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►**B** **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)

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THE COUNCIL OF THE EUROPEAN UNION,

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 ([1]) (the basic Regulation), and in particular Article 9(4) and Article 11(2), 11(5) and 11(6) thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Previous investigations and measures in force

(1) By Regulation (EC) No 130/2006 ([2]) (the original Regulation), the Council imposed a definitive anti-dumping duty, ranging from 0 % to 34,9 %, on imports of tartaric acid (TA) originating in the People's Republic of China ('China'). It is recalled that the rate of the definitive anti-dumping duty imposed on TA produced by the Chinese exporting producer Hangzhou Bioking Biochemical Engineering Co. Ltd ('Hangzhou Bioking') was 0 % while it ranged between 4,7 % and 34,9 % for other Chinese exporting producers.

(2) On 22 February 2008, following a review initiated on the basis of Article 11(3) of the basic Regulation, the Council, by Regulation (EC) No 150/2008 ([3]), amended the scope of the abovementioned measures.

(3) On 16 April 2012, following a review of the existing measures on Hangzhou Bioking initiated on the basis of Article 2(3) of Regulation (EC) No 1515/2001, in light of the WTO Appellate Body report entitled 'Mexico — Definitive Anti-Dumping Measures on Beef and Rice' ([4]), which found, in paragraphs 305 and 306, that an exporting producer not found to be dumping in an original investigation has to be excluded from the scope of the definitive measure imposed as a result of such investigation and cannot be made subject to administrative and changed circumstances review, the Council, by Regulation (EU) No 332/2012 ([5]), amended the measures regarding Hangzhou Bioking.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 23, 27.1.2006, p. 1.
([3]) OJ L 48, 22.2.2008, p. 1.
([4]) WT/DS295/AB/R, 29 November 2005.
([5]) OJ L 108, 20.4.2012, p. 1.

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(4) The investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

2. **Request for an expiry review**

(5) Following the publication of a notice of impending expiry ([1]) of the anti-dumping measures in force, the Commission received on 27 October 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the following producers ('the applicants'): Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie SRL and Comercial Química Sarasa SL representing a major proportion, in this case more than 50 %, of the total Union production of TA.

(6) The request was based on the grounds that the expiry of the measures imposed on imports of TA originating in China would be likely to result in a continuation of dumping and injury to the Union industry.

3. **Initiation of an expiry review**

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 26 January 2011 the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, by a notice published in the *Official Journal of the European Union* ([2]) ('notice of initiation').

4. **Parallel cases**

(8) The Commission also announced on 29 July 2011 the initiation of an anti-dumping proceeding ([3]) pursuant to Article 5 on imports of TA originating in China, limited to one Chinese exporting producer, Hangzhou Bioking.

(9) On the same day, the Commission announced the initiation of a partial interim review ([4]) pursuant to Article 11(3) of the basic Regulation of the anti-dumping measures applicable to imports of TA originating in China limited to the examination of dumping as far as two Chinese exporting produces are concerned, namely Changmao Biochemical Engineering Co. Ltd, Changzhou City, and Ninghai Organic Chemical Factory, Ninghai.

5. **Investigation**

5.1. *Review investigation period and the period considered*

(10) The investigation of continuation of dumping covered the period from 1 January 2010 to 31 December 2010 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2007 to the end of the review investigation period ('the period considered').

([1]) OJ C 211, 4.8.2010, p. 11.
([2]) OJ C 24, 26.1.2011, p. 14.
([3]) OJ C 223, 29.7.2011, p. 11.
([4]) OJ C 223, 29.7.2011, p. 16.

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5.2. *Parties concerned by the investigation*

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

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

(13) In view of the apparent large number of exporting producers from China, unrelated importers in the Union and Union producers involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the publication of the notice of initiation and to provide the Commission with the information requested in the notice of initiation.

(14) In view of the replies received it was decided to apply sampling in respect of Union producers. No unrelated importers in the Union cooperated in the investigation. As regards exporting producers from China, only two exporting producers manifested their willingness to cooperate in the investigation. It was therefore decided that sampling was not necessary as regards exporting producers.

(15) Six Union producers provided the information requested in the notice of initiation and agreed to be included in the sample. On the basis of the information received from these Union producers, the Commission selected a sample of four Union producers which were found to be representative of the Union industry in terms of sales volumes of the like product in the Union. Their combined sales volume represented 61 % of the sales volume in the Union market.

(16) Questionnaire replies were received from the four sampled Union producers, two users in the Union, and two exporting producers in China. In addition, two cooperating Union producers provided the requested general data for the injury analysis.

