all producers in the PRC in the interim review (except for Bioking which was not part of that review) published in July 2012. The refusal was based on raw material distortions. Consequently, the individual margins of these companies are the result of individual treatment.

- (4) An earlier investigation limited to Hangzhou Bioking Biochemical Engineering Co. Ltd was initiated on 29 July 2011 <sup>(1)</sup>. Following a withdrawal of the complaint, the proceeding was terminated by Commission decision of 4 June 2012 <sup>(2)</sup> without imposing measures.

#### 1.2. INITIATION OF THE INVESTIGATION

- (5) On 4 December 2014, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of tartaric acid originating in the PRC, limited to Hangzhou Bioking Biochemical Engineering Co. Ltd ('Bioking' or 'the exporting producer') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(3)</sup> ('the Notice of Initiation').
- (6) The Commission initiated the investigation following a complaint lodged on 21 October 2014 by four Union producers of tartaric acid, Distillerie Bonollo S.r.l., Caviro Distillerie S.r.l., Industria Chimica Valenzana S.p.a. and Distillerie Mazzari S.p.a. ('the complainants'), representing more than 25 % of the total Union production of tartaric acid. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (7) After the initiation, the exporting producer requested a hearing with the Hearing Officer in trade proceedings. The exporting producer claimed that the Commission violated the general principle enshrined in GATT Article VI and the Article 5.8 of WTO Anti-dumping Agreement (WTO ADA) <sup>(4)</sup> by initiating a new anti-dumping investigation based on Article 5 of the basic Regulation against a single company, as anti-dumping investigations should be carried out against third countries as a whole. In particular, it argued that the current investigation had the effect of an interim review and would thus be contrary to the WTO Appellate Body report referred to in recital 2 above.
- (8) Indeed, trade defence investigations are carried out against third countries as a whole rather than against single companies. The present case is exceptionally initiated against a single company, under Article 5 of the basic Regulation and not under Article 11(3) of that Regulation, in conformity with the WTO Appellate Body report and not contrary to it. The Appellate Body report clarified that an exporting producer not found to be dumping in an original investigation was to be excluded from the scope of the definitive measures imposed as a result of such an investigation and could not be subject to subsequent reviews of the initial measures. It does not follow from this report that such an exporting producer and its imports could not be investigated anew for the purposes of protection against dumped imports and measures imposed when the conditions for imposition are met.
- (9) Union legislation must, as far as possible, be interpreted in a manner that is consistent with international law, in particular where the provisions at issue are intended to give effect to an international agreement concluded by the Union. Since the WTO ADA on the one hand allows imposition of measures to counteract injurious dumping, but on the other hand has been interpreted by the Appellate Body as not allowing reviews of companies found not to be dumping during an original investigation, the basic Regulation must necessarily be interpreted as allowing the Union to open an investigation based on Article 5 of the basic Regulation in a case like the present one when there is prima facie evidence for injurious dumping.
- (10) In any event, the case-law of the Union courts confirms that none of the provisions of the basic Regulation prevents a new anti-dumping proceeding under Article 5 of the basic Regulation limited to one company found not dumping in another proceeding but for which there is currently prima facie evidence for injurious dumping <sup>(5)</sup>. Therefore, the claims of the exporting producer were rejected.

<sup>(1)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking Biochemical Engineering Co., Ltd (OJ C 223, 29.7.2011, p. 11).

<sup>(2)</sup> Commission Decision 2012/289/EU of 4 June 2012 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking Biochemical Engineering Co. Ltd (OJ L 144, 5.6.2012, p. 43).

<sup>(3)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking Biochemical Engineering Co. Ltd (OJ C 434, 4.12.2014, p. 9).

<sup>(4)</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

<sup>(5)</sup> Judgment of 18 September 2012 of the General Court in T-156/11 Since Hardware (Guangzhou) Co., Ltd v Council.

### 1.3. INTERESTED PARTIES

- (11) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainants, other known Union producers, association of the Union producers, the exporting producer and the authorities of the People's Republic of China, known unrelated importers, suppliers and users, about the initiation of the investigation and invited them to participate.
- (12) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

### 1.4. ANALOGUE COUNTRY PRODUCERS

- (13) The Commission also informed producers in Argentina, Australia, Brazil, Chile and India about the initiation and invited them to participate. In the Notice of Initiation, the Commission informed interested parties that it had envisaged Argentina as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation.

### 1.5. SAMPLING

- (14) 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 Union producers

- (15) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the highest sales volumes in the Union, while ensuring that both producing Member States, Italy and Spain, were represented in the sample. The Commission relied on all the available information concerning the Union industry, such as the complaint, information received from a National Association of Industrial Distillers and Spirits in Italy (Assodistil) and other known Union producers participating in the standing exercise under Article 5(4) of the basic Regulation. The provisional sample consisted of three Union producers. The sampled Union producers accounted for around 56 % of the total Union production of the like product.
- (16) The Commission invited interested parties to comment on the provisional sample.
- (17) One Union producer, not included in the provisional sample, claimed that the sample did not sufficiently represent the situation of smaller Union producers. It argued that it should be included in the final sample because the injurious effect of dumped imports from Bioking had mainly impacted smaller companies. The Italian National Association of Industrial Distillers and Spirits (Assodistil) made the same claim.
- (18) Union producers of tartaric acid are all SMEs. Adding a smaller Union producer to the sample would not have fundamentally changed its representativity and would not have had any significant impact on the injury indicators assessed on the basis of data of the sample. Macroeconomic indicators such as sales volume (as described in recital 109) are in any event based on the data of the Union industry as a whole, that is to say all Union producers, including the Union producer in question.
- (19) In addition, there were other non-sampled Union producers, all SMEs, which accounted for more significant volumes of sales, and which were willing to be part of the sample. The Union producer in question did not advance any other reason for disregarding any of these producers and selecting its company instead.

- (20) No further comments were submitted. The provisional sample was thus confirmed. The sample is representative of the Union industry.

#### 1.5.2. Sampling of importers

- (21) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (22) Ten companies provided the requested information. However, only one of them was an unrelated importer/trader of the product concerned. The remaining nine companies were deemed to be users and received the respective questionnaires.
- (23) In view of the low number of cooperating unrelated importers/traders, the Commission decided that sampling was not necessary.

#### 1.6. MARKET ECONOMY TREATMENT (MET) CLAIM FORMS

- (24) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent an MET claim form to the exporting producer in the PRC as requested.

#### 1.7. REPLIES TO THE QUESTIONNAIRE

- (25) The Commission sent questionnaires to the three sampled Union producers, to the cooperating unrelated importer/trader, to nine users, to 13 suppliers, to the exporting producer in the PRC and to producers in five potential analogue countries, namely Argentina, Australia, Brazil, Chile and India. In addition, potential producers in the USA were contacted by phone. These contacts, however, confirmed that there was no production of tartaric acid in the USA.
- (26) Questionnaire replies were received from the three sampled Union producers, one cooperating unrelated importer, eight users, four suppliers in the Union, the exporting producer in the PRC and one producer in Australia.

#### 1.8. VERIFICATION VISITS

- (27) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

##### Union producers

- Caviro Distillerie S.r.l, Faenza, Italy;
- Comercial Quimica Sarasa s.l., 'Tydsa', Girona, Spain;
- Distillerie Mazzari S.p.a., Ravenna, Italy.

##### Unrelated Importer

- RFI Food Ingredients Handelsgesellschaft mbH, Düsseldorf, Germany.

##### Users

- DuPont Nutrition Biosciences ApS, Aarhus, Denmark;
- VG-Orth GmbH & Co. KG, Stadtoldendorf, Germany.

Exporting producer in the PRC

— Hangzhou Bioking Biochemical Engineering Co. Ltd, Tangqi industrial park, Yuhang District, Hangzhou, Zhejiang, China.

Producer in the analogue country

— Australian Tartaric Products Pty Ltd, Colignan, Victoria, Australia.

#### 1.9. INVESTIGATION PERIOD AND PERIOD CONSIDERED

- (28) The investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. PRODUCT CONCERNED

- (29) The product concerned is tartaric acid originating in the People's Republic of China excluding D-(-)- tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, and currently falling within CN code ex 2918 12 00 (TARIC cod 2918 12 00 90) ('the product concerned').
- (30) Tartaric acid is used either as an ingredient in final products such as wine and other beverages, food and pharmaceutical products, or as an additive to speed up or slow down certain chemical processes, for example in plasters, where it is used as a retardant.
- (31) The product concerned can be obtained either from the by-products of wine making, notably wine lees, as is the case with all Union producers ('natural tartaric acid') or, via chemical synthesis, from benzene and maleic anhydride, the latter substance being the main raw material used by Bioking ('synthetic tartaric acid').

### 2.2. LIKE PRODUCT

- (32) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned,
  - the product produced and sold by the exporting producer on the domestic market of the PRC,
  - the product produced and sold on the domestic market in the analogue country selected as described in recitals 63 to 68 below, and
  - the product produced and sold in the Union by the Union industry.
- (33) The Commission decided that these products are like products within the meaning of Article 1(4) of the basic Regulation.

### 2.3. CLAIMS REGARDING PRODUCT SCOPE

- (34) An interested party claimed that synthetic and natural tartaric acids were not like products. According to this party, the two types of tartaric acid differed in terms of raw materials, production process, production costs, regulatory treatment, consumer perception, physical characteristics and end uses. These differences did not allow a fair comparison between synthetic tartaric acid produced by Bioking and natural tartaric acid produced by the Union industry.
- (35) It was also claimed that, given its distinct characteristics, synthetic tartaric acid better satisfied certain users' needs. The synthetic tartaric acid is produced from maleic anhydride whose availability is not dependent on climatic conditions, while natural tartaric acid is produced from calcium tartrate obtained from wine lees and therefore its availability varies according the quality of the grape wine harvest, namely climatic conditions. Therefore, due to the security of supply and the stability of prices, the competition between the two types of tartaric acid was described as limited.
- (36) Article 1(4) of the basic Regulation provides that for the purposes of an anti-dumping investigation the products are considered alike when they are identical or alike in all respects or have closely resembling characteristics. Account may be taken of a number of factors, including the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality.
- (37) The investigation established that tartaric acid manufactured by Bioking, by the analogue country producer and by the Union industry have an identical chemical formula and that they share the same technical and physical characteristics despite the difference of raw materials, production process or production costs. Such differences relating to the production cannot undermine the likeness of the end products since the likeness is established on the basis of the identical chemical formula and the same technical and physical characteristics. In addition, the products were marketed in similar grades, had similar end-use applications and were interchangeable. One exception relates to the EU wine producing sector where the use of synthetic tartaric acid is not permitted by the EU regulatory measures<sup>(1)</sup>, however, it is not as such to eliminate the other pertinent similarities. All other market segments are in open and direct competition. Indeed, the investigation showed that users in food, construction and pharmaceutical sectors were purchasing synthetic as well as natural tartaric acid. Therefore, the claims were not in conformity with the findings of the investigation and it is confirmed that the products were alike.
- (38) It is noted that the products were considered alike in all preceding investigations referred to in recitals 1 to 4 above.

## 3. DUMPING

### 3.1. NORMAL VALUE

#### 3.1.1. Market economy treatment ('MET')

- (39) The Commission assessed the MET claim of the exporting producer and also carried out a verification visit at its premises.
- (40) Subsequently, the Commission disclosed the MET findings to the exporting producer, to the authorities of the country concerned and to the Union industry. The interested parties had an opportunity to comment on the findings and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission took account of the views presented. The Commission informed the interested parties of the final MET determination.

<sup>(1)</sup> Commission Regulation (EC) No 2244/2002 of 16 December 2002 amending Regulation (EC) No 1622/2000 as regards the use of tartaric acid in wine products (OJ L 341, 17.12.2002, p. 27).

- (41) The investigation established that while it met the requirements of the other criteria of Article 2(7)(c) of the basic Regulation, the exporting producer did not meet the requirements of its first criterion ('criterion 1') because the domestic price of the basic raw material representing a major input, maleic anhydride, which it paid during the investigation period, was systematically below international prices and did not reflect market values. In addition, the low purchase prices of maleic anhydride paid by Bioking corresponded to the Chinese domestic price for maleic anhydride that was also systematically lower than international prices. The average price difference established during the investigation period for Bioking was 14 %.
- (42) The price difference referred to in recital 41 above was the result of comparing the domestic prices of maleic anhydride paid by Bioking in the PRC during the investigation period with domestic prices in other markets. In order to conduct such a price comparison, the Commission first determined the availability of the domestic prices of maleic anhydride (resulting from market forces) per country, and the comparable types of maleic anhydride in those countries with the maleic anhydride used by Bioking and the maleic anhydride on the domestic market in the PRC as a whole. The Commission considered that the comparable market should be in the same geographic area for the reasons of transport costs. The Commission thus determined that the characteristics of the domestic market in Taiwan, that is geographically the closest market to PRC, allowed it to conduct a proper comparison with prices paid by Bioking and with the domestic prices of maleic anhydride in the PRC in general.
- (43) The data used for the comparison of domestic prices in the PRC and the third countries, was sourced from an independent provider of market data<sup>(1)</sup>. The comparison was made between purchase prices for maleic anhydride of Bioking, (based on verified data of Bioking), the Chinese domestic price for maleic anhydride, (calculated without VAT), and the domestic price in Taiwan, (without VAT) as sourced from the independent provider. The Commission also analysed the data of domestic prices of maleic anhydride in other markets (the USA and the Union), and the results of the comparison between domestic prices in the PRC and the domestic prices in the USA and the Union, respectively, showed an average price difference even substantially higher than the one established for Taiwan.
- (44) The price differences between Chinese and other third country domestic prices can be explained by the fact that the Chinese VAT regime does not allow for a full reimbursement of the input VAT in case of export of maleic anhydride. This VAT regime thus discourages the exports of maleic anhydride from the PRC. Under Chinese law, companies exporting maleic anhydride from the PRC have to pay a 17 % VAT. However, only part of the related input VAT is reimbursed. In the investigation period, the reimbursement amounted to 9 % of the input VAT. Thus, the policy pursued by the PRC through, for example establishing unfavourable VAT conditions on exports of a given raw material<sup>(2)</sup> results first in suppressed (net) export prices of such raw material from the PRC (as exporters from the PRC have to compete in the international markets with companies that generally do not pay VAT on export sales), and second, in an incentive to shift sales towards the domestic market, thus suppressing domestic prices below international prices.
- (45) Furthermore, the investigation established that maleic anhydride is made of benzene or butane accounting for 90 % of the total cost of manufacturing. In addition, it was found that the price quotations for maleic anhydride in the PRC are at the same level regardless of whether it is made from benzene or butane. Exports of benzene from the PRC are subject to 40 % export tax and the VAT paid is not refundable when exported. Therefore, it can be reasonably concluded that the benzene market in the PRC has an indirect impact on the market for maleic anhydride produced from butane, as the one used by Bioking, and further contributes to the overall distortion of the maleic anhydride market in the PRC.
- (46) Finally, the investigation showed that a number of maleic anhydride producers in the PRC were State owned and that there was significant overcapacity on the Chinese market. It can be reasonably concluded that the persistence of the overcapacity is linked to the protected status of the State owned companies preventing the normal market mechanism such as consolidation and closures to address these overcapacities.
- (47) Considering the above, the Chinese domestic market of maleic anhydride is considered to be distorted as a whole.