(17) Exports made by Hangzhou Bioking, whose individual dumping margin in the original investigation was zero, have been excluded from both dumping and injury analysis, including the likelihood of continuation of dumping and risk of recurrence of injury resulting from dumped imports. The analysis in the present review was therefore based on exports of product concerned from China to the Union during the RIP excluding the exports made by the producer Hangzhou Bioking and is also referred to as ‘exports subject to measures’ in this Regulation.

(18) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of

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continuation or recurrence of dumping and resulting injury and for the determination of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Union producers:

— Comercial Química Sarasa SL,

— Alcoholera Vinícola Europea SA,

— Distillerie Mazzari SpA,

— Distillerie Bonollo SpA;

(b) exporting producers in China:

— Changmao Biochemical Engineering Co. Ltd,

— Ninghai Organical Chemical Factory;

(c) users:

— Danisco A/S,

— Kerry (NL) BV;

(d) producer in the analogue country:

— Tarcol SA, Argentina.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(19) The product concerned by this review is the same as the one defined in Regulation (EC) No 150/2008, which amended the scope of the measures established by the original Regulation as explained above. Namely, the product concerned is tartaric acid, excluding D-(-)-tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, originating in China, currently falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90) ('the product concerned').

(20) The review investigation confirmed that, as in the original investigation, the product concerned imported into the Union market and the products manufactured and sold by the exporting producers on the domestic markets, as well as those manufactured and sold in the Union by the Union Industry ('the like product'), have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

1. Preliminary remarks

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

(22) As mentioned in recital 13, in view of the potentially large number of exporting producers involved in this review, sampling was foreseen in the notice of initiation. From the 20 known exporting producers, only the two companies, both benefiting from market economy treatment, came forward and agreed

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to cooperate. These two companies cover most of the imports of product concerned from China to the Union during the RIP excluding the exports made by the company Hangzhou Bioking, whose individual dumping margin in the original investigation was zero.

2. **Dumping of imports during the RIP**

2.1. *Analogue country*

(23) Since China is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment (MET) has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').

(24) As in the original investigation, Argentina was proposed as analogue country in the notice of initiation for the purpose of establishing normal value. Interested parties were given the opportunity to comment on the appropriateness of this choice.

(25) One industrial consumer of tartaric acid highlighted some constraints linked to the choice of Argentina as analogue market arguing that it should not be the sole benchmark for the purpose of determining normal value. The party concerned addressed in particular alleged differences in the production processes between China and Argentina, the limited amount of annual production as compared to world production and currency exchange rates fluctuation. However, none of these arguments were substantiated by any documentary evidence.

(26) In any event, the different production processes in Argentina and China and the resulting impact on the costing and the valuation of the product concerned were already carefully considered in the original investigation and it was concluded that it did not alter the comparability of the products that were found to be similar. As the allegation of the industrial consumer did not bring any new element and its claims were not substantiated, the argument is rejected. The findings of the current expiry review, therefore confirm the findings of the original investigation, i.e. that the differences in production processes did not have an impact on the comparability of the products.

(27) The limited size of the annual production in Argentina as compared to the world market of TA is not a relevant argument when assessing whether a specific market is suitable to establish normal value in an analogue market. Indeed, the investigation confirmed that Argentina is an open and competitive market with at least two operators. On these grounds, the argument is rejected.

(28) The argument of significant currency exchange fluctuation between regions was not substantiated. In addition, the on spot investigation did not gather any element pointing to any distortion of currency rates between regions. On these grounds, the argument is also rejected.

(29) Therefore, as in the original investigation, it was concluded that Argentina was an appropriate analogue country from which normal value will be determined.

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(30) Two known Argentinean companies were contacted but only one of them agreed to cooperate, to reply to the questionnaire and to accept a verification visit. Its figures have been used for the determination of the normal value.

2.2. *Normal value*

(31) For the two companies granted MET in the original investigation, normal value has been established based on their respective data. In accordance with Article 2 of the basic Regulation, the Commission examined whether the domestic sales of tartaric acid to independent customers were representative during the RIP, i.e. if the sales volume of the product intended for domestic consumption represents 5 % or more of their exports of the product concerned to the Union.

(32) For one company granted MET, normal value had to be constructed since its domestic sales were not sufficient to be considered representative as explained in recital 31. Therefore, the established normal value was calculated using the company's cost of manufacturing and adding selling, general and administrative costs (SG&A) and profit achieved on the domestic sale made in the ordinary course of trade.

(33) For the other company granted MET, since the domestic sales were representative and made in the ordinary course of trade, normal value was established on the prices paid by independent customers in the exporting country.

(34) As far as the companies not granted MET in the original investigation are concerned, pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information collected from the cooperating producer in the analogue country.

(35) Therefore, the domestic sales to independent customers in the analogue country were also assessed in accordance with the criterion defined in Article 2 of the basic Regulation. The Commission could verify that these sales were made in sufficient quantities and in the ordinary course of trade and could thus be used to determine normal value for the companies not granted MET.

2.3. *Export price*

(36) All export sales to the Union of the cooperating exporting producers were made directly to independent customers established in the Union. In accordance with Article 2(8) of the basic Regulation, the export price was established on the basis of the prices actually paid or payable.

(37) For the export price of all other producers established in China, information was taken from imports statistics made available in the Article 14(6) database.

2.4. *Comparison*

(38) The comparison between normal value and export price was made on an ex-works basis.

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(39) For the purpose of ensuring a fair comparison between the normal value and the export price of the cooperating exporting producers, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport, insurance, taxes and credit costs which affected prices and price comparability.

(40) In order to fairly compare the ex-works normal value from the analogue country and the export price as mentioned in recital 37, the CIF export prices were adjusted to ex-works using data collected during the verification visits.

2.5. *Dumping margin*

(41) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price.

(42) For the cooperating exporting producers, granted MET in the original investigation this comparison showed that these companies continued dumping although at a slightly lower level.

(43) The residual duty calculated showed a significant level of dumping even higher than in the original investigation.

3. **Likelihood of continuation of dumping**

(44) Further to the analysis of the existence of dumping during the RIP, the likelihood of continuation of dumping was also investigated.

(45) In this respect, the following elements were analysed: the volume and prices of dumped imports from China, the production capacity and the spare capacity in China, the attractiveness of the Union market and other third markets.

3.1. *Volume and prices of dumped imports from China*

(46) After imposition of definitive measures in January 2006, dumped imports from China continued to increase, raising from 3 034 metric tonnes (MT) in 2007 to 3 649 MT in the RIP, i.e. an increase of around 20 %. In parallel, market share of dumped imports from China gained 1,0 percentage points in the period considered from 12,6 % in 2007 to 13,5 % in the RIP.

(47) In the same period, prices of dumped imports from China remained relatively stable with an increase of 12,6 % between 2007 and 2008 followed by a continued reduction in 2009 and the RIP, to reach in the latter period the level achieved in 2007.

3.2. *Production capacity and spare capacity in China*

(48) As far as the total production capacity of TA in China is concerned, different sources of information publicly available [1] point to a production capacity that is largely in excess of demand on the Chinese domestic market.

[1] Like the *Chemical Economic Handbook* (CEH), or reports from CCM International Ltd.

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(49) Total production capacity in China has been assessed at around 25 000 MT, taking into account information gathered on spot during the investigation and following market researches [1]. The Chinese market is small when compared to the available capacity in China with an estimated consumption of 5 000 MT.

(50) In addition, there are strong indications that capacity in China is even higher than 25 000 MT. Indeed, total capacity of the two cooperating Chinese exporters went up by more than 200 % comparing data for the original IP to the current RIP. The corresponding spare capacity was of around 20 % of total capacity in the RIP.

(51) Furthermore, information collected from extracts of the reports mentioned above in recital 48 and publicly available information show that at least two new producers of tartaric acid were set up in 2007.

(52) On these grounds, it is clear that capacity in China is disproportionate as compared to domestic consumption, which confirms a clear need for the Chinese producers to increase their position on export markets.

3.3. *Attractiveness of the Union market and other third markets*

(53) From the information gathered at the Chinese cooperating companies, the level of prices to third countries is in line with the level of prices that they could obtain in the Union market. As mentioned above, there is an important production overcapacity on the Chinese domestic market suggesting a strong and natural need to find alternative markets to absorb this excess in production capacity.

(54) The Union market is by far the biggest in the world reaching around 40 % of the world consumption of tartaric acid and is still growing as mentioned in recital 60. It is also clear, based on information collected during the investigation that Chinese companies have shown a big interest in developing their presence on the biggest market in the world and maintaining a significant market share on the Union market.

4. **Conclusion of the likelihood of continuation of dumping**

(55) In view of the findings described above, it can be concluded that significant volumes of imports from China are still being dumped and that there is a strong likelihood of continuation of dumping. Given the potential spare capacity in China including the new producers that appeared on the Chinese market and the fact that the Union market is the biggest market in the world with attractive level of prices, it can be concluded that the Chinese exporters are likely to further increase their exports to the Union at dumped prices should the anti-dumping measures be allowed to lapse.

[1] Like the *Chemical Economic Handbook* (CEH), or reports from CCM International Ltd.