<sup>(1)</sup> Tecnon Orbichem: <http://www.orbichem.com/>

<sup>(2)</sup> Working paper 'Trade policy and industrial policy in China: What motivates public authorities to apply restrictions on exports?' <http://www.cepii.fr/CEPII/en/publications/wp/abstract.asp?NoDoc=7886>. This Working paper suggests, inter alia, that in addition to officially stated objectives 'such as promoting high-technology productions or environment protection' there are also other objectives 'such as subsidising downstream sectors'.

- (48) Following disclosure, the exporting producer claimed that the price comparison for maleic anhydride referred to in recitals from 41 to 44 was based on domestic prices and therefore not appropriate. Instead, the exporting producer suggested that export prices from the third markets should have been compared to the Chinese domestic prices. The exporting producer provided alternative price comparisons between the international export prices and Chinese domestic prices. The exporting producer also suggested that a price comparison between its purchase prices and the US export prices on the basis of the US customs statistics database would show that its purchase price was systematically higher than the US export prices to various third country markets. The exporting producer further claimed that the raw material cost for maleic anhydride (price of butane) in Taiwan was higher than in the PRC or the USA and that for these reasons the comparison to Taiwanese prices was inappropriate.
- (49) The alternative international export price comparisons provided by the exporting producer were not appropriate. As explained in recital 42, comparable domestic prices with similar delivery terms were considered an appropriate basis for comparison. It is also noted that Bioking did not put forward any reasons to justify its claim that the use of domestic prices for the comparison per se would not be appropriate. Also, as explained in recital 42, the investigation concluded that due to the transportation costs, the geographically closest market was likely to be the most reasonable basis for comparison. Therefore, the claims that Taiwan did not constitute an appropriate basis of comparison, or that another basis for comparison, either export price data submitted by Bioking or from the US customs statistics, would be more appropriate, were rejected.
- (50) The exporting producer further claimed that any potential impact on the (net) export price and consequently on the Chinese domestic price of maleic anhydride as a consequence of the VAT regime referred to in recital 44 was overstated and it would only be minimal. The claim was however not substantiated by factual evidence. In any event, on the basis of the information available during the investigation and as also shown by the price differences explained in recitals 41 to 44, the difference would be significant and higher than claimed by the exporting producer. Therefore, this claim was rejected.
- (51) The exporting producer further claimed that potential distortions through State interference in the benzene prices would be irrelevant since butane was becoming the leading market price setter and would replace progressively the benzene derived maleic anhydride on the market. As explained above in recital 45 export prices of maleic anhydride from the PRC are at the same level regardless of whether it is made from benzene or butane. This indicates that the benzene market in the PRC has an indirect impact on maleic anhydride produced from butane, as the one used by Bioking, and further contributes to the overall maleic anhydride market distortion. In any event, the finding that the Bioking' costs for major inputs do substantially not reflect market values was established on the basis of the data provided by the exporting producer. Last, the exporting producer did not support its claim with evidence on the alleged systematic material differences in this respect. This claim was therefore rejected.
- (52) The exporting producer also claimed that the protected status of State owned enterprises producing maleic anhydride as confirmed by the Commission's MET investigation and explained in the MET disclosure to the exporting producer would have had no relevance since the exporting producer was buying maleic anhydride mostly from privately owned suppliers. Regarding this claim, it was considered that even if the suppliers were mainly privately owned they could still be subject to the price pressure exerted by the large overcapacity and the protected status of State owned enterprises producing maleic anhydride. Moreover, Bioking did not demonstrate the opposite. In any event, the comparison of Bioking's purchase prices with international prices demonstrated that Bioking's prices were indeed distorted and that this corresponded to the overall distortion on the Chinese market. Therefore, this claim was rejected.
- (53) The exporting producer claimed that the determination of non-compliance with criterion 1 due to the Chinese VAT refund regime would be inconsistent with the GATT/WTO rules as different VAT refund systems were allowed under these rules and were not considered to distort market prices. This would be confirmed by the fact that the PRC did not undertake any special commitment on the VAT refund system under its WTO Accession Protocol. Finally, the exporting producer claimed that MET was not rejected as a result of the Chinese VAT refund system in any earlier investigations and therefore it could not constitute a reason for rejecting MET in this investigation either.