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D. **DEFINITION OF THE UNION INDUSTRY**

(56) During the RIP, the like product was produced by nine producers in the Union. Of these nine producers, six producers fully cooperated with the investigation, submitted sampling forms and requested to be included in the sample. These six producers were found to account for a major proportion, in this case more than 73 %, of the total Union production of the like product. As mentioned in recital 57 below, nine producers having provided the data in the review request, are hereafter referred to as the 'Union industry' within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(57) For the purpose of the injury analysis, the injury indicators have been established at the following two levels:

— the macroeconomic elements (production, capacity, capacity utilisation, productivity, sales volume, market share, growth, employment, and magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production, on the basis of the information collected from the producers that came forward in the context of the sampling exercise and on an estimation based on the data from the review request for the other three Union producers,

— the analysis of microeconomic elements (average unit prices stocks, wages, profitability, return on investments, cash flow, ability to raise capital and investments) was carried out on the basis of information provided by the sampled Union producers.

(58) It is noted that the Union market for TA is characterised by a relatively small number of producers, mostly small and medium enterprises located in Italy and Spain. With the exception of one producer established in Spain, which only produces TA, all other producers are vertically integrated, with the main activity being producing alcohol from wine lees, a process for which TA is a by-product.

E. **SITUATION ON THE UNION MARKET**

1. **Consumption in the Union market**

(59) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the Chinese export database and the imports volumes data for the Union market obtained from Eurostat and, concerning the other Union producers, from estimation based on the review request.

(60) Union consumption of TA increased between 2007 and the RIP by 11 %. In details, the apparent demand went down from 2007 to 2009 by 15 %. However, during the RIP the Union consumption reached 29 964 tonnes, representing a significant increase of 26 percentage points as compared to the previous

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year. This increase is explained by the high price elasticity of the TA. Indeed, when prices are low, as was the case during the RIP, TA can be used in additional applications as a substitute for other raw material chemical products such as citric acid and malic, hence an increase of the total Union consumption.

Table 1

	2007	2008	2009	RIP
Total EU consumption (tonnes)	26 931	25 333	22 983	29 964
Index	*100*	*94*	*85*	*111*

Source: Questionnaire replies, Chinese export database, Eurostat.

2. **Volume, market share and prices of imports from China**

2.1. *Volume and market share*

(61) The volume of all imports of the product concerned from China into the Union increased by 45 % during the period considered. It reached 8 495 tonnes in the RIP corresponding to a market share of 28,4 %.

(62) The volume of imports of TA from Chinese exporters being subject to anti-dumping measures into the Union increased by 20 % and reached 3 649 tonnes in the RIP corresponding to a market share of 12,2 %, up from 11,3 % at the beginning of the period considered. The remaining imports, 4 846 tonnes, were made by a Chinese exporter subject to a 0 % and which also increased its share in total Chinese exports to the Union during the period considered (+ 9 percentage points).

Table 2

	2007	2008	2009	RIP
Volume of imports subject to measures from China (tonnes)	3 035	3 042	2 945	3 649
Index = 100	*100*	*100*	*97*	*120*
Market share of imports subject to measures from China	11,3 %	12,0 %	12,8 %	12,2 %
Index = 100	*100*	*106*	*113*	*107*

2.2. *Prices and undercutting*

(63) The following table shows the development of average CIF EU frontier prices of imports under measures from China and the relevant average sales prices of the Union industry.

Table 3

	2007	2008	2009	RIP
Price of Chinese imports (EUR/tonne) subject to measures	1 834	2 060	1 966	1 819
Index = 100	*100*	*112*	*107*	*99*

Source: Questionnaire replies, Article 14(6) database.

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(64) Average unit selling prices of Chinese exports subject to measures at CIF level in the RIP reached 1 819 EUR/MT, corresponding, over the period considered, to an increase of 20 %.

(65) Concerning the selling price on the Union market of the TA during the RIP, a comparison was made between the prices of TA produced and sold by the Union industry and those of the imports subject to measures from China. The relevant sales prices of the Union industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Union and after deduction of discounts and rebates. These prices were compared with the sales prices charged by the aforementioned Chinese exporting producers net of discounts and adjusted where necessary to CIF EU frontier with an appropriate adjustment for the customs clearance costs and post importation costs. The Union weighted average selling price during the RIP was 2 496 EUR/MT.

(66) The comparison on a type by type basis showed that, during the RIP, imports subject to measures from China of the product concerned were sold in the Union at prices which significantly undercut the Union industry's prices, when expressed as a percentage of the latter, by 32,6 %.

3. **Imports from other third countries**

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

Table 4

	2007	2008	2009	RIP
Volume of imports from other countries (tonne)	590	135	156	845
Index = 100	*100*	*23*	*26*	*143*
Market share of imports from other third countries	2,2 %	0,5 %	0,7 %	2,8 %
Index = 100	*100*	*24*	*31*	*129*
Price of imports (EUR/tonne)	2 503	2 874	2 300	2 413

Source: Eurostat, Article 14(6) database.

(68) The volume of imports from other third countries of the TA into the EU increased in the period considered, by 43 % and reached 845 tonnes in the RIP. Prices of these imports are relatively high and significantly above the respective prices from China and only slightly below the average level of prices of the Union industry. However, it can be considered that exports from other third countries were marginal since during the RIP they represented only a market share of 2,8 % despite their steep increase in percentage terms at the end of the period considered.

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

(69) Pursuant to Article 3(5) of the basic Regulation, all relevant economic factors and indices having a bearing on the state of the Union industry during the period considered have been examined.

4.1. *Preliminary remarks*

(70) In view of the fact that sampling was used with regard to the Union industry, for the purpose of the injury analysis, the injury indicators have been established at two levels as mentioned in recital 57 above.

4.2. *Macroeconomic elements*

(a) Production

(71) The Union production increased by 5 % between 2007 and the RIP. More specifically, it increased by 19 percentage points between 2009 and RIP to around 30,5 thousand MT, following a sharp decrease between 2007 and 2009 of 14 %. Increased production levels have allowed the Union industry to contain the increase of production costs and had a positive impact on the overall Union industry profitability.

Table 5

	2007	2008	2009	RIP
Production in volume (tonne)	29 000	27 500	25 000	30 588
Index = 100	*100*	*95*	*86*	*105*

Source: Questionnaire replies, review request.

(b) Production capacity and capacity utilisation

(72) The production capacity of the Union producers decreased by 2 % throughout the period considered.

(73) Capacity utilisation was 63 % in 2007 and dropped to 56 % in 2009, to reach 68 % in the RIP. The lower utilisation rate in 2009 reflected the negative effects of the crisis. Total capacity utilisation increased by 8 % over the period considered, which contributed to a further dilution of fixed costs.

Table 6

	2007	2008	2009	RIP
Production capacity (tonne)	46 000	46 000	45 000	45 000
Index = 100	*100*	*100*	*98*	*98*
Capacity utilisation	63 %	60 %	56 %	68 %
Index = 100	*100*	*95*	*88*	*108*

Source: Questionnaire replies, review request.

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(c) Sales volume

(74) The sales volume of the Union producers to unrelated customers on the Union market modestly increased in RIP by 1 %. First they decreased by 11 % between 2007 and 2008, followed by a further decrease by 9 % in 2009, to reach almost the same level at the end of the period considered as the beginning of the period considered, thus showing wide variations mainly due to the economic crisis of 2008 and 2009.

Table 7

	2007	2008	2009	RIP
Sales to unrelated parties in the Union (tonne)	20 489	18 165	16 709	20 623
Index = 100	*100*	*89*	*82*	*101*

Source: Questionnaire replies, review request.

(d) Market share

(75) During the period considered, the Union producers lost 7,3 percentage points in market share, which decreased from 76,1 % in 2007 to 68,8 % in the RIP. This loss of market share reflects the fact that, despite an increase in consumption, the Union industry's sales were not able to progress at the same pace in the period considered but remained somewhat stable.

Table 8

	2007	2008	2009	RIP
Market share of the Union producers	76,1 %	71,7 %	72,7 %	68,8 %
Index = 100	*100*	*94*	*95*	*90*

Source: Questionnaire replies, review request and Eurostat.

(e) Growth

(76) Between 2007 and the RIP, whilst the Union consumption increased by 11 %, the volume of sales by the Union industry on the Union market remained stable and the Union industry market share decreased by 10 %. It is thus concluded that the Union producers could not benefit from any growth of the market.

(f) Employment

(77) The employment level of the Union industry shows a decrease of 28 % between 2007 and the RIP. More specifically, the number of persons employed decreased significantly from 320 in 2007 and 2008 to 280 in 2009 and 230 in the RIP. The drop in 2009 is a reflection of the restructuring efforts by a number of Union producers.

Table 9

	2007	2008	2009	RIP
Employment (persons)	320	320	280	230

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	2007	2008	2009	RIP
Index = 100	*100*	*100*	*88*	*72*

Source: Questionnaire replies, review request.

(g) Productivity

(78) Productivity of the Union industry workforce, measured as output (tonnes) per person employed per year, increased by 47 % in the period considered. This reflects that production increased by 5 %, whilst employment levels decreased by 28 % and is an indication of the increased efficiency by the Union industry. This is particularly obvious in the RIP, when production increased while the employment level continued to decrease and productivity was 48 percentage points higher than in 2009.

Table 10

	2007	2008	2009	RIP
Productivity (tonnes per employee)	90	85	89	132
Index = 100	*100*	*94*	*99*	*147*

Source: Questionnaire replies and review request.