- (54) Regardless of the fact that different VAT refund systems are allowed under GATT/WTO rules, in this case it was found that the Chinese VAT regime indeed suppressed Chinese (net) export prices and discouraged exports of maleic anhydride from the PRC. As a consequence, and as described in the recital 43 above, it was established that also Chinese domestic prices were suppressed which created a distortion in the market. Therefore, these claims were rejected.
- (55) As regards the claim that MET has not been rejected as a result of the Chinese VAT refund system in any earlier investigations, it is recalled that in an earlier investigation <sup>(1)</sup> the absence of VAT refund was an argument supporting a negative MET assessment. Therefore this claim was rejected.
- (56) The current investigation established that the prices of the maleic anhydride paid by Bioking as well as overall prices in the PRC did not reflect market values as they were systematically lower than international prices. The Chinese VAT refund system was analysed as an explanation of the distortion. For each investigation the MET decision is made independently, on the basis of the specific circumstances relevant to the investigation in question. The present investigation established that criterion 1 of Article 2(7)(c) of the basic Regulation was not fulfilled on the basis of the particular circumstances as discussed above. Therefore, this argument was rejected.
- (57) Following disclosure, the complainants reiterated that it was questionable that the investments of the exporting producer during the investigation period, including land use rights, could have been financed solely by the retained earnings of the company especially since the company had also paid dividends in the financial year 2013. The complainants further claimed that the retained earnings may have been acquired as a result of prior preferential tax rates via the Chinese Hi-tech industries promotion programme. These claims concerning the second criterion of Article 2(7)(c) of the basic Regulation were however not substantiated with any evidence. Therefore, they were rejected.
- (58) The complainants also claimed that, the exporting producer did not comply with the international accounting standards as stipulated in the second indent of Article 2(7)(c) of the basic Regulation because it did not record appreciation and/or impairment in an asset exchange transaction where a previously acquired land use right was exchanged against a more suitable one. However, evaluation of an asset acquired in an asset exchange transaction at the carrying amount of the asset given up (instead of fair value) is an accounting treatment that is also recognised by the international accounting standards. Therefore, this argument was rejected.
- (59) The complainants further claimed that the second indent of Article 2(7)(c) of the basic Regulation would not be fulfilled since the accounts of the exporting producer were prepared and audited under the Chinese accounting standards which would be different from the international accounting standards as required by Article 2(7)(c) of the basic Regulation. The investigation however showed that, notwithstanding the statutory reference made only to the Chinese accounting standards, the accounting standards applied by the exporting producer were in line with the international standards. Therefore, this argument was rejected.
- (60) Finally, the complainants claimed that the Commission should not have evaluated the price paid for the land use rights against reference prices in the PRC but against land prices in third countries such as Taiwan, Indonesia and India. The complainants further claimed that the prices paid for land use rights may have been below the market economy prices. However, the claim that the land use rights were below the market prices was not substantiated nor was it consistent with the findings of the investigation which, on the contrary, found that the prices reflected reasonable market prices prevailing in the PRC and were also in line with an independent evaluation report. Finally, as regards the complainants' suggestion that the land use rights should have been evaluated against third country prices, it is recalled that an assessment in accordance with the Article 2(7)(c) of the basic Regulation may, but does not have to, be based on third country prices. In any event, the complainants did not put forward any reason to question the appropriateness of the use of independent evaluation report. Therefore, this argument was rejected.
- (61) In view of the above considerations and those in the specific disclosure already provided to the exporting producer, the exporting producer could not be granted MET in this investigation.

<sup>(1)</sup> See recital 18 of Implementing Regulation (EU) No 626/2012.

### 3.1.2. Analogue country

- (62) According to Article 2(7)(a) of the basic Regulation normal value should be determined on the basis of the price or constructed value in a market economy third country for the exporting producers not granted MET. For this purpose, a market economy third country had to be selected ('the analogue country').
- (63) In the Notice of Initiation, the Commission informed interested parties that it envisaged Argentina as an appropriate analogue country and invited interested parties to comment.
- (64) The Commission contacted the authorities of five potential analogue countries (Argentina, Australia, Brazil, Chile and India). The contacts with potential producers in the USA however confirmed that there was no production of tartaric acid in the USA. On the basis of the information received, the Commission requested information from 26 potential producers of the like product in Argentina, Australia, Brazil, Chile and India to provide information.
- (65) Only one producer in Australia replied and provided the Commission with the requested information.
- (66) The investigation established that domestic production in Australia is in competition with imports of tartaric acid at least from the PRC. There were no duties in force for imports of tartaric acid. As mentioned in recitals 36 and 37 the tartaric acid produced by the sole cooperating producer in Australia was found to be alike with the product produced and exported by the PRC albeit the difference in production process. On basis of the information available, the domestic Australian market was therefore deemed appropriate for the purpose of establishing normal value.
- (67) The exporting producer claimed that the Argentinian, Australian and US export prices of tartaric acid are much lower than Bioking's export prices and therefore using those prices would confirm the absence of dumping. The claim is irrelevant because an analogue country is not selected depending on the level of its export prices. Moreover, only one producer from one potential analogue country provided the necessary cooperation. The exporting producer made furthermore claims concerning the product scope. These are addressed in the recitals 34 to 38 above.
- (68) In view of the fact that only one producer in one potential analogue country cooperated and given that Australia is considered as an appropriate analogue market, the Commission selected Australia as an analogue country under Article 2(7)(a) of the basic Regulation.

### 3.1.3. Normal value

- (69) In the latest interim review of the measures in force applicable to the PRC except for Bioking <sup>(1)</sup> Argentina was selected as an analogue country. The normal value was based on a constructed value reflecting the objective differences in the production method between Argentina and the PRC which was found to have a significant impact on prices and costs. In the case at hand, the difference in the production method between Australia and the PRC is also present. The investigation revealed no circumstances that would justify a different approach than the one followed in the interim review. Interested parties did not put forward any comment in this respect either. Therefore, it is considered that normal value should be based on a constructed normal value in Australia reflecting the objective differences in the production method between Australia and the PRC.
- (70) To that end, the Commission used the price of the maleic anhydride as found in Taiwan for the purposes of the MET determination (see recital 42) as the starting point for its calculation of the costs of manufacturing. A reasonable amount for selling, general and administrative costs ('SG&A') and for profit was determined on the basis of the actual data of the analogue country producer.

<sup>(1)</sup> Implementing Regulation (EU) No 626/2012.

- (71) The sole cooperating Australian producer produced and sold only one product type that was identical to one of the product types sold for export to the Union by the exporting producer. The Commission used the constructed normal value of the type of tartaric acid produced and sold in Australia as corresponding to all the types of tartaric acid sold and exported by Bioking to the Union during the investigation period. The approach was considered appropriate in this case since the production process for all types of tartaric acid sold and exported by Bioking to the Union during the investigation period was essentially the same and because the examination of the production process showed existence of virtually no differences in their cost of production.

#### 3.1.4. Export price

- (72) The exporting producer exported directly to independent customers in the Union. Therefore, the export price was based on the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

#### 3.1.5. Comparison

- (73) The Commission compared the normal value and the export price of the exporting producer on an ex-works basis.
- (74) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for non-refundable export VAT, handling, loading, freight and ancillary expenses, ocean freight, ocean insurance, credit cost, packing, warranty and guarantee expenses and bank charges.
- (75) Regarding the adjustment for non-refundable export VAT, it was found that on the Chinese domestic market a lower level of VAT was reimbursed on export sales than what is reimbursed for domestic sales. On this basis, the normal value in Australia was determined by adding the non-refundable VAT rate applicable to export sales from the PRC.

#### 3.1.6. Comments relating to dumping from interested parties following disclosure

- (76) After final disclosure, comments relating to dumping were received from the exporting producer and the complainants.
- (77) The exporting producer reiterated its earlier claim that Bioking should be granted MET.
- (78) Firstly, it argued again that the choice of Taiwan for the purpose of comparing the Chinese domestic prices of maleic anhydride is not appropriate since prices of maleic anhydride in Taiwan are too high compared to other third countries. However, as mentioned in recitals 42 and 43, Taiwan is considered to be the most appropriate choice and, as explained in recital 43, alternative markets investigated by the Commission even show higher price differences than the one for Taiwan. In the absence of well-founded reasons to reject Taiwan and in the absence of a relevant proposal for a better alternative, this claim was rejected.
- (79) Bioking also claimed that the geographical proximity cannot be a decisive factor in choosing the comparable market and that the data may be distorted by direct or indirect government intervention. Bioking did not however provide any evidence to support any claimed intervention by the Taiwanese government and this claim is therefore rejected.
- (80) Secondly, it reiterated its argument to use export prices of maleic anhydride instead of domestic prices without coming with different arguments as already addressed in recitals 48 and 49. This claim was therefore rejected.