4.3. *Data relating to the sampled Union producers*

(h) Factors affecting sales prices

(79) The annual average sales prices of the sampled producers on the Union market to unrelated customers increased by 8 % between 2007 and 2009, however, they decreased by 6 % during the period considered as in the RIP the annual average sale price reached 2 496 EUR/tonne from 2 667 EUR/tonne in 2007. The availability of calcium tartrate, which is produced out of wine lees and represents 66 % of total costs of manufacturing of TA, varies according to the quality of the grape wine harvest. Therefore, favourable or poor climatic conditions have an effect on the overall supply of calcium tartrate, which in turn has an impact on the annual averages sales prices. It should be noted that 2007 and 2008 have not been two favourable years as far as the grape wine harvest is concerned, which subsequently led to an increase of the costs of raw materials and sales prices after the production period (as it is a seasonal product, effects materialise only several months following the harvest period). Conversely, as 2009 has been a good wine harvesting year hence, the annual average sale prices in the RIP was 14 % lower compared to the previous year.

Table 11

	2007	2008	2009	RIP
Unit price EU market (EUR/tonne)	2 667	2 946	2 881	2 496

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	2007	2008	2009	RIP
Index = 100	*100*	*110*	*108*	*94*

Source: Questionnaire replies, review request.

(i) Magnitude of dumping margin and recovery from past dumping

(80) Given the level of dumping found in this investigation, no full recovery from the past dumping could be established and it was considered that the Union industry remains vulnerable to the injurious effect of any dumped imports in the Union market. It is recalled that in the original investigation dumping margins of 4,7 % and 10,1 % were found for the respective two cooperating Chinese producers being granted MET. The dumping margin for all other companies is 34,9 %. Furthermore, as mentioned in recital 7 above, an anti-dumping proceeding limited to one Chinese exporting producer, Hangzhou Bioking, which is not subject to measures was initiated and it cannot be excluded that this exporting producer could be found to practise dumping. In addition, as stated in recitals 48 to 54 above, a likelihood of continuation of dumping was established mainly based on available excess production capacity in China and the rather small size of the Chinese domestic market. As regards recovery from past dumped imports from China, it is important to recall that after the imposition of definitive measures in January 2006, imports from China subject to measures continue to increase, as mentioned in recital 46 above. Thus, no actual recovery from the past dumping could be established and it is considered that the Union industry remains vulnerable to the injurious effects of any dumped imports in the Union market.

(j) Stocks

(81) Volume of stock remained stable during the period considered with a modest increase of 2 %. More specifically, it sharply increased by 65 % in 2008 as a direct consequence of the evolution of sales as mentioned in recital 74 above. Between 2008 and the RIP volume of stock decreased as sales to unrelated parties increased during the same period.

Table 12

	2007	2008	2009	RIP
Closing stock (tonne)	863	1 428	933	879
Index = 100	*100*	*165*	*108*	*102*

Source: Questionnaire replies.

(k) Wages

(82) The average labour cost increased by 19 % during the period considered despite the labour cost reducing efforts of the sampled producers in particular with regard to unskilled workers, as reflected in the reduction of the overall workforce mentioned in recital 77 above.

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Table 13

	2007	2008	2009	RIP
Average wage (EUR)	28 686	31 871	31 574	34 245
Index = 100	*100*	*111*	*110*	*119*

Source: Questionnaire replies.

(l) Profitability and return on investments

(83) During the period considered, the profitability of the sampled producers' sales of the like product on the Union market to unrelated customers, expressed as a percentage of net sales, increased by more than 6 percentage points. More specifically, the situation with regard to profitability of the sampled producers dropped by 3,7 percentage points between 2007 and 2008 to a level of 7,7 %, which was considered to be below the target profit and increased in 2009 and the RIP to reach 17,6 %.

(84) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It decreased from a level of 36,4 % in 2007 to 21,9 % in 2008. It increased to 44,4 % in 2009 and increased again in the RIP to 142,9 %. Overall, the return on investments remained very positive over the period considered.

Table 14

	2007	2008	2009	RIP
Profitability of EU (% of net sales)	11,4 %	7,7 %	12,5 %	17,6 %
Index = 100	*100*	*67*	*109*	*153*
ROI (profit in % of net book value of investments)	36,4 %	21,9 %	44,4 %	142,9 %
Index = 100	*100*	*60*	*122*	*393*

Source: Questionnaire replies.

(m) Cash flow and ability to raise capital

(85) The net cash flow from operating activities was positive at EUR 4,6 million in 2007. It dropped to EUR 1,8 million in 2008 and improved significantly until the end of the period considered to reach a level of EUR 6,8 million in the RIP. Overall, cash flow has been constantly positive in the period considered.

(86) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that, as mentioned in recital 58 above, most of the sampled producers are integrated companies.

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Table 15

	2007	2008	2009	RIP
Cash flow (EUR)	4 691 458	1 841 705	4 706 092	6 802 164
Index = 100	*100*	*39*	*100*	*145*

Source: Questionnaire replies.

(n) Investments

(87) The sampled producers' annual investments in the production of the like product decreased by 23 % between 2007 and the RIP. More specifically, it increased by 5 % between 2007 and 2008 and then it further increased by 32 percentage points in 2009. The sharp drop in investments observed between 2009 and the RIP (– 60 percentage points) can be partially explained by the fact that investigated companies had already during the period considered achieved their necessary scheduled main investments.

Table 16

	2007	2008	2009	RIP
Net investments (EUR)	2 518 189	2 632 013	3 461 990	1 943 290
Index = 100	*100*	*105*	*137*	*77*

Source: Questionnaire replies.

5. **Conclusion on the situation of the Union industry**

(88) The analysis of the macroeconomic data shows that the Union industry increased its production and sales during the period considered. However, the observed increase which was not significant as such, should be seen in the context of increased demand between 2007 and the RIP, which resulted in the Union producers' market share dropping by 7,3 percentage points to 68,8 %.

(89) At the same time the relevant microeconomic indicators show an improvement regarding the economic situation of the Union industry. The profitability and return on investment remained positive and the cash flow also remained positive in the RIP.

(90) In the light of the foregoing, it is concluded that the Union industry has not suffered material injury within the meaning of Article 3(5) of the basic Regulation. However, the overall absence of material injury during the RIP should be considered in the light of other important injury indicators, which developed negatively during the period considered, in particular sales prices, loss of market share and employment. Therefore, the situation of the Union industry is considered to be still vulnerable and in some aspects, far from the levels that could be expected had it recovered fully from the injury found in the original investigation.

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F. **LIKELIHOOD OF RECURRENCE OF INJURY**

1. **Impact of the projected volume of imports and price effects in case of repeal of measures**

(91) As concluded in recitals 48 to 52 above, the exporting producers in China have considerable spare capacities and a clear potential to increase their export volumes to the Union market significantly including redirecting exports from other markets.

(92) The CIF export prices to the Union of TA practised by the Chinese exporters currently subject to measures were significantly lower than the prices of the Union industry in the RIP and on a type by type basis undercut it by 32,6 %.

(93) An analysis of Chinese exports ([1]) of TA to the rest of the world after the RIP shows that their volume was decreasing significantly, from 10 862 MT in the RIP to 8 118 MT at the end of July 2011 (– 25 %). This decrease in Chinese exports volume of 2 744 tonnes to other markets could create an additional flow of Chinese exports towards the Union market.

(94) Considering existing spare capacities for TA in China, combined with the attractiveness of the Union market as mentioned above, exporters in China would in all likelihood try to increase their market shares in the Union thereby materially injuring the Union industry. Consequently, in the absence of anti-dumping duties on imports of TA originating in China, any increased volumes of dumped imports from China would exercise an even stronger price pressure on the Union industry and cause material injury.

(95) As mentioned in recital 79 climatic/harvest-related conditions partly play a role in the overall financial situation of the Union industry. It is recalled that the TA, used also by wine producers, can be obtained either from the by-products of winemaking or, as is the case of Chinese exporters, via chemical synthesis, from petrochemical or coal-related compounds such as benzene.

(96) Consequently, it should be further noted that there are no significant constraints in production volumes for Chinese production given their synthetic production methods, unlike the Union industry producers using natural raw materials — wine lees.

(97) Given that the profitability of the Union industry is in part dependent on climatic conditions, it appears that the good profitability achieved in the RIP cannot be considered as lasting. Indeed, even during the period considered, the Union industry was not always able to achieve its target profit of 8 %. Moreover, in the six-month period following the end of the RIP, the Union industry's profitability already fell significantly to around 3 % with the industry again finding itself in a vulnerable position.

([1]) *Source:* Chinese exports' database.

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2. **Conclusion on the likelihood of recurrence of injury**

(98) On this basis, it is concluded that the repeal of the measures would in all likelihood result in an increase of dumped exports originating in China resulting in a downwards pressure on Union industry prices and a worsening of the economic situation of the Union industry. It is therefore concluded that the repeal of measures against China would in all likelihood result in the recurrence of injury to the Union industry.

G. UNION INTEREST

1. **Introduction**

(99) In compliance with Article 21 of the basic Regulation, it was examined whether maintenance of the existing anti-dumping measures against China would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(100) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(101) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures against imports originating in China.

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

(102) The Union industry has proven to be in general a viable industry. This was confirmed by the positive development of its economic situation observed during the period considered partly due to its restructuring efforts and the measures in place. In particular, the Union industry improved its cost structure and profit situation and production volume along the period considered.