- (81) Thirdly, it was again argued that the VAT impact as calculated by the Commission was overstated and that if this was differently calculated, the price difference between Chinese and Taiwanese domestic prices of maleic anhydride would be insignificant. In the absence however of new substantiated arguments, the explanation given in recital 50 is still valid and this claim was consequently rejected.
- (82) Fourthly, the distortion through State interference of the benzene prices was once more challenged. Since no new elements as already addressed in recitals 50 to 52 were brought forward, this claim was rejected.
- (83) Finally, as regards the MET claim, the exporting producer reiterated the compliance of the Chinese VAT refund regime with Council Regulation (EC) No 597/2009 of 11 June 2009 and the WTO Agreement on Subsidies and Countervailing measures without providing new elements as already addressed in recitals 53 to 55. This claim was therefore rejected and the Commission reiterated its conclusion of recital 61 that the exporting producer could not be granted MET in this investigation.
- (84) The same party once more repeated its argumentation that the price of maleic anhydride in Taiwan is not appropriate for the determination of the constructed normal value and that the US export price to Mexico would constitute a better basis. As addressed already in the recital 49 above the price comparison was made on the most comparable basis, which is by comparing domestic prices with similar delivery terms on similar and geographically closest markets. The exporter did not provide evidence to support its claim why export prices from USA to Mexico would constitute a better basis for comparison. Therefore this argument was rejected.
- (85) The complainants submitted comments regarding Bioking's alleged capacity expansion after the investigation period. Firstly, it has to be noted that these post investigation period developments are normally not taken into account. Furthermore, since the construction of the new production facility to replace the existing factory was in progress during the investigation there was no data on the total of Bioking's capacity after its completion. Therefore this claim could not be taken into account and was rejected.
- (86) The complainants also contested the methodology used to calculate the dumping margin for Hangzhou Bioking which was the same as that applied in the last interim review and involved a construction of the normal value rather than the use of actual prices. They further claimed that had the actual prices of the analogue country producer been used, it could be envisaged that the dumping duty rate found for Hangzhou Bioking would be even higher. As explained in the recital 69 the investigation revealed no circumstances that would justify a different approach than the one followed in the interim review. Neither did interested parties put forward any arguments in this respect. Therefore, it is maintained that normal value should be based on a constructed normal value in Australia reflecting the objective differences in the production method between Australia and the PRC.

### 3.1.7. Dumping margin

- (87) The Commission compared the weighted average normal value with the weighted average export price as established above, in accordance with Article 2(11) and (12) of the basic Regulation.
- (88) On this basis, the weighted average dumping margin expressed as a percentage of the Cost, Insurance and Freight ("CIF") Union frontier price, duty unpaid, is as follows:

Company	Definitive dumping margin
Hangzhou Bioking Biochemical Engineering Co. Ltd	42,8 %

#### 4. INJURY

##### 4.1. PRELIMINARY REMARK

- (89) As mentioned in recital 1 above, during the period considered anti-dumping duties were in force for imports of tartaric acid from the PRC, with the exception of imports from Bioking that were subject to a zero duty. The measures in force were last maintained following an expiry review in 2012 as referred to in recital 3 above. The expiry review found that the measures in force shielded to a large extent the Union industry from the effects of the dumped imports and it concluded that there was a likelihood that injury would recur if measures lapse.
- (90) The current investigation is concerned only with the dumped imports from Bioking and their volume and effect on Union market prices and on the Union industry. However, the effect of Bioking's imports was evaluated in the context of the effects of measures in force protecting the Union industry from the harmful effects of dumped imports from the rest of the PRC.
- (91) Given the fact that only one exporting producer was subject to the current investigation, all figures related to business confidential data had to be indexed for reasons of confidentiality.

##### 4.2. DEFINITION OF THE UNION INDUSTRY AND UNION PRODUCTION

- (92) The like product was manufactured by nine producers in the Union during the investigation period. Based on the available information from the complaint, there are no other Union producers of the product concerned in the Union. Therefore, these nine producers constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.
- (93) The total Union production during the investigation period was established at around 23 000 tonnes. The Commission established total Union production on the basis of information provided in the complaint, cross-checked against information collected during the on-spot verifications of the sampled Union producers.
- (94) As indicated in recitals 15 to 20, three Union producers were selected in the sample representing around 56 % of the total Union production of the like product.

##### 4.3. UNION CONSUMPTION

- (95) The Commission established the Union consumption on the basis of (i) the sales volume of the Union industry on the Union market obtained from the sampled Union producers, and from the complaint for the remaining Union producers (actual data of the complainants and the estimates for other Union producers); (ii) the total import volume from the PRC based on the Chinese export database, and the exporting producer concerned and (iii) the import volume from the other third countries based on Eurostat.
- (96) The total imports from the PRC could not be reliably based on Eurostat data in this case. The volumes reported by the exporting producer concerned were substantially higher than the total imports from the PRC on the basis of Eurostat for each year of the period considered. On this basis, the data recorded in Eurostat from the PRC could not be used. On the other hand, the volume reported by the exporting producer concerned was in conformity with the volume reported in the Chinese export database.
- (97) Union consumption developed as follows:

Table 1

#### Union consumption (kg)

	2011	2012	2013	Investigation period
Total Union consumption	29 112 425	30 780 763	30 053 279	25 853 923
Index	100	106	103	89

Source: the complaint, data of the sampled Union producers and exporting producer, Chinese export database, Eurostat.

- (98) Union consumption decreased by 11 % in the period considered. It first increased by 6 % between 2011 and 2012 but then decreased by 3 % in 2013 and by 14 %, in the investigation period.

#### 4.4. DUMPED IMPORTS FROM BIKING

##### 4.4.1. Volume and market share of the dumped imports from Bioking

- (99) The Commission established the total volume of dumped imports from Bioking on the basis of its own data.
- (100) Imports into the Union from Bioking developed as follows:

Table 2

##### Import volume and market share

	2011	2012	2013	Investigation period
Import volume Index	100	115	136	125
Market share Index	100	108	132	141

Source: data of the exporting producer.

- (101) Dumped import volumes of the product concerned to the Union from Bioking increased by 25 % in the period considered: they increased by 36 % from 2011 to 2013, and then decreased from 2013 to the end of the investigation period by 11 %.
- (102) This increase in import volumes resulted in an overall substantial increase of market share from Bioking of 41 % during the period considered.

##### 4.4.2. Prices of the dumped imports from Bioking and price undercutting

- (103) The Commission established the average prices of imports from Bioking on the basis of its own data by dividing the total value of imports by the total volume of those imports.
- (104) The average price of dumped imports from Bioking into the Union from the country concerned developed as follows:

Table 3

##### Import prices (EUR/kg)

	2011	2012	2013	Investigation period
Average import price (Bioking) Index	100	124	143	135

Source: data of the exporting producer.

- (105) The average import price from Bioking of the product concerned increased by 35 % during the period considered: it increased by 43 % between 2011 and 2013, but then decreased by 8 %, between 2013 and the investigation period.
- (106) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, and
  - the corresponding weighted average prices per product type of the imports from Bioking to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for customs duties and post-importation costs.
- (107) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of 10,3 % by the dumped imports from Bioking on the Union market.

#### 4.5. ECONOMIC SITUATION OF THE UNION INDUSTRY

##### 4.5.1. General remarks

- (108) 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.
- (109) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the complaint, the questionnaire replies from the sampled Union producers, Chinese export database and Eurostat. The data on the macroeconomic indicators related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data on the microeconomic indicators related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (110) The macroeconomic indicators analysed are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping. The microeconomic indicators analysed are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.5.2. Macroeconomic indicators

###### 4.5.2.1. Production, production capacity and capacity utilisation

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

Table 4

#### Production, production capacity and capacity utilisation

	2011	2012	2013	Investigation period
Production volume (kg)	27 290 291	25 626 300	22 837 500	22 808 454
Index	100	94	84	84

	2011	2012	2013	Investigation period
Production capacity (kg)	37 464 000	37 482 000	37 464 000	37 464 000
Index	100	100	100	100
Capacity utilisation	73 %	68 %	61 %	61 %
Index	100	94	84	84

Source: the complaint, data of the sampled Union producers.

- (112) During the period considered the production volume decreased by 16 %: it decreased by 6 % between 2011 and 2012 and a further 10 % in 2013, while it remained stable from 2013 to the investigation period.
- (113) Production capacity was estimated by dividing the total production volume by the capacity utilisation rate of the sampled Union producers. On this basis, the production capacity of the Union industry remained stable throughout the period considered.
- (114) The Union producers' capacity utilisation rate decreased by 12 percentage points over the period considered. Decreasing capacity utilisation reflected the negative effects of decreased production. On that basis, it is likely that the Union industry will encounter difficulties to cover its fixed costs in the long term.

#### 4.5.2.2. Sales volume and market share

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

Table 5

#### Sales volume and market share

	2011	2012	2013	Investigation period
Sales volume Index	100	103	79	70
Market share Index	100	97	76	79

Source: the complaint, data of the sampled Union producers.

- (116) The sales volume of the Union industry decreased by 30 % throughout the period considered: it increased by 3 % between 2011 and 2012, and then decreased by 33 % between 2012 and the investigation period. This negative trend was in line with the decreasing consumption as described in recital 97 but it was significantly more pronounced.
- (117) As a result, the market share held by the Union industry decreased throughout the period considered and overall fell by 21 %. In the same period, imports from Bioking increased by 25 % in volume and the corresponding market share increased by 41 %, as described in recitals 101 and 102 above.

4.5.2.3. *Growth*

- (118) The Union consumption declined from 2012 to the end of investigation period. Despite this decrease, the volume of dumped imports from Bioking increased and resulted in a growing market share during the same period. Thus, over the period considered, the Union industry lost an important part of its market share, whereas the imports concerned strongly increased their market share against a decreasing consumption in the Union market. At the same time, the production volume of the Union industry declined more than the consumption.

4.5.2.4. *Employment and productivity*

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

Table 6

**Employment and productivity**

	2011	2012	2013	Investigation period
Number of employees	178	173	185	184
Index	100	97	104	104
Productivity (kg/employee)	153 367	147 785	123 598	123 793
Index	100	96	81	81

Source: the complaint, data of the sampled Union producers.

- (120) The level of employment in the Union industry was rather stable during the period considered: it decreased from 2011 to 2012 by 3 %, it then increased by 7 % from 2012 to 2013, and remained stable until the end of the investigation period.
- (121) Productivity, measured as output in kilogram per employee, decreased significantly due to reduced production levels and rather stable employment. Overall, the productivity decreased by 19 % during the period considered.

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

- (122) The dumping margin established in recital 88 was above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the exporting producer concerned.
- (123) Bioking was found not to be dumping in the original investigation during which it was granted MET, which led to the application of a zero duty, as explained in recital 1. In the absence of any injurious dumping by Bioking, any recovery from past dumping is only relevant to the extent that it refers to the dumping practices of other Chinese exporting producers, against which measures were extended and amended by way of several reviews, as mentioned under recital 3. These measures are currently in force, as detailed under recital 3.

#### 4.5.3. Microeconomic indicators

##### 4.5.3.1. Prices and factors affecting prices

- (124) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

#### Sales prices and cost of production in the Union

	2011	2012	2013	Investigation period
Average unit sales price Index	100	149	175	119
Unit cost of production Index	100	141	165	109

Source: data of the sampled Union producers.

- (125) The sampled Union producers' average unit sales price increased by 75 % between 2011 and 2013, and then decreased by 56 % between 2013 and the investigation period. Dumped import prices of Bioking were following a similar trend as the Union industry's sales prices, as shown in recital 105 above.
- (126) The availability of raw material — calcium tartrate, which is produced from wine lees and represents around 60 % of total costs of manufacturing of tartaric acid for the Union industry, varies according to the quality of the grape wine harvest. Therefore, favourable or poor climatic conditions in the Union have an effect on the overall supply of calcium tartrate, which in turn has an impact on the annual average sales prices. It should be noted that 2012 and 2013 have not been favourable years as far as the wine grape harvest is concerned in the Union, which subsequently led to an increase of the costs of raw materials and sales prices after the production period of wine (as it is a seasonal product, effects materialise only several months following the harvest period). Conversely, as the investigation period has been a good wine harvesting year in the Union, hence, the annual average sale prices in the investigation period was lower compared to the previous year.
- (127) The increase in the average unit sales price (19 % over the period considered) was more pronounced than the increase in the cost of production during the same period (an increase of 9 %).

##### 4.5.3.2. Labour costs

- (128) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

#### Average labour costs per employee

	2011	2012	2013	Investigation period
Average labour costs per employee (EUR)	41 048	41 418	40 542	40 914
Index	100	101	99	100

Source: data of the sampled Union producers.

- (129) During the period considered, the sampled Union producers' average labour costs per employee remained stable. The general increase in labour costs (4,6 %) <sup>(1)</sup> and the inflation rate (4,7 %) <sup>(2)</sup> in the Union during the same period were not reflected in the average labour costs.

#### 4.5.3.3. Inventories

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

Table 9

#### Inventories

	2011	2012	2013	Investigation period
Closing stocks (kg)	438 640	285 995	674 065	633 550
Index	100	65	154	144
Closing stocks as a percentage of production	3 %	2 %	5 %	5 %
Index	100	68	181	169

Source: data of the sampled Union producers.

- (131) The closing stocks increased by 44 % during the period considered: they decreased by 35 % between 2011 and 2012, then increased significantly between 2012 and the end of the investigation period.
- (132) The stock level represented 3 % of sampled Union producers' production volumes in 2011, while it increased to 5 % by the end of the investigation period.