(103) It can reasonably be expected that the Union industry will continue to benefit from the measures to be maintained. Should the measures against imports originating in China not be maintained, it is likely that the Union industry will again suffer material injury from substantial volumes of dumped imports from China, causing a serious deterioration of its financial situation. Indeed, there is a clear likelihood of injurious dumping in substantial volumes which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current anti-dumping measures.

(104) Accordingly, it is concluded that the maintenance of anti-dumping measures against China would clearly be in the interest of the Union industry.

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3. **Interest of importers**

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

4. **Interest of users**

(106) TA is mainly used in the wine and food industry as a food and beverage additive, and in the construction industry as a retardant in the production of gypsum.

(107) All known users have been contacted in this investigation.

(108) There was no cooperation from users from the construction industry. As established in the original investigation, TA represents less than 2 % of the costs of the gypsum products where it is used. Therefore it was concluded that the continuation of the measures would have a negligible influence on the costs and the competitive position of the construction industry.

(109) Two major importers/users from the food sector cooperated fully in the proceeding. It could be determined that both companies were profitable, including their product lines using the product concerned as one of the raw materials. Besides sales of products manufactured using the product concerned represented only a minor percentage of their total turnover. Thus it can be concluded that the continuation of the measures would not unduly affect the users of the food industry. Moreover for these users the existence of diverse supply sources for the product concerned was quite important.

5. **Conclusion on Union interest**

(110) Taking into account all of the factors outlined above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. **ANTI-DUMPING MEASURES**

(111) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained on imports of the product concerned originating in China. They were also granted a period to make representations subsequent to this disclosure.

(112) A user from the construction sector claimed that the extension of the measures in force would cause a shortage of the product concerned, might increase their production costs and thus result in increased prices of their finished products. No evidence was submitted to support these claims. Therefore, due to the lack of justification of the claims along with the lack of cooperation from users from the construction sector, it was not possible to verify these claims.

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(113) The two users from the food sector that cooperated in the investigation claimed that the impact of the continuation of the measures on the food industry had not been sufficiently considered, and one of them requested a hearing with the Hearing Officer.

(114) During the hearing, this user did not disagree with the conclusion that the continuation of the measures would overall not negatively affect the profitability of the company as a whole but claimed that the impact on the profitability of the specific production line using the product concerned, which represents only a minor percentage of the total turnover, would be in their view significant. It also claimed that domestic prices for tartaric acid had considerably increased after the review investigation period and that these price levels would again significantly reduce their product profitability. Nevertheless this user did not deny that the price increase was a result of a lack of raw material supply on the Union market whose level fluctuates regularly depending on the wine harvest and cannot therefore be considered as lasting nor being caused by the anti-dumping measures in force.

(115) The other cooperating user, during a hearing with the investigation team, argued against the extension of the measures with arguments of similar nature. Therefore, these arguments were similarly rejected (see the previous recital).

(116) A cooperating Chinese exporting producer argued that the Union industry could not be considered as still being vulnerable, that the essential cause influencing the Union industry situation was closely associated with climatic conditions and that, in consequence, it was against the continuation of the measures. These claims were not supported by evidence and hence could not be accepted. Furthermore, they were not of a nature as to change the findings as to the situation of the Union industry.

(117) Finally the Union industry, in consideration of its profitability figures during the period considered, justified that the closure in mid-2008 of the sole French producer had, in the short run, diminished the quantity of product concerned available in the domestic market, thus temporarily increasing sales prices and, accordingly, increasing their profitability. The Union industry argued that given these circumstances, these changes could not in any case be considered as been of a lasting nature. Thus, the findings as regard the situation of the Union industry remain unchanged.

(118) In summary, after having considered all the comments submitted following disclosure to interested parties of the conclusions of the investigation, it was considered that none of them was of such a nature as to change the conclusions reached during the investigation.

(119) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of tartaric acid originating in China should be maintained for an additional period of five years,

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HAS ADOPTED THIS REGULATION:

Article 1

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

2. The rate of the definitive anti-dumping duty applicable, to the net free-at-Union-frontier price, before duty, for the products manufactured by the companies listed below shall be as follows:

▼M1

Company	Anti-dumping duty	TARIC additional code
Changmao Biochemical Engineering Co. Ltd, Changzhou	13,1 %	A688
Ninghai Organic Chemical Factory, Ninghai	8,3 %	A689
All other companies (except Hangzhou Bioking Biochemical Engineering Co. Ltd, Hangzhou — TARIC additional code A687)	34,9 %	A999

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3. The application of the individual duty rates 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, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

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

Article 2

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

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

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ANNEX

(1) A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3): The name and function of the official of the entity which has issued the commercial invoice.

(2) The following declaration: ‘I, the undersigned, certify that the (volume) of tartaric acid sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.’

Date and signature