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

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

Table 10

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

	2011	2012	2013	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2	8	8	10
Index	100	310	327	430
Cash flow (EUR)	1 267 809	4 185 410	4 316 300	2 481 985
Index	100	330	340	196

<sup>(1)</sup> Eurostat: EU-28 Labour cost index, annual data (NACE Rev. 2) — cumulative annual average rate of change (%) from 2011 to 2014.

<sup>(2)</sup> Eurostat: EU 28 HICP — inflation rate — cumulative annual average rate of change (%) from 2011 to 2014.

	2011	2012	2013	Investigation period
Investments (EUR)	539 710	474 594	409 323	500 659
Index	100	88	76	93
Return on investments	16 %	80 %	72 %	47 %
Index	100	508	456	300

Source: data of the sampled Union producers.

- (134) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered the profitability of the sampled Union producers' sales of the like product on the Union market to unrelated customers increased by 8 percentage points.
- (135) The investigation showed that the profitability of the Union industry is in part dependent on external elements, such as the climatic conditions. Nonetheless, the investigation showed that profitability increased substantially during the period considered, reaching 10 % during the investigation period, and thus exceeding the 8 % target profit of this industry.
- (136) The net cash flow is the ability of the Union producers to self-finance their activities. It increased during the period considered: the trend in net cash flow increased from 2011 to 2013 and declined in the investigation period.
- (137) The sampled Union producers' investments in the production of the like product decreased by 7 % during the period considered: they decreased by 24 % between 2011 and 2013, and then increased by 22 % in the investigation period.
- (138) The return on investments is the profit in percentage of the net book value of investments. It increased between 2011 and 2012, and was decreasing from 2012 to the end of the investigation period.
- (139) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that most of the sampled producers were integrated companies.

#### 4.5.4. Conclusion on injury

- (140) Injury indicators such as production, sales volume and market share showed negative trends during the period considered. However, these trends did not have a negative impact on the overall financial situation of the Union industry. To the contrary, the Union industry's profitability showed a steady positive trend during the period considered and even exceeded the target profit during the investigation period. Moreover, other financial indicators such as cash flow and return on investment also increased over the period considered. The Union industry was also able to increase employment, albeit not very significantly.
- (141) As mentioned in recital 1, during the period considered anti-dumping duties were already in place on imports of tartaric acid from the PRC, except from Bioking. These duties largely shielded the Union industry from the effects of the dumped imports from the PRC and had therefore an impact on the situation of the Union industry, a fact which was considered in the current investigation. However, in this specific case the Union industry appeared to have recovered from past dumping, and despite the relevant increase of imports and market share from the

exporting producer concerned, it incurred high profit margins during the investigation period. Under these circumstances, despite the loss of sales volume and market share from the Union industry and while recognising that the Union industry was to a certain extent negatively impacted by the dumped imports from Bioking, the investigation did not establish that the Union industry suffered material injury within the meaning of Article 3 of the basic Regulation. This is mainly based on the fact that all financial indicators showed positive trends and that the Union industry was able to increase prices to a greater extent than its production cost, despite Bioking's dumped import prices, that were undercutting the Union industry prices.

(142) On this basis, it was concluded that the Union industry did not suffer material injury.

#### 4.5.5. Comments from interested parties following disclosure

(143) Interested parties claimed that the Commission incorrectly gave more weight to certain injury indicators (i.e. profitability) to the detriment of others that are of equal relevance. It was claimed that special care needed to be taken when performing the injury analysis of an industry entirely made up of SMEs, as is the case of the Union tartaric acid industry.

(144) The Commission performed its injury analysis based on the information available, including the verified replies of the three sampled companies, which received specifically designed questionnaires intended for SMEs. In this context, it is stressed that the Commission made an assessment of all economic indicators having a bearing on the state of the Union industry, none of them being given prominence over the others, in line with Article 3(5) of the basic Regulation.

(145) It was claimed that Bioking's 42,8 % dumping margin, being in excess of the residual duty of 34,9 % currently imposed on all Chinese producers, and of the individual duties of 13,1 % and 8,3 % applicable to two other companies, should have been interpreted to amount to significant injury, especially when corroborated with ever increasing import volumes and market shares. It was further claimed that Bioking enjoyed an 'unjustified exemption' from the scope of the anti-dumping measures currently in place under Implementing Regulation (EU) No 626/2012.

(146) The dumping margin of an exporting producer is not as such a conclusive economic indicator of injury. Indeed, the fact that imports are dumped does not necessarily imply that these imports will cause injury to the domestic industry. It merely represents a vehicle by which an exporting producer can achieve a higher market penetration (increase market share and import volumes). The Commission further noted that Bioking's imports into the Union have been excluded from the scope of the current measures by a legally valid Union act, Implementing Regulation (EU) No 332/2012. On these grounds the argument was dismissed.

(147) The same interested parties highlighted the fact that, while the Union industry saw its sales and market share in the Union decrease by 30 % and 21 % respectively, over the same time period Bioking was able to boost its dumped sales volumes by 25 % and its market share by 41 %, which is a clear indication of material injury.

(148) Indeed, the investigation showed an increase of volumes and market shares of imports made by Bioking. However the market share of the Union industry remained at a relatively high level in the period considered. Nevertheless, market share and import volumes are not the only elements that have been analysed in order to establish whether the Union industry suffered material injury or not. As noted in recital 144 above, in line with Article 3(5) of the basic Regulation, the Commission made an assessment of all economic indicators having a bearing on the state of the Union industry, none of them being given prominence over the others. The argument was therefore rejected.

(149) It was further claimed that the decline in production volume (16 % over the period considered) and in capacity utilisation (16 % over the period considered) would affect profitability and render the entire Union industry unsustainable in the long term, given its inability to cover the fixed costs, a development recognised by the Commission under recital 114. Interested parties also claimed that by means of a price policy that aggressively undercut Union industry's sales prices, Bioking was effectively leveraging its position as market leader, driving the Union industry out of key sectors, such as the building sector, the food additives sector or the emulsifier sector.

They further argued that their refusal to engage in aggressive price competition with the dumped imports from Bioking and that their choice to sell a higher quality product to customers willing to pay a quality premium represented a legitimate defensive strategy. At the same time, these parties stressed that, given Bioking's overcapacity, this strategy could not be sustained in the long run since dumped Chinese imports are expected to flood the market at an increasing rate, suffocating the business opportunities of even the most profitable Union producer in the sample.

- (150) The investigation confirmed that Bioking increased its market share and undercut prices, which resulted in the reduction of the production volume and of the capacity utilisation rate as well as in the loss of important customers in certain industrial sectors by the Union industry. However, as acknowledged by the complainants themselves, this situation resulted from a rational business decision of the Union industry to choose to earn higher profit margins at the expense of market share. This cannot be construed as an indicator of material injury. The argument was therefore dismissed.
- (151) The complainants also claimed that the profitability rate, as calculated by the Commission, concealed the real trends in the Union industry's actual profit levels, as not all sampled companies were able to post positive profit figures. These interested parties contested the methodology used by the Commission to calculate the profitability rate, claiming that the profitability levels established by the Commission for the purpose of performing the injury analysis were manifestly distorted by the presence of a relatively large Union producer in the sample, one that was able to achieve economies of scale, as opposed to the smaller sampled companies.
- (152) It is noted that the situation of the Union industry is analysed in its entirety and therefore the micro-indicators related to the sampled Union producers are representative of the economic situation of the whole Union industry. The composition of the definitive sample has not been contested by the complainants, and as explained in recital 20 the sample is considered by the Commission to be representative of the situation of the Union industry. At the hearing held on 13 January 2016, the complainants reiterated their concerns with regard to the representativeness of the sample, without however substantiating them further. In any event, the sampled Union producers cannot be analysed in isolation, nor can any one company be given a different weight against other sampled companies in view of the fact that the entire Union industry is made up of SMEs (see recital 18 above). The argument was therefore dismissed.
- (153) It was also claimed that the Commission should have observed the fall in profitability since the end of the review investigation period in the last expiry review. There was a dramatic fall in profitability between 2010 and 2011, which remained unaccounted for. It is further underlined that it was precisely in 2011 that Bioking increased its market penetration by increasing its import volumes by around 33 %.
- (154) It is recalled that in order to examine the trends relevant for the assessment of injury, the Commission usually analyses a period of 3 years prior to the investigation period. This period is fixed at the beginning of the investigation and is used to collect economic data which are subject to verification. In this case, as explained in recital 28, the period selected by the Commission for the examination of trends relevant for the assessment of injury starts on 1 January 2011 and ends on 30 September 2014, and the use of this period has never been contested by the complainants at any point in time during the investigation. The year 2010 falls therefore outside the temporal scope of this investigation, and using that year on a selective basis for some injury indicators selected by the complainants would be discriminatory and not objective. In any event, the investigation could not establish a clear correlation between the trends in the profitability margins of the Union industry and the trends in the market share of Bioking over the period considered. Finally, the Commission notes that the sampled companies did not have restructuring costs. The argument was therefore rejected.
- (155) It was argued that the Union industry's ability to invest in the future is at stake, since the decreasing production volumes and capacity utilisation rates will translate in the Union industry's inability to cover its fixed costs in the long term. The current profitability levels are therefore bound to collapse.
- (156) The investigation showed that the Union industry made investments during the period considered. Even if the level of investments has decreased by an overall 7 % during the period considered, this should be seen in relation with the production process of tartaric acid, which is rather basic and does not necessarily require significant investments in research and development. The argument was therefore rejected.

- (157) It was also claimed that the increase in cash-flow should have been analysed starting from 2010 instead of 2011, as the latter showed cash flow at a very low level. According to the interested parties, if the Commission had looked at 2010 as a starting point, it would have noted that the Union industry had a surplus cash-flow of EUR 6,8 million. Moreover, it was claimed that cash flow deteriorated significantly between 2013 and the investigation period falling by 43 % over a short period of time. The Commission should also have examined more closely the distortive effect of the strongest sampled company, especially in the light of the fact that for two of the sampled companies, cash-flow remained at critical levels between 2012 and the investigation period.
- (158) As explained above in recital 154, the situation of the Union industry is normally assessed over a period of 3 years prior to the investigation period, and the year 2010 is not part of the temporal scope of this investigation. The investigation showed that the profit margins achieved by the Union industry were sufficient to generate cash flow over the period considered. The cash flow was at its highest level in 2012 and 2013 and overall increased significantly over the period considered. The argument was therefore rejected.
- (159) It was claimed that the trend in cash-flow and return on investment diverged from the profitability trend, showing the importance of sales volume in the assessment of profitability and the overall well-being of an industry. It was claimed that the Commission incorrectly stated that all financial indicators showed positive trends, since investment levels suffered a sharp decrease between 2011 and 2013 (24 %) and an overall decline of 7 % over the period considered.
- (160) Profitability, cash flow and return on investments are different economic indicators and may not necessarily follow the same trends. In any event, these three indicators, even if showing different trends, all showed an overall significant increase during the period considered which is a strong indicator of the lack of injury of the Union industry in the investigation period.
- (161) Interested parties stressed the fact that the conclusion as to the Union industry's recovery from past dumping contradicted the conclusion of the last expiry review, where the Commission described the Union industry to be still in a vulnerable situation. It was claimed that most of the indicators used in the expiry review to demonstrate the fragility of the Union industry suffered further deterioration over the course of the period considered. They also contested the Commission's approach, according to which any recovery from past dumping is only relevant to the extent that it refers to the dumping practices of other Chinese exporting producers, against which measures were extended and amended by way of several reviews. It was claimed that there was no legal basis in the basic Regulation that would enable the Commission to operate such distinctions.
- (162) The fact that the situation of the Union industry was still considered as vulnerable in the previous expiry review has no impact on the conclusion of the current investigation. Indeed, as confirmed by the investigation, the financial situation of the Union industry continued to improve over the period considered leading to high profitability levels in 2012, 2013 and the investigation period. In addition, the Commission confirms the approach described in recital 123 regarding the analysis of the recovery from past dumping. The argument was therefore rejected. In any event, this factor would not affect the overall conclusion of the Commission on the lack of material injury in the specific circumstances of this case.
- (163) With regard to the Union industry's employment levels, interested parties requested the Commission to double-check employment data. In addition, the same interested parties criticised the Commission for failing to recognise that layoffs had already been performed prior to the beginning of the period considered.
- (164) The Commission confirms the figures reported on employment in recital 119 above, which have been verified during the investigation. As to the fact that layoffs took place prior to the period considered, it has to be noted that it remains outside the temporal scope of the current investigation. The argument was therefore rejected.
- (165) Finally, these parties also voiced their concerns with regard to the significant production overcapacity of Bioking, pointing out that the total disregard of the Union demand can only lead to the complete destruction of the Union tartaric acid industry in the short term, regardless of its profitability rate. At the hearing held on 13 January 2016, those parties reiterated that post investigation period information was relevant for the correct assessment of the situation of the Union industry, in particular of its profitability.

(166) According to the information gathered and verified during the investigation, it could not be established whether the production capacity of Bioking will increase in the near future or whether the new facilities under construction will replace the old existing ones. The information provided by the complainants in their comments to the general disclosure document does not provide specific evidence in that respect. Furthermore, as mentioned in recital 85, post investigation period developments are normally not taken into account, and in any event, can no longer be verified at this late stage of the investigation. The argument was therefore rejected.

#### 5. CAUSALITY

(167) Since it was found that the Union industry did not suffer material injury, it was not necessary to examine the causality.

#### 6. UNION INTEREST

(168) Since it was found that the Union industry did not suffer material injury, it was not necessary to examine the Union interest.

#### 7. TERMINATION OF THE PROCEEDING

(169) In view of the conclusions reached with regard to the lack of material injury suffered by the Union industry, in accordance with Article 9 of the basic Regulation, the proceeding should be terminated without the imposition of measures.

(170) All parties concerned were informed of the final findings and the intention to terminate the proceeding and were given an opportunity to comment.

(171) The Committee established by Article 15(1) of the basic regulation did not deliver an opinion,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90), is hereby terminated.

#### *Article 2*

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

Done at Brussels, 9 February 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER