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EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1157

of 11 July 2016

amending Implementing Regulation (EU) No 964/2014 as regards standard terms and conditions for financial instruments for a co-investment facility and for an urban development fund

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ⁽¹⁾, and in particular the second subparagraph of Article 38(3) thereof,

Whereas:

- (1) To facilitate the use of financial instruments which are set up at national, regional, transnational or cross-border level and managed by or under the responsibility of the managing authority in accordance with Article 38(3)(a) of Regulation (EU) No 1303/2013, Commission Implementing Regulation (EU) No 964/2014 ⁽²⁾ established rules on standard terms and conditions for three financial instruments: a portfolio risk sharing loan, a capped portfolio guarantee and a renovation loan.
- (2) To further facilitate the delivery of European Structural and Investment Funds to final recipients it is necessary to provide for rules on standard terms and conditions for two further financial instruments: a Co-Investment Facility and an Urban Development Fund.
- (3) A Co-Investment Facility is an appropriate financial instrument for supporting entrepreneurial development of small and medium-sized enterprises (SMEs) at different stages of development. The Co-Investment Facilities should develop the local equity market and attract additional equity investments in SMEs through a partnership approach with private investors.
- (4) An Urban Development Fund is an appropriate financial instrument for addressing the high concentration of economic, environmental and social problems of urban areas located in assisted areas identified in a regional aid map in accordance with Articles 107(3)(a) and (c) of the Treaty. Urban Development Funds should be used to mobilise co-investment from private investors to support implementation of urban development projects and should aim at addressing market failures by supporting sustainable urban development strategies where there is limited availability of funding or relatively low interest of investors in supporting urban development projects.
- (5) Implementing Regulation (EU) No 964/2014 should therefore be amended accordingly.

⁽¹⁾ OJ L 347, 20.12.2013, p. 320.

⁽²⁾ Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments (OJ L 271, 12.9.2014, p. 16).

- (6) The measures provided for in this Regulation are in accordance with the opinion of the Coordination Committee for the European Structural and Investment Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 964/2014 is amended as follows:

- (1) Article 1 is replaced by the following:

'Article 1

Subject matter

This Regulation lays down rules concerning the standard terms and conditions for the following financial instruments:

- (a) a portfolio risk sharing loan ("RS Loan");
- (b) a capped portfolio guarantee;
- (c) a renovation loan;
- (d) a co-investment facility;
- (e) an Urban Development Fund.;

- (2) in Article 3 the title is replaced by the following:

'Article 3

Grants under the standard terms and conditions';

- (3) the following Articles 8a and 8b are inserted:

'Article 8a

Co-investment Facility

1. The Co-investment Facility shall take the form of an equity fund managed by a financial intermediary investing contributions from the European Structural and Investment Funds (ESIF) programme into small and medium-sized enterprises (SMEs). The Co-investment Facility shall attract additional investments in SMEs through a partnership approach with private co-investors on a deal by deal basis.

2. The Co-investment Facility shall comply with the terms and conditions set out in Annex V.

Article 8b

Urban Development Fund

1. The Urban Development Fund shall take the form of a loan fund and shall be set up and managed by a financial intermediary with contributions from the ESIF programme and a mobilisation of co-financing of at least 30 % from the financial intermediary and co-investors. The Urban Development Fund shall finance and support implementation of urban development projects in assisted areas which are designated in a regional aid map for the period 1 July 2014 to 31 December 2020 in accordance with points (a) and (c) of Article 107(3) of the Treaty, as well as mobilise co-investment from private sources.

2. The Urban Development Fund shall comply with the terms and conditions set out in Annex VI.;

- (4) Annexes V and VI as set out in the Annex to this Regulation are added.

Article 2

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

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

Done at Brussels, 11 July 2016.

For the Commission

The President

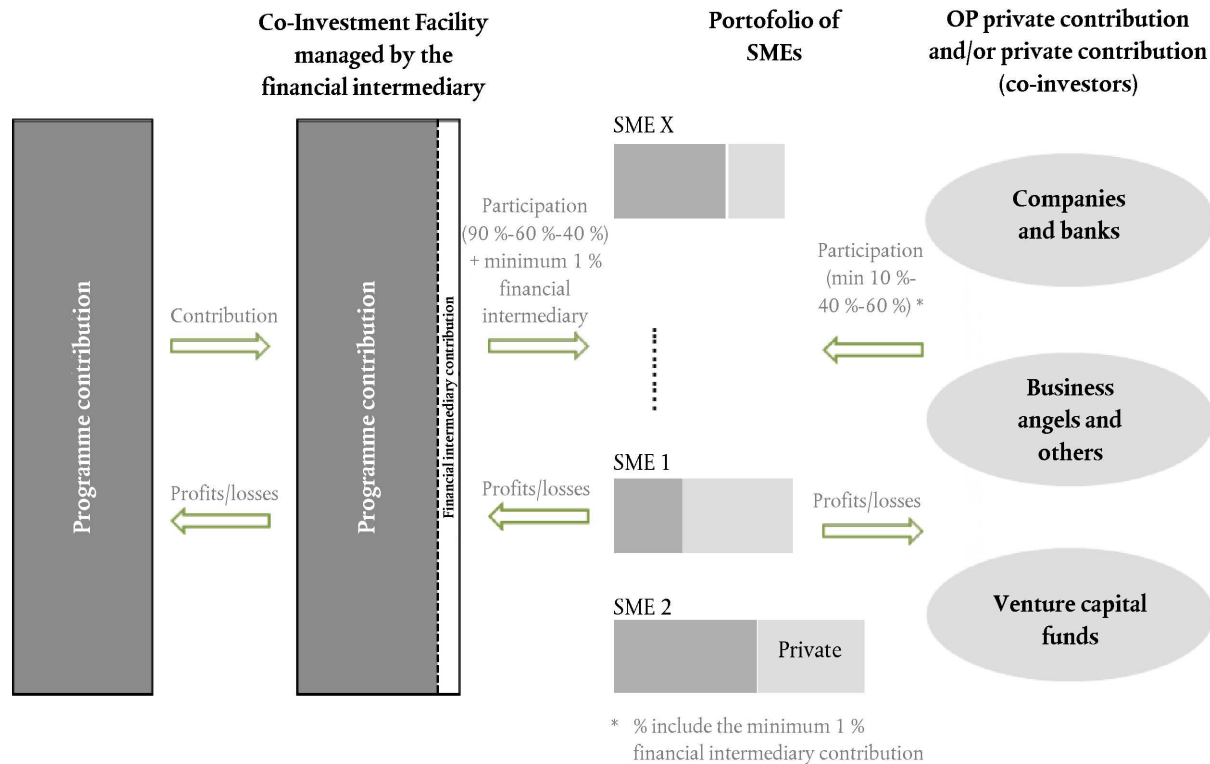
Jean-Claude JUNKER

ANNEX

ANNEX V

CO-INVESTMENT FACILITY

Schematic representation of the Co-Investment Facility principle



Terms and conditions for the Co-Investment Facility

Structure of the financial instrument	The Co-Investment Facility shall invest in the equity of SMEs with the contributions of the ESIF programme, the financial intermediary's own resources and private co-investors. The financial intermediary shall be a private entity that takes all investment and divestment decisions with the diligence of a professional manager in good faith. The financial intermediary shall be economically and legally independent from the managing authority and from fund of funds. Private co-investors shall be private bodies and shall be legally independent from the financial intermediary. The Co-Investment Facility shall be made available in the framework of an operation which is part of the priority axis defined in the programme funded by the ESI Funds and specified in the context of the <i>ex ante</i> assessment required under Article 37 of Regulation (EU) No 1303/2013.
Aims of the instrument	The aims of the instrument shall be to: (1) Invest in SMEs at seed, start-up, and expansion stage or for the realisation of new projects, penetration of new markets or new developments by existing enterprises through co-investment agreements (partnership approach) with co-investors on a deal by deal basis. Such investments shall be made within the scope of Commission Regulation (EU) No 651/2014 (*). (2) Provide more capital to increase investment volumes for SMEs.

	The aims are linked with the following conditions. The ESIF programme contribution to the Co-Investment Facility shall not crowd out financing available from other public or private investors. The Co-Investment Facility amount and rates shall be set to fill the equity gap identified in the <i>ex ante</i> assessment of the financial instrument in accordance with Article 37 of Regulation (EU) No 1303/2013. The ESIF programme shall provide funding to the Co-Investment Facility to build up a portfolio of investments in SMEs. The Co-Investment Facility shall participate with the financial intermediary and co-investors on a deal by deal basis. In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary in charge of the Co-Investment Facility. In addition to the ESIF programme contribution, the fund of funds may provide its own resources. State aid rules apply where the resources provided by the fund of funds are State resources. Where fund of funds resources are combined with other State resources Article 21 of Regulation (EU) No 651/2014 also apply.
State aid implication	The investment of the Co-Investment Facility shall be implemented as an instrument entailing State aid. It shall be considered compatible with the internal market and not requiring an ad hoc notification, provided conditions for compatibility under Article 21 of Regulation (EU) No 651/2014 are satisfied. The presence of State aid shall be assessed at the levels of the fund of funds, financial intermediary, the private investors and final recipients. In particular, on a deal by deal basis the aggregate private participation rate at the level of the SME shall reach at least the following thresholds: (a) 10 % for risk finance provided to the eligible undertakings prior to their first commercial sale on any market; (b) 40 % for risk finance provided to eligible undertakings operating in any market for less than 7 years following their first commercial sale; (c) 60 % for risk finance provided either to eligible undertakings requiring an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographic market, is higher than 50 % of their average annual turnover in the preceding 5 years, or for follow-on investments in eligible undertakings after the 7-year period of the first commercial sale. Private participation is here considered as investments made by private bodies. For the purposes of the Co-Investment Facility there is allowable aid at the level of the final recipients if: (a) there is allowable aid to private co-investors; (b) the financial intermediary is managed on a commercial basis and its financing decisions are independent and profit-driven; (c) the ceiling of private participation as set out in Article 21(10) of Regulation (EU) No 651/2014 are satisfied. The costs associated with the development of the investment projects, for the due diligence and for accompanying the final recipients shall be covered by the management costs and fees of the financial intermediary managing the Co-Investment Facility. Activities supported by the EAFRD, are subject to general State aid rules.

Investment policy**(a) Disbursement from the managing authority or from the fund of funds to the Co-Investment Facility**

Following the signature of a funding agreement between the managing authority or fund of funds and the financial intermediary, the relevant managing authority or fund of funds shall transfer the contributions from the programme to the Co-Investment Facility. The amount of the transfer shall cover the needs in terms of investments and management costs and fees. The transfer shall be carried out in tranches.

The target investment volume shall be confirmed within the *ex ante* assessment carried out in accordance with Article 37 of Regulation (EU) No 1303/2013.

The investment policy of the Co-Investment Facility shall include a clear exit strategy. That strategy shall be described in the funding agreement.

(b) Disbursements from the Co-Investment Facility to the eligible SMEs

The Co-Investment Facility shall co-invest, within a pre-determined limited period of time, with the financial intermediary and other private investors.

On a deal by deal basis, the selected financial intermediary shall leverage additional finance from the financial intermediary or a vehicle affiliated to the financial intermediary for at least 1 % for the purpose of alignment of interest; and from co-investors, i.e. private investors.

Investments decisions shall be profit-driven. In order to be considered profit driven the investment shall comply with the following conditions:

- (i) the financial intermediary is established in accordance with the applicable laws and provides for a due diligence process ensuring a commercially sound investment policy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments;
- (ii) investment in eligible SMEs is based on a viable business plan, containing details of product, sales and profitability development, establishing the *ex ante* viability of the investment;
- (iii) a clear and realistic exit strategy exists for each investment.

The financial Intermediary shall implement a consistent investment policy that complies with the applicable industry standards and that is aligned with the financial interests and policy objectives of the managing authority.

(c) Disbursements from the Co-Investors to the eligible SMEs

The financial intermediary shall identify, screen and assess potential co-investments in final recipients as well as any co-investors. The financial intermediary shall carry out a due diligence assessment on a deal by deal basis. The due diligence shall assess key aspects such as the business plan, the viability of the investment and the exit strategy. The business plan shall contain details on product, sales and profitability development.

The private participation rate of eligible SMEs shall reach the minimum threshold set in Article 21 of Regulation (EU) No 651/2014.

The co-investment agreement between the financial intermediary and co-investors shall establish the terms and conditions for investment in the final recipients and shall comply with Article 1(3) of Commission Implementing Regulation (EU) No 821/2014 (**), where that Article is applicable.

Fund Contribution to financial instrument: amount and rate (product details)	The Co-Investment Facility shall provide capital to unlisted SMEs which fulfil at least one of the following conditions: (a) the SMEs have not been operating in any market; (b) the SMEs have been operating in any market for less than 7 years following their first commercial sale; (c) the SMEs require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographic market, is higher than 50 % of their average annual turnover in the preceding 5 years; (d) the SMEs require follow-on investments in eligible undertakings, including after the 7-year period of the first commercial sale. The co-investment amount and rate per deal shall be determined by applying at least the following factors: (a) the size and focus of the Co-Investment Facility; (b) the participation of co-investors; (c) the expected catalytic effect of the Co-Investment Facility; remaining within the ceilings set out in Article 21(10) of Regulation (EU) No 651/2014. Amounts returned to the Co-Investment Facility from the investments within the timeframe for investments as set out in the funding agreement shall be re-used as provided for under Articles 44 and 45 of Regulation (EU) No 1303/2013. Preferential remuneration of private investors aimed solely at asymmetric profit-sharing shall be set in line with Article 44(1) of Regulation (EU) No 1303/2013 and Article 21(13)(b) of Regulation (EU) No 651/2014.
Programme contribution to financial instrument (activities)	The underlying transactions portfolio funded by the Co-Investment Facility shall include investments provided for the benefit of final recipients. The eligibility criteria for inclusion in the portfolio are determined in accordance with Union law, the ESIF programme, national eligibility rules, and with the financial intermediary. The financial intermediary shall have a reasonable estimation of the portfolio risk profile. The co-investment shall be made in final recipients for the required period before an exit in line with the investment policy.
Managing authority's liability	The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Commission Delegated Regulation (EU) No 480/2014 (**). On liquidation of the Co-Investment Facility, the financial intermediary shall make a thorough assessment of the risk of claims against the Co-Investment Facility and ensure suitable sums are held in escrow accounts to meet such claims.
Duration	The Co-Investment Facility has an indicative duration of 10 years and may be extended with the consent of the managing authority. The investment period of the financial instrument shall be set to ensure that the programme contribution referred to in Article 42 of Regulation (EU) No 1303/2013 is used for investments to final recipients at the latest by 31 December 2023. Investments made after 31 December 2020 shall be assessed for compliance with the State aid rules which enter into force after that date.

**Investment and risk-sharing
at financial intermediary level
(alignment of interest)**

Alignment of interest between the managing authority and the financial intermediary shall be achieved through:

- performance fees as provided for under Articles 12 and 13 of Delegated Regulation (EU) No 480/2014,
- the remuneration of the financial intermediary that shall reflect the current market remuneration in comparable situations, including carried interest, if any,
- a co-financing by the private co-investors that shall be at the minimum level in accordance with Article 21(10) of Regulation (EU) No 651/2014,
- a co-financing with own resources by the financial intermediary of a minimum of 1 % on each deal under the same conditions as the Co-Investment Facility; additional co-investment by the financial intermediary shall be subject to the same conditions as the Co-Investment Facility,
- the co-financing by other co-investors which shall be made on identical terms and conditions as those applicable to the Co-Investment Facility except if the *ex ante* assessment referred to in Article 37(2)(c) of Regulation (EU) No 1303/2013 estimates that an asymmetric profit-sharing shall be set between the public and private investors; such arrangements shall be in line with Article 21(13)(b) of Regulation (EU) No 651/2014,
- the financial intermediary shall not engage in investment activities under a new investment vehicle targeting the same type of final recipients until either such a time as 75 % of the Co-Investment Facility commitments have been invested and the remaining 25 % are committed to be invested, or, the end of the investment period of the Co-Investment Facility, if earlier.

Procedures aimed at avoiding conflict of interest between the financial intermediary, co-investors and investees shall be laid down before any investment made in a final recipient by the financial intermediary selected.

Eligible Financial Intermediary and Co-investors

The selected financial intermediary (fund manager of the Co-Investment Facility) shall be a private body established at international, national or regional levels in the Member States. Such body shall be legally authorised to provide equity to enterprises established in the Member States, such as financial institutions, or any other institution authorised to provide financial instruments.

Private bodies shall be considered as private legal entities owned by private or public investors investing at their own risk and from their own resources.

The managing authority and fund of funds shall comply with Union law when selecting financial intermediaries. The selection of financial intermediaries shall be open, transparent and non-discriminatory. The selection of the financial intermediaries shall establish appropriate risk-sharing arrangements in the case of preferential remuneration and determine possible carried interest.

The financial intermediary shall specify, in the context of its selection, the conditions and criteria for the evaluation of co-investors. Those shall be understandable and available to potential co-investors. The financial intermediary shall demonstrate a non-discriminatory approach to find and invest with co-investors. The evaluation of co-investors may be controlled *ex post*. Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled if the conditions laid down in Article 21(15) of Regulation (EU) No 651/2014 are fulfilled.

The Co-Investment Facility shall seek to mobilise Co-investors implementing best practice. The co-investors shall be long-term private investors investing own resources including venture capital funds, business angels, high net worth individuals, family offices, or companies with proven know-how and operational capacity.

	Co-investors shall be deemed to be any investors which, in the reasonable determination of the financial intermediary are investors operating in circumstances corresponding to the market economy investor principle in a free market economy, irrespective of their legal nature and ownership. Co-investors and the financial intermediary shall be independent from the final recipients of the investment except in the case of follow-on investment in final recipients that are already part of the Co-Investment Facility.
Final recipient eligibility	The final recipients shall be eligible under Union and national law, the relevant ESIF programme, funding agreement and with the condition referred to in Article 21(5) of Regulation (EU) No 651/2014. The following eligibility criteria shall be met by the final recipients at the date of the signature of the investment: (a) they shall be a micro, small and medium enterprise ("SMEs" (including individual entrepreneurs/self-employed persons) as defined in Commission Recommendation 2003/361/EC (****); (b) they shall not be excluded by Article 1(2) to (5) of the Regulation (EU) No 651/2014. (c) they shall not be part of one or more restricted sectors (*****); (d) they shall not be an undertaking in difficulty as defined by Article 2(18) of the Regulation (EU) No 651/2014; (e) they shall not be in default in respect of any other loan or lease either granted by a financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy; (f) they shall be established and operating in the relevant region/jurisdiction under the ESIF programme; (g) for reasons related to State aid considerations, investment shall not be made in listed companies (SMEs listed on an alternative trading platform shall not be considered listed for the purposes of this instrument); (h) they shall not receive investment as replacement capital (including management buyout or buy-in); (i) they shall comply with Articles 10 and 11 of Regulation (EU) No 508/2014 of the European Parliament and of the Council (*****), if they are SMEs active in the fisheries and aquaculture sector.
Characteristics of the product for the final recipients	The Co-Investment Facility amount and rates shall be aligned with the results of the <i>ex ante</i> assessment referred to in Article 37(2) of Regulation (EU) No 1303/2013 and shall comply with Regulation (EU) No 651/2014. The financial intermediary shall invest in SMEs in the form of equity or quasi-equity investment co-financed by the programme public contribution, the financial intermediary's own contributions and the co-investors contributions (the private contribution may be included for co-financing of the ESI Funds as a programme private contribution) under a co-investment agreement signed between the financial intermediary and the co-investors. Such investment of the Co-Investment Facility shall contribute to the ESIF programme objective. The total investment (i.e. one or more investment rounds including follow-on) combining public and private resources provided shall not exceed EUR 15 000 000 per eligible final recipient as set in Article 21(9) of Regulation (EU) No 651/2014. The total investment allowed per eligible final recipient shall be verified by including risk finance investments made under other risk finance measures.

Reporting and targeted results	The financial intermediary shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope. The report shall include all the relevant elements for the managing authority to comply with Article 46 of Regulation (EU) No 1303/2013. Member States shall also fulfil their reporting and transparency obligations pursuant to Regulation (EU) No 651/2014. Indicators shall be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and with the expected results specified in the <i>ex ante</i> assessment. They shall be measured and reported at least quarterly for the Co-Investment Facility and aligned as a minimum with the requirements of Regulation (EU) No 1303/2013. In addition to the common indicators of the priority axis of the ESIF programme other indicators are: (a) amount invested into SMEs (with breakdown); (b) number of SMEs financed; (c) value of the investments financed; (d) gain or loss generated by the investment (if applicable); (e) number of employees at “investment” and “number of employees” at “exit” in SMEs supported.
Evaluation of the economic benefit of the programme Contribution	The financial support of the programme public contribution to the instrument shall be transferred to the final recipients. This principle shall be reflected in the funding agreement between the managing authority or fund of funds and the financial intermediary.

(*) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

(**) Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data (OJ L 223, 29.7.2014, p. 7).

(***) Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ L 138, 13.5.2014, p. 5).

(****) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Enterprise with less than 250 employees and having a turnover of less than EUR 50 million or total assets less than EUR 43 million; also not belonging to a group exceeding such thresholds. According to the Commission Recommendation, “an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form.”

(*****) The following economic sectors are together referred to as the “restricted sectors”:

(a) illegal economic activities: any production, trade or other activity, which is illegal under the laws or regulations of the home jurisdiction for such production, trade or activity;

(b) tobacco and distilled alcoholic beverages. The production of and trade in tobacco and distilled alcoholic beverages and related products;

(c) production of and trade in weapons and ammunition: the financing of the production of and trade in weapons and ammunition of any kind. This restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies;

(d) casinos. Casinos and equivalent enterprises;

(e) IT sector restrictions. Research, development or technical applications relating to electronic data programs or solutions, which (i) aim specifically at: (a) supporting any activity included in the Restricted Sectors referred to a to (d) above; (b) internet gambling and online casinos; or (c) pornography, or which (ii) are intended to enable to illegally (a) enter into electronic data networks; or (b) download electronic data;

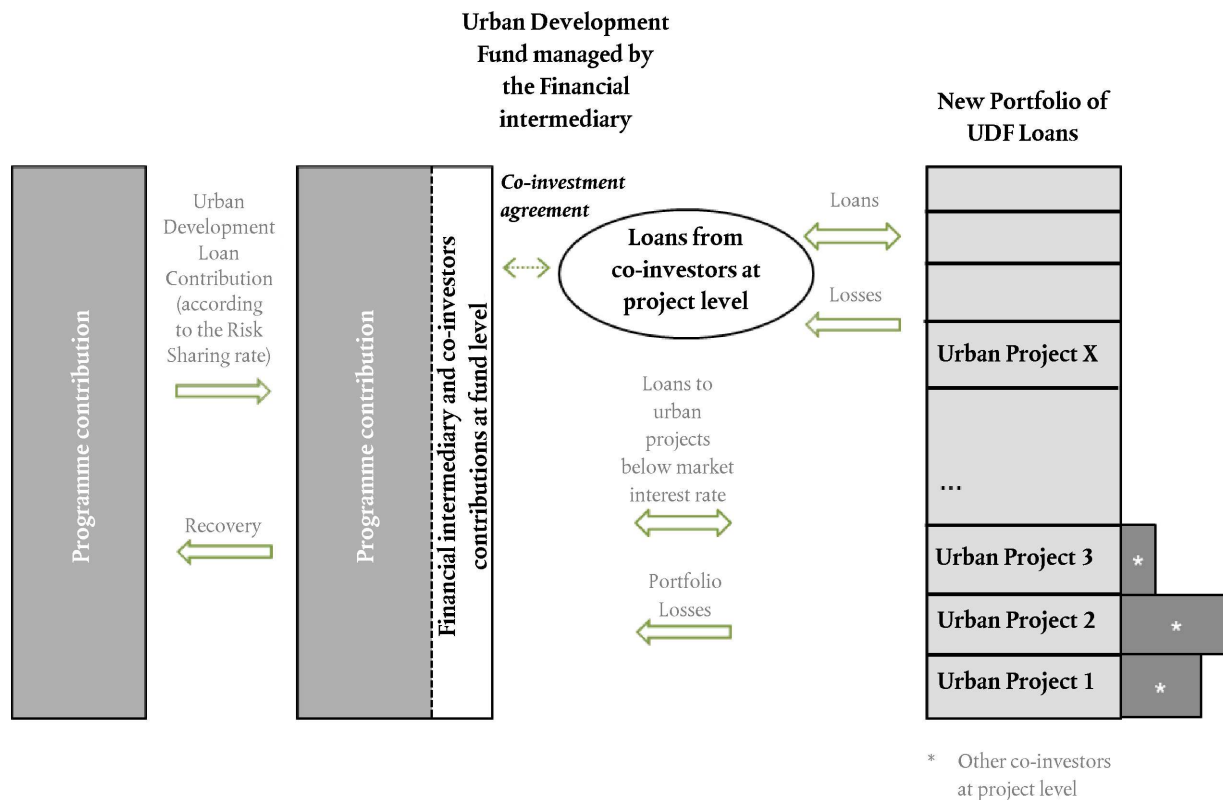
(f) life science sector restrictions. When providing support to the financing of the research, development or technical applications relating to: (i) human cloning for research or therapeutic purposes; or (ii) Genetically Modified Organisms (“GMOs”).

(*****) Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

ANNEX VI

URBAN DEVELOPMENT FUND

Schematic representation of the Urban Development Fund principle



Terms and conditions for the Urban Development Fund

Structure of the financial instrument	The Urban Development Fund (hereinafter referred to as “UDF”) shall take the form of a loan fund to be set up and managed by a financial intermediary with contributions from the programme, the financial intermediary and co-investors to finance newly originated loans for urban development projects. The UDF shall be made available in the framework of an operation which is part of the priority axis defined in the programme co-funded by the European Structural and Investment Fund (ESIF) and defined in the context of the <i>ex ante</i> assessment required in (EU) No 1303/2013.
Aim of the instrument	The aims of the instrument is to: (1) Combine resources from the ESIF programme, the financial intermediary and co-investors to support financing of urban development projects. (2) Provide urban development projects located in assisted areas as designated in an approved regional aid map for 1 July 2014 to 31 December 2020 in application of points (a) and (c) of Article 107(3) of the Treaty with easier access to finance offering projects funds at preferential conditions. Such investments shall be made within the scope of Regulation (EU) No 651/2014. The aims are linked with the following conditions. The UDF instrument shall be part of the implementation of interventions envisaged in an integrated approach for a sustainable urban development strategy. The contribution from the ESIF programme to the financial intermediary shall not crowd out financing available from other private or public investors.

	The ESIF programme shall provide funding to the financial intermediary in order to build up a portfolio of loans to urban development projects. The programme shall also participate in the losses and defaults, revenues and recoveries on the UDF loan in this portfolio on a loan by loan basis. The co-financing of the ESIF programme shall be provided by one of the following: the programme contribution by the managing authority, the financial intermediary contribution, and co-investors' contributions at the level of co-investments in the fund, co-investments through loans into urban development projects and co-investments by other co-investors. In the case of fund of funds structure, the fund of funds shall transfer the contribution from the ESIF programme to the financial intermediary. In addition to the ESIF programme contribution, the fund of funds may provide its own resources which are combined with the financial intermediary's resources. In this instance, the fund of funds shall take a part of the risk sharing between the contributions in the portfolio of loans. Article 16 of Regulation (EU) No 651/2014 will have to be applied if the resources provided by the fund of funds are State resources or are combined with other State resources.
Urban development project	The urban development project shall be part of the implementation of interventions envisaged in an integrated approach for a sustainable urban development strategy and which contributes to the achievement of the objectives defined therein. In addition all urban development projects shall demonstrate the following parameters: Financial sustainability: — urban development projects shall be based on a business model, estimating cash flows and targeting potential private investors, — urban development projects shall be structured in such a way that they generate revenue or reduce expenditures, sufficient to repay the loan received from the UDF and they shall be structured such that any State aid support is set at the minimum amount necessary to enable the project to proceed so as not to distort competition. The projects shall have an internal rate of return (IRR) which is not sufficient to attract financing on a purely commercial basis. Strategic alignment: — urban development projects shall be part of an integrated sustainable urban development strategy and have the potential to attract additional funding from other public and private investors, — urban development projects shall comply with the objectives and interventions envisaged by the ESIF programme and shall contribute to meet relevant output indicators of the ESIF programme, — urban development projects shall be located in the relevant region/jurisdiction and contribute to the achievement of objectives (including quantitative outputs) as stipulated in the ESIF programme. The following investment priorities may be supported by the UDF: — investment in low-carbon strategies for urban areas, — investment to ensure disaster resilience, — investment for adaption to climate change,

	— investment to improve the urban environment, including regeneration of brown-field sites and reduction of air pollution, — investment in sustainable urban mobility, — investment support for self-employment and business creation, — investment in infrastructure for public employment services, — investment in the health and social sectors, be it in infrastructure, R & D or innovative services, which contribute to local development and to the transition from institutional to community-based and primary forms of healthcare as well as to enhance access to health and social services, — investment in the physical and economic regeneration of deprived urban and rural communities, — investment towards the conservation, protection, promotion and development of cultural heritage, — investment in higher education, including collaboration with companies, — investment in ICT development.
State aid implication	The investment shall be considered compatible with the internal market and not requiring an ad hoc notification, provided it complies with Article 16 of Regulation (EU) No 651/2014. The presence of State aid shall be assessed at the levels of the fund of funds, financial intermediary, the private investors and final recipients. In this regard the financial intermediary and the fund of funds shall comply with the following conditions: (a) the management costs and fees of the financial intermediary and the fund of funds reflects the current market remuneration in comparable situations, which is the case when the latter has been selected through an open, transparent, non-discriminatory call or if the remuneration is aligned with Articles 12 and 13 of Delegated Regulation (EU) No 480/2014 and no other advantages are granted by the State. Where the fund of fund only transfers the ESIF contribution to the financial intermediary, and has a public interest mission, and has no commercial activity when implementing the measure, and is not co-investing with its own resources — therefore it is not considered a beneficiary of aid — it is enough that the fund of fund is not overcompensated; (b) the private contribution to each urban development project is not lower than 30 % of the total financing provided in compliance with Article 16(6) of Regulation (EU) No 651/2014; (c) the UDF is managed on a commercial basis and shall ensure profit-driven financing decisions. Private contribution is here considered as investments made by private bodies. The costs for the due diligence of the urban development projects shall be covered by the management costs and fees of the financial intermediary managing the UDF. Preferential remuneration (asymmetric conditions on risk-sharing arrangements) for fund of funds, financial intermediary contribution and co- investors contributions at fund level and project level in a form of loans, if any, shall be set in line with Article 44(1) of Regulation (EU) No 1303/2013, points (b) and (c) of Article 16(8) of Regulation (EU) No 651/2014, as further specified under the pricing policy. No asymmetric conditions are possible for the other co-investors at project level since their contributions are not invested in loans and outside UDF.

Lending policy**(a) Disbursement from the managing authority or from the fund of funds to the financial intermediary**

Following the signature of a funding agreement between the managing authority or fund of funds and the financial intermediary, the relevant managing authority or fund of funds shall transfer public contributions from the programme to the financial intermediary which shall place such contributions in a dedicated UDF. The transfer shall be carried out in tranches and shall respect the ceilings of Article 41 of Regulation (EU) No 1303/2013.

The target lending volume and range of interest rate shall be confirmed within the *ex ante* assessment in accordance with Article 37 of Regulation (EU) No 1303/2013 and shall be taken into account to determine the nature of the instrument (revolving or non-revolving instrument).

(b) Origination of a portfolio of loans

The financial intermediary shall be required to originate within a pre-determined limited period of time a portfolio of eligible loans for urban development projects in addition to its current loan activities, partly funded from the disbursed funds under the programme at the risk sharing rate agreed in the funding agreement.

The financial intermediary shall implement a consistent lending policy based on an agreed investment strategy enabling sound credit portfolio management; while complying with the applicable industry standards and while remaining appropriate to the managing authority's financial interests and policy objectives. The investment strategy shall be defined within the integrated sustainable urban development strategy, target activity, target spatial areas and eligible expenditure.

The identification, selection, due diligence, documentation and execution of the loans to final recipients shall be performed by the financial intermediary in accordance with its standard procedures and in accordance with the principles set out in the relevant funding agreement.

In case of co-investors providing loans into urban development projects a co-investment agreement between the financial intermediary and co-investors providing loan directly to an urban development project should be signed. Such agreement defines the terms and conditions for investment in the final recipients and is, if applicable, compliant with Article 1(3) of the Commission Implementing Regulation (EU) No 821/2014 (*). Such co-investment agreement shall specify the conditions for risk-sharing arrangements if any.

(c) Re-use of resources paid back to financial instrument

Resources paid back to financial instrument shall be either reused within the same financial instrument (revolving within the same financial instrument) or after being paid back to managing authority or fund of funds they shall be used in accordance with Article 44 and 45 of Regulation (EU) No 1303/2013.

This revolving approach as referred to in Articles 44 and 45 of Regulation (EU) No 1303/2013 shall be included in the funding agreement.

When revolving within the same financial instrument, as a matter of principles the amounts that are attributable to the support of the ESIF and that are reimbursed and/or recovered by the financial intermediary from loans to final recipients within the time framework for investments shall be made available for new use within the same financial instrument.

Alternatively, if managing authority or fund of funds is directly repaid, the repayments shall occur regularly mirroring (i) principal repayments (ii) any recovered amounts and losses deductions of the loans and (iii) any interest rate payments. These resources have to be used in accordance with Articles 44 and 45 of the Regulation (EU) No 1303/2013.

	(d) <i>Loss recoveries</i> The financial intermediary shall take recovery actions in relation to each defaulted loan financed by the UDF in accordance with its internal guidelines and procedures. Amounts recovered by the financial intermediary (net of recovery and foreclosure costs, if any) shall be allocated between the financial intermediary, the managing authority and the fund of funds. (e) <i>Interest and other gains</i> Interest and other gains generated by support from the ESI Funds to financial instrument shall be used as referred in Article 43 of Regulation (EU) No 1303/2013.
Pricing policy	When proposing its pricing, the financial intermediary shall reduce the overall collateral requirement and the interest rate charged on each loan included in the Portfolio, to the allocation provided by the public contribution of the programme and the risk-sharing arrangements. The pricing policy shall at least include the following elements: (1) The interest rate on the financial intermediary participation shall be set at market basis (i.e. according to the financial intermediary own policy). (2) The overall interest rate, to be charged on loans to the eligible urban development projects included in the portfolio, must be reduced proportionally to the allocation provided by the public contribution of the programme. This reduction shall take into account the fees that the managing authority might charge on the programme contribution and the risk-sharing arrangements. (3) The pricing policy shall remain constant during the eligibility period.
Programme contribution to financial instrument: amount and rate (product details)	The actual risk sharing rate, programme public contribution, preferential remuneration and interest rate on loans shall be based on the <i>ex ante</i> assessment findings and shall be such as to ensure that the benefit to the final recipients complies with Article 16(8)(b) of Regulation (EU) No 651/2014. The size of the target portfolio of the UDF shall be established on the basis of the <i>ex ante</i> assessment justifying the support to the financial instrument in accordance with Article 37 of Regulation (EU) No 1303/2013 and shall take into account the revolving approach of the instrument, if applicable. The UDF allocation and the risk-sharing rate shall be set to fill the gap identified in the <i>ex ante</i> assessment, and shall comply with the conditions laid down in this Annex. The minimum co-financing rate agreed with the financial intermediary shall be defined for each eligible loan included in the portfolio, corresponding to the maximum portion of the eligible loan principal amount financed by the programme. The risk sharing rate agreed with the financial intermediary shall determine the portion of the losses which are to be shared between the financial intermediary, co-investors (at fund level and at project level) and the programme contribution in absence of any other arrangement. Detailed terms and conditions for financing to be provided by a UDF shall be determined prior to making an investment for each urban development project on the basis of financial forecasts prepared for the urban development project and verified by the financial intermediary.

Programme contribution to financial instrument (activities)	The underlying transactions portfolio funded by the UDF shall include loans for urban development projects. The eligibility criteria for inclusion in the portfolio are determined in accordance with Union law, the ESIF programme, national eligibility rules, the investment strategy (part of the integrated approach for sustainable urban development strategy) and with the financial intermediary. The financial intermediary shall have a reasonable estimation of the portfolio risk profile. The financial intermediary shall be required to identify, invest in and manage in a sustainable manner a portfolio of urban development projects based on an investment strategy confirmed within the <i>ex ante</i> assessment. The financial intermediary shall manage a portfolio of urban development projects that are part of the implementation of interventions envisaged in an integrated approach for a sustainable urban development strategy. For each urban development project, the financial intermediary shall provide at least the following: (a) a general description of the project and the project's timetable, including a description of the co-financing partners and shareholders and the project's detailed financing plan; (b) a justification for selection for the contribution from the programme, including an initial assessment of the viability of the project and the subsequent need for UDF investment; (c) an identification of the risks; (d) the compliance with the project's objectives described in the relevant programme. This means that selected urban development projects shall contribute to the achievement of the programme objectives, including quantitative outputs, as stipulated in the relevant priority axes of the programme. When implementing the portfolio, the financial intermediary shall in particular: (a) identify, invest in and lead the negotiation and structuring of financial investments in viable urban development projects which meet the requirements and criteria applicable to the relevant programme; (b) carry out both compliance and investment appraisal with the requirements of the investment strategy. A viability test must demonstrate that the project would not proceed without UDF investment; (c) report on urban development projects in accordance with the Article 46 of Regulation (EU) No 1303/2013; (d) ensure that at least 30 % of the total financing provided to an urban development project is from private origin and that the best possible leverage of private resources is achieved.
Managing Authority's liability	The managing authority's liability in relation to the financial instrument shall be as set out in Article 6 of Delegated Regulation (EU) No 480/2014. The losses covered are principal amounts due, payable and outstanding and standard interest (but excluding late payment fees and any other costs and expenses).
Duration	The lending period of the financial instrument shall be set in order to ensure that the programme contribution as referred in Article 42 of Regulation (EU) No 1303/2013 is used for loans disbursed to final recipients no later than the 31 December 2023. Investments done after 31 December 2020 need to be checked for compliance with State-aid rules, which will enter into force after that date.

Lending and risk-sharing at financial intermediary level (alignment of interest)

Alignment of interest between the managing authority, co-investors and the financial intermediary shall be achieved through:

- performance fees as provided for under Articles 12 and 13 of the Delegated Regulation (EU) No 480/2014,
- the remuneration of the financial intermediary that shall reflect the current market remuneration in comparable situations,
- the financial intermediary shall ensure the financing of at least 30 % of the total financing commitment for lending to the urban development projects. Out of this 30 %, minimum 1 % of the total financing commitment of the UDF to each project shall be invested by the financial intermediary from its own resources on the same terms and conditions as the programme contribution. The other minimum 29 % shall be provided by the financial intermediary, co-investors at fund level or co-investors at project level through loans,
- the total amount of private co-financing shall be at least 30 % of the total financing provided to an urban development project,
- co-financing by co-investors could be regarded as either national co-financing of the ESI Fund as long as it doesn't come from final recipients' own resources (where such co-financing is then invested in eligible project expenditures) or complementary to the programme public contribution,
- the risk-sharing with the financial intermediary and with co-investors (at fund level or at urban development project level) shall be made pro-rata as for the programme contribution except if the *ex ante* assessment as referred in Article 37(2)(c) of Regulation (EU) No 1303/2013 estimates that a preferential remuneration is needed in the form of an asymmetric risk-sharing set between the public and private co-investors. Such arrangements shall be in line with Article 16(8)(b) and c of Regulation (EU) No 651/2014 and included in the co-investment agreement between the parties. Such arrangements do not apply to the 1 % invested by the financial intermediary from its own resources as required here above for the purpose of alignment of interest.

Eligible Financial Intermediaries

The selected financial intermediary shall be a public or private body established in a Member State and shall be legally authorised to provide loans to urban development projects located in the jurisdiction of the programme which contributes to the financial instrument. The eligible financial intermediary shall also demonstrate capacity to manage a UDF and monitor the portfolio of urban development projects. It concerns the elements required at the Article 7 of Delegated Regulation (EU) No 480/2014. Eligible financial intermediary shall also demonstrate experience in the relevant targeted market and a suitable track record in the management of equivalent or similar projects or financial vehicles investing in similar projects to those envisaged by the UDF, including experience in the use of ESIF.

The financial intermediary shall be appropriately regulated by the relevant national financial services regulatory body and it shall follow professional fund management best practice.

The financial intermediary shall be managed on commercial basis. This requirement shall be considered to be fulfilled if the conditions set in Article 16(9) of Regulation (EU) No 651/2014 are complied with.

Private bodies shall be considered as private legal entities owned by private or public investors investing at their own risk and from their own resources.

The legal structure of the UDF shall allow additional funding to leverage programme contribution from other investors into urban development projects.

	The managing authority and fund of funds shall comply with Union law when selecting financial intermediaries. The selection of financial intermediaries shall be open, transparent and non-discriminatory. The selection of the financial intermediaries shall aim at establishing appropriate risk-sharing arrangements in case of preferential remuneration. The selection process of the financial intermediary shall evaluate the UDF investment strategy, decision making and overall governance approach, management capacity and contribution by the financial intermediary on its own resources to the UDF. Within the selection process, one of the eligibility criteria for the selection of the financial intermediary shall be its capacity to propose and develop a portfolio of urban development projects to be financed, taking into account the most competitive pricing policy proposed by the financial intermediary participating in the selection process. The financial intermediary shall be responsible for the identification and evaluation of urban development projects. Once selected, the financial intermediary shall manage an urban development project pipeline. The pipeline of urban development projects shall contain projects that the financial intermediary undertakes to finance, based upon the information available at that time. Investors shall be deemed to be any investors which, in the reasonable determination of the financial intermediary are investors operating in circumstances corresponding to the market economy investor principle in a free market economy, irrespective of their legal nature and ownership. The financial intermediary shall specify, in the context of its selection, the conditions and criteria for the evaluation of co-investors. Those shall be understandable and available to potential co-investors. The financial intermediary shall demonstrate a non-discriminatory approach to find and invest with co-investors. The evaluation of co-investors may be controlled <i>ex post</i>.
Final recipients eligibility	The final recipients shall be eligible under Union and national law, the relevant ESIF programme, funding agreement and with the condition referred in Article 16 of Regulation (EU) No 651/2014. The following eligibility criteria shall be met by the final recipients at the date of the signature of the loan: (a) they shall be urban development actors, meaning undertakings with a legal status allowing for taking debts and implementing urban development projects, with various ownership structures, for example combining private and public capital; (b) they shall be active partners for regional and local authorities stimulating urban development by investing in urban development project. Final recipients must have suitable legal interest in the asset which the investment is made; (c) they shall not be excluded by Article 1(2) to (5) of the Regulation (EU) No 651/2014; (d) they shall not be part of one or more restricted sectors (**); (e) they shall not be a company in difficulty as defined by Article 2(18) of the Regulation (EU) No 651/2014; (f) they shall not be delinquent or in default in respect of any other loan or lease either granted by the financial intermediary or by another financial institution pursuant to checks made in accordance with the financial intermediary internal guidelines and standard credit policy; (g) they shall invest in urban development projects that are implemented in assisted areas as designated in an approved regional aid map for the period 1.7.2014-31.12.2020 in application of Article 107(3)(a) and (c) of the Treaty.

	In addition, at the time of the investment and during the reimbursement of the loan, final recipients shall have a registered place in a Member State and the activity for which the loan was disbursed shall be located in the relevant Member State and region/jurisdiction of the ESIF programme.
Characteristics of the product for the final recipients	The UDF shall deliver to final recipients the loans that contribute to the objective of the programme and that are co-financed by the programme. The UDF amount and rates shall be aligned with the results of the <i>ex ante</i> assessment referred in Article 37(2) Regulation (EU) No 1303/2013 and shall comply with Regulation (EU) No 651/2014. The loans shall be used exclusively for the following permitted purposes: (a) investments in tangible and in intangible assets; (b) working capital related to development or expansion activities that are ancillary (and linked) to activities referred to in (a) above (which ancillary nature shall be evidenced, inter alia, by the business plan of the urban development project and the amount of the financing). The following eligibility criteria shall be met at all times by UDF loans included in the portfolio: (c) loans shall be newly originated, to the exclusion of the refinancing of existing loans or financing of completed projects; (d) the total investment amount of the UDF for the urban development project shall not exceed EUR 20 000 000 as set out in Article 16(3) of Regulation (EU) No 651/2014; (e) loans shall provide financing for one or more of the permitted purposes in EUR and/or national currency in the relevant jurisdiction and/or, as the case may be, in any other currency; (f) loans shall not be in the form of mezzanine loans, subordinated debt or quasi equity; (g) loans shall not be in the form of revolving credit lines; (h) loans shall have a repayment schedule: including regular amortising and/or bullet payments; (i) loans shall not finance pure financial activities and shall not finance the provision of consumer finance; (j) maturity: loans shall have the minimum maturity of 12 months (including the relevant grace period, if any) and a maximum maturity of up to 360 months.
Reporting and targeted results	The financial intermediary shall provide the managing authority or fund of funds with at least quarterly information in a standardised form and scope. The report shall include all the relevant elements for the managing authority to comply with Article 46 of Regulation (EU) No 1303/2013. Member States shall also fulfil their reporting and transparency obligations pursuant to Regulation (EU) No 651/2014.

	Indicators shall be aligned with the specific objectives of the relevant priority of the ESIF programme financing the financial instrument and with the expected results specified in the <i>ex ante</i> assessment. They shall be measured and reported at least quarterly for the UDF and aligned as a minimum with the requirements of Regulation (EU) No 1303/2013. In addition to the common indicators of the priority axis of the ESIF programme other indicators are: (a) numbers of loans/projects financed; (b) amounts of loans financed; (c) defaults (numbers and amounts); (d) resources repaid and gains.
Evaluation of the economic benefit of the programme contribution	The financial advantage of the programme's public contribution to the instrument shall be transferred to the final recipients taking into consideration, if applicable, the favourable funding conditions provided by the programme's public contribution to the UDF. The financial intermediary shall reduce the overall effective interest rate and collateral policy, where appropriate, charged to the final recipients under each eligible loan included in the portfolio reflecting the favourable funding conditions of the programme contribution to the UDF. This principle shall be reflected in the funding agreement between the managing authority or fund of funds and the financial intermediary.

(*) Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data (OJ L 223, 29.7.2014, p. 7).

(**) The following economic sectors are together referred to as the "restricted sectors":

- (a) illegal economic activities: any production, trade or other activity, which is illegal under the laws or regulations of the home jurisdiction for such production, trade or activity;
- (b) tobacco and distilled alcoholic beverages. The production of and trade in tobacco and distilled alcoholic beverages and related products;
- (c) production of and trade in weapons and ammunition: the financing of the production of and trade in weapons and ammunition of any kind. This restriction does not apply to the extent such activities are part of or accessory to explicit European Union policies;
- (d) casinos. Casinos and equivalent enterprises;
- (e) IT sector restrictions. Research, development or technical applications relating to electronic data programs or solutions, which (i) aim specifically at: (a) supporting any activity included in the Restricted Sectors referred to a to d above; (b) internet gambling and online casinos; or (c) pornography, or which (ii) are intended to enable to illegally (a) enter into electronic data networks; or (b) download electronic data;
- (f) life science sector restrictions. When providing support to the financing of the research, development or technical applications relating to: (i) human cloning for research or therapeutic purposes; or (ii) Genetically Modified Organisms ("GMOs").

COMMISSION REGULATION (EU) 2016/1158**of 15 July 2016****amending Regulation (EU) No 452/2014 as regards the deletion of templates for the authorisations issued to third country operators and for the associated specifications****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, and in particular Article 9(4) thereof,

Whereas:

- (1) Commission Regulation (EU) No 452/2014 ⁽²⁾ sets out how third country operators of aircraft referred to in Article 4(1)(d) of Regulation (EC) No 216/2008 engaged in commercial air transport operations into, within or out of the territory subject to the provisions of the Treaty are to be authorised with respect to the applicable International Civil Aviation Organisation (ICAO) standards. That Regulation contains in Appendices I and II to its Annex 2 (Part-ART) templates for that authorisation and specifications associated with it.
- (2) Experience in the application of Regulation (EU) No 452/2014 has shown that, in order to account for frequently changing ICAO standards in a timely manner, those templates would need to be amended on a regular basis, resulting in unnecessary administrative burden. The requirement to use those templates is not justified, considering that without that requirement the European Aviation Safety Agency can establish and update itself the necessary templates. Therefore that requirement and those templates should be deleted from Regulation (EU) No 452/2014.
- (3) Regulation (EU) No 452/2014 should therefore be amended accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Annex 2 to Regulation (EU) No 452/2014 is amended in accordance with the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 133, 6.5.2014, p. 12).

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

Done at Brussels, 15 July 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Annex 2 to Regulation (EU) No 452/2014 is amended as follows:

(1) point ART.210(a) is replaced by the following:

‘(a) The Agency shall issue the authorisation, including the associated specifications, when:

- (1) it is satisfied that the third country operator holds a valid AOC or equivalent document and associated operations specifications issued by the State of the operator;
- (2) it is satisfied that the third country operator is authorised by the State of the operator to conduct operations into the EU;
- (3) it is satisfied that the third country operator has established:
 - (i) compliance with the applicable requirements of Part-TCO;
 - (ii) transparent, adequate and timely communication in response to a further assessment and/or an audit of the Agency, if applicable; and
 - (iii) a timely and successful corrective action submitted in response to an identified non-compliance, if any;
- (4) there is no evidence of major deficiencies in the ability of the State of the operator or the State of registry, as applicable, to certify and oversee the operator and/or aircraft in accordance with the applicable ICAO standards; and
- (5) the applicant not being subject to an operating ban pursuant to Regulation (EC) No 2111/2005.’;

(2) Appendices I and II are deleted.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1159**of 15 July 2016****imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and produced by Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited**

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 ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) Following an anti-dumping investigation under Article 5 of 'the basic Regulation', by Regulation (EC) No 435/2004 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('the PRC') and Indonesia.
- (2) Since then, these measures were first extended for an additional period of five years in June 2010 ⁽³⁾, and, in May 2012 following a partial interim review, the duty level of one Chinese exporting producer was amended ⁽⁴⁾. As a result, the rate of the duty applicable for Indonesia ranged from 0,24 EUR/kg to 0,27 EUR/kg, and for the PRC from 0,23 EUR/kg to 0,26 EUR/kg ('the measures in force').
- (3) The measures in force applied to all imports of sodium cyclamate originating in the PRC and Indonesia, with the exception of imports of sodium cyclamate produced by the Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited. A zero duty rate was originally determined for these companies, as no dumping was found (Regulation (EC) No 435/2004).
- (4) In line with the WTO Appellate Body report in case Mexico — Definitive Anti-dumping Measures on Beef and Rice ('the WTO Appellate Body report') ⁽⁵⁾, the Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited were not examined in the subsequent reviews of the measures as imposed by Regulation (EC) No 435/2004 and are not subject to the measures in force.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Regulation (EC) No 435/2004 of 8 March 2004 imposing a definitive anti-dumping duty and collecting the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ L 72, 11.3.2004, p. 1).

⁽³⁾ Council Implementing Regulation (EU) No 492/2010 of 3 June 2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 140, 8.6.2010, p.2).

⁽⁴⁾ Council Implementing Regulation (EU) No 398/2012 of 7 May 2012 amending Implementing Regulation (EU) No 492/2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in, inter alia, the People's Republic of China (OJ L 124, 11.5.2012, p. 1).

⁽⁵⁾ WT/DS295/AB/R, 29 November 2005, AB-2005-6.

- (5) An earlier investigation limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited was initiated on 17 February 2011 ⁽⁶⁾. Following a withdrawal of the complaint, the proceeding was terminated by Commission decision of 5 April 2012 ⁽⁷⁾ without imposing measures.
- (6) A second expiry review of the measures in force was initiated in June 2015 ⁽⁸⁾ under Article 11(2) of the basic Regulation.

1.2. Initiation of the investigation

- (7) On 12 August 2015, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of sodium cyclamate originating in the People's Republic of China ('PRC'), limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited, two companies belonging to the same group (both companies referred to as 'the exporting producers concerned' or 'Fang Da'), on the basis of Article 5 of the basic Regulation. A Notice of Initiation was published in the *Official Journal of the European Union* ⁽⁹⁾ ('the Notice of Initiation').
- (8) The Commission initiated the investigation following a complaint lodged on 30 June 2015 by Productos Aditivos S.A. ('the complainant' or 'the Union producer'), the sole producer of sodium cyclamate in the Union, thus representing 100 % of the total Union production. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (9) Following disclosure, Fang Da claimed that the evidence on injury contained in the complaint was deficient, and that the opening of one investigation after another against Fang Da was abusive. It also stated that this illustrates that the initiation of the present case under Article 5 of the basic Regulation is not appropriate. They also sought clarification of the trends of certain indicators in the open file.
- (10) As already explained in recital (8), the Commission considers that the complaint contained sufficient evidence to justify the initiation of the investigation which alone is the criterion for the decision on the initiation, not the existence or outcome of past investigations. In fact, the specific injury analysis of the complaint has shown that there is sufficient evidence pointing to a significant penetration of the EU market by imports from Fang Da made at prices which substantially undercut and undersell the Union industry's own prices. In addition, not all factors must show deterioration in order for material injury to be established. Furthermore, the existence of other factors which may have an impact on the situation of the Union industry does not necessarily imply that the effect of dumped imports on this industry is not material. Accordingly, the initiation of the investigation is legally valid. Regarding the comments on the possible inconsistency of three indicators in the open file, it is explained by the substantial difference in magnitude of the volumes involved in these calculations and the result of the rounding of the confidential figures used (upward or downward, depending of the year).
- (11) It was also legally possible to initiate the investigation under Article 5 of the basic Regulation even if it concerned one company, as confirmed by case-law ⁽¹⁰⁾.

1.3. Subsequent procedure

- (12) The Commission did not impose provisional anti-dumping measures in this investigation in order to align the timing of the definitive findings of this proceeding with the expiry review mentioned in recital (6).

⁽⁶⁾ Notice of initiation of an anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China, limited to two Chinese exporting producers, Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited, and of initiation of a review of the anti-dumping measures on imports of sodium cyclamate originating in the People's Republic of China (OJ C 50, 17.2.2011, p. 9).

⁽⁷⁾ Commission Decision of 4 April 2012 terminating the anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China, limited to two Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited (2012/185/EU) (OJ L 99, 5.4.2012, p. 33).

⁽⁸⁾ Notice on initiation of an expiry review of the anti-dumping measures applicable to sodium cyclamate originating in the People's Republic of China and Indonesia (OJ C 189, 6.6.2015, p. 2).

⁽⁹⁾ Notice of initiation of an anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China, limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited (OJ C 264, 12.8.2015, p. 32).

⁽¹⁰⁾ Judgment of the General Court of 18 September 2012 in Case T-158/11 Since Hardware (Guangzhou) Co., Ltd v Council of the European Union, EU:T:2012:431, paragraph 84.

1.4. Interested parties

- (13) 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 complainant, the two exporting producers concerned and the Chinese authorities, known importers, suppliers, users and traders known to be concerned about the initiation of the investigation and invited them to participate.
- (14) 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.

1.5. Analogue country producers

- (15) The Commission also informed producers in Indonesia about the initiation and invited them to participate. In the Notice of Initiation, the Commission informed interested parties that it envisaged Indonesia as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation. There were no indications on the file pointing towards possible production of sodium cyclamate in other third countries.

1.6. Sampling

- (16) In the Notice of Initiation, the Commission stated that it might sample importers concerned in accordance with Article 17 of the basic Regulation.
- (17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (18) Three unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number of the importers, the Commission decided that sampling was not necessary.

1.7. Market economy treatment ('MET') claim forms

- (19) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent MET claim forms to the two exporting producers concerned in the PRC.

1.8. Replies to the questionnaire

- (20) The Commission sent questionnaires to the sole Union producer, the two Chinese exporting producers concerned and the three unrelated importers.
- (21) Questionnaire replies were received from the sole Union producer, one of the two Chinese exporting producers concerned (including two of its related export sales offices in Hong Kong) and from two unrelated importers. The second Chinese exporting producer concerned had stopped production and sales of the product concerned prior to the investigation period, and was therefore not concerned by the questionnaire for the investigation period.

1.9. Verification visits

- (22) The Commission sought and verified all the information deemed necessary for a 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 producer

— Productos Aditivos S.A., Barcelona, Spain

Importers

- DKSH GmbH, Hamburg, Germany
- Emilio Peña S.A., Torrente (Valencia), Spain

Exporting producers in the PRC

- Fang Da Food Additive (Yang Quan) Limited, Yang Quan, the PRC

Export sales office (related to Fang Da) in Hong Kong

- Zhong Hua Fang Da Ltd., Hong Kong

1.10. Investigation period and period considered

- (23) The investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 ('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**

- (24) The product concerned is sodium cyclamate originating in the People's Republic of China and produced by the two exporting producers concerned, currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10) ('the product concerned').
- (25) Sodium cyclamate is a commodity product used as a food additive and is widely used as a sweetener by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.
- (26) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. The content of the impurities, determined by the Union legislation, defines the quality of sodium cyclamate. Sodium cyclamate can be found in two different forms: hydrated (HC), with 15 % of moisture; and anhydrous (AC), with a content of up to 1 % of moisture. These two forms of sodium cyclamate have the same main characteristics and uses; it only varies in degree of sweetness; the HC type is less sweet due to the water content. Prices vary due to the same reason. The AC type is more expensive than the HC form. Both forms should be therefore considered as one product for the purposes of this proceeding.

2.2. Like product

- (27) 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 People's Republic of China;
 - the product produced and sold in the Union by the Union industry.
- (28) The Commission therefore concluded that those products are like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

- (29) One of the exporting producers concerned, Fang Da Food Additive (Shen Zhen) Limited, ceased production of the product concerned in 2012. Therefore, only Fang Da Food Additive (Yang Quan) Limited submitted a MET claim form and a questionnaire reply.
- (30) Officials of the Commission visited Fang Da Food Additive (Shen Zhen) Limited to verify that the company had ceased production and sales of the product concerned, which was indeed found to be so. Therefore, the dumping analysis was based on the data submitted by Fang Da Food Additive (Yang Quan).
- (31) However, seen the relation between the two companies, belonging to the Fang Da group and owned by the same parent company, the findings are applicable to both companies, which constitute the Fang Da group.

3.2. Market Economy Treatment ('MET')

- (32) The Commission assessed the MET claim of the exporting producer and also carried out a verification visit at its premises.
- (33) In accordance with Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (34) The investigation established that the exporting producer claiming MET failed to demonstrate that it fulfilled all of the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (35) More specifically, it was established that the second criteria as laid down in Article 2(7)(c) of the basic Regulation was not met, as the accounting transactions were not recorded on an accrual basis. In addition, there was no fair presentation of the company's financial position. The Commission also identified an issue with the accounting treatment for property, plant and equipment. Moreover, it was established that no provisions were recognised for certain expenses. Finally, it was found that no consolidation of financial statements was made at the correct (parent) level.
- (36) 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.
- (37) Following disclosure, the exporting producer concerned submitted comments, disputing all of the above findings. The comments received were duly analysed, however, they were not such as to alter the Commission's preliminary findings and the exporting producer was informed accordingly on 11 April 2016. Following final disclosure, the exporting producer maintained its objections without providing further evidence or arguments.
- (38) In conclusion, the exporting producer concerned could not show that it fulfilled all the criteria set out in Article 2(7)(c) of the basic Regulation and its MET claim was therefore rejected.

3.3. Analogue country

- (39) In accordance with Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the prices in an appropriate market economy third country, or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

- (40) Due care was taken in identifying a market economy third country for establishing prices or constructed value to determine normal value.
- (41) As mentioned in recital (15), the Commission informed in the Notice of Initiation interested parties that it envisaged Indonesia as an appropriate analogue country and invited interested parties to comment. No comments were received. The Commission sought cooperation from producers in Indonesia. Letters and relevant questionnaires were sent to the three known Indonesian exporting producers.
- (42) One Indonesian exporting producer initially came forward, indicating its willingness to cooperate. The Commission requested this company to complete the questionnaire for producers of sodium cyclamate in the analogue country. No reply was received.
- (43) According to the information available to the Commission, there is only production of the product under investigation in the Union, the PRC and Indonesia. There were no indications on the file pointing towards possible production of sodium cyclamate in other third countries.

3.4. Normal value

- (44) As explained in recitals (40)-(43) above, no cooperation could be obtained from any analogue country producer.
- (45) Consequently, in accordance with Article 2(7)(a) of the basic Regulation, normal value had to be established on any other reasonable basis. To that effect, the Commission considered it reasonable to base the normal value on the verified price and costs data of the Union producer.
- (46) The like product was sold by the Union industry in representative quantities. However, the Union industry's domestic sales were loss-making. Therefore, the normal value was based on the Union industry's manufacturing costs plus a reasonable amount for selling, general and administrative costs (SGA) and profit. SGA was determined based on the verified data from the Union producer. The profit rate added was identical to the target profit used for calculating the Union industry non-injurious price (see recitals (174) — (177) below).

3.5. Export price

- (47) All of the exports of the exporting producer concerned to the Union were made via its export trading companies in Hong Kong and all Union sales were made to unrelated Union customers. The export price was thus constructed on the basis of the prices at which the imported product was first resold to independent customers of the exporting producer concerned in the Union, in accordance with Article 2(9) of the basic Regulation. Appropriate adjustments to the price were made for all costs incurred between importation and resale, including SGA expenses, and for profits, which were determined based on the verified data from two unrelated importers.

3.6. Comparison

- (48) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.
- (49) Where justified in order 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.
- (50) Appropriate adjustments for transport, insurance, handling, loading and ancillary costs, and bank charges were made where they were found to be reasonable, accurate and supported by verified evidence.

3.7. Comments relating to dumping from interested parties following disclosure

- (51) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and produced by Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited. All parties were granted a period within which they could make comments on the definitive disclosure. The comments submitted by the interested parties were considered and taken into account where appropriate.
- (52) Following disclosure, Fang Da argued that it was discriminatory to have its normal value determined on the basis of data of the Union producer, while in one of the previous investigations on imports of sodium cyclamate originating in, *inter alia*, the People's Republic of China, normal value had been based on data from Indonesia, being the analogue country ⁽¹¹⁾. Article 2(7)(a) of the basic Regulation provides for both methods in hierarchical order depending on the factual circumstances of each investigation. The analogue country method is indeed the first one. As explained in recitals (40) to (43) despite the Commission's extensive efforts, there was no cooperation from any analogue country producer in this investigation, while in the previous investigation Indonesia provided cooperation. Therefore, as stated in recital (45), the normal value had to be based on Union data as a reasonable basis in accordance with Article 2(7)(a) of the basic Regulation. The argument is therefore rejected on the basis of the factual circumstances of the present investigation.
- (53) Moreover, Fang Da also asserted that normal value based on the Union producer's data led to a higher dumping margin (88,7 %) while normal value based on Indonesia as an analogue country in one of the previous investigations ⁽¹²⁾ led to a lower dumping margin (i.e. 14,2 %, as opposed to 88,7 % for Fang Da). The determination of the normal value was allegedly unreasonable in the present case because the export prices in both cases were not significantly different.
- (54) First, Fang Da did not provide an export price comparison to substantiate its assertion. In any event, the two cases relied on different investigation periods, which makes the comparison between export prices misleading. Second, as explained in recital (52) above, in the absence of cooperation from any analogue country the normal value was determined on any other reasonable basis and in particular on data from the Union producer in line with Article 2(7)(a) of the basic Regulation. The argument is rejected on the basis of the factual circumstances of the present investigation.
- (55) Furthermore, the exporting producer concerned alleged that it was discriminatory to have its duty (EUR 1,17 per kg) based on the injury margin, while the duty (EUR 0,23 to 0,26 per kg) on the rest of the Chinese imports ⁽¹³⁾ is based on a dumping margin. It again asserted that such a difference in duties cannot be supported by any significant difference in average import prices and that it rewarded the non-cooperation of other Chinese exporting producers subject to another proceeding concerning the same product.
- (56) First, it is recalled that whether the duty is based on the dumping or the injury margin is defined in accordance with the lesser duty rule under Article 9(4) of the basic Regulation (see recital (182) below). Therefore, it is not dependent on the method for determining the normal value. Second, it has already been explained in recitals (52) and (54) that the use of an analogue country in one investigation and the use of Union data in another did not amount to a discriminatory treatment. Third, the difference in duties of the exporting producer concerned and other non-cooperating Chinese exporting producers is a result of separate proceedings relating to different periods in accordance with the conditions of the basic Regulation. The argument is therefore rejected.
- (57) On the basis of the above, none of the comments following final disclosure changed the findings on dumping.

3.8. Dumping margin

- (58) The Commission compared the weighted average export price per product type with the weighted average normal value per product type, in accordance with Article 2(11) and 2(12) of the basic Regulation.

⁽¹¹⁾ See footnote 4.

⁽¹²⁾ See footnote 4.

⁽¹³⁾ See footnote 3.

- (59) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, is as follows:

Company	Definitive dumping margin
Fang Da Food Additive (Yang Quan) Limited and Fang Da Food Additive (Shen Zhen) Limited	88,7 %

4. INJURY

4.1. Preliminary remark

- (60) As the Union industry consists of only one producer and this proceeding concerns only one group of Chinese exporting producers, injury indicators and import data had to be indexed in order to ensure the confidentiality of business sensitive data.

4.2. Definition of the Union industry and Union production

- (61) The like product was manufactured by only one producer in the Union during the investigation period, which thus constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

4.3. Union consumption

- (62) Sodium cyclamate is produced only in the Union, the PRC and Indonesia. The Commission established the Union consumption on the basis of the sales volume of the Union industry on the Union market, plus the volume of imports of sodium cyclamate from the PRC and Indonesia. Since imports of sodium cyclamate from these two countries were subject to measures during the period considered, the Commission used the statistics collected pursuant to Article 14(6) ⁽¹⁴⁾ of the basic Regulation ('Article 14(6) database') to establish the volume and average prices of imports from these two countries during the period considered, as it contained sufficiently detailed information at the level of the 10-digit TARIC codes and TARIC additional codes.
- (63) Following disclosure the exporting producer concerned submitted new Chinese export data that would show import volumes during the period considered from the Chinese exporting producers other than Fang Da that were higher than the data of the Article 14(6) database. The exporting producer did however not reveal the exact source of these new data or, apart from presenting different figures, provide a reason for disregarding the data used in the present investigation on actual imports contained in the Article 14(6) database. Therefore, the Commission did not change the source of the data used in the present investigation.
- (64) Union consumption developed as follows:

Table 1

Union consumption

Index (2011 = 100)	2011	2012	2013	2014	Investigation period
Total Union consumption	100	103	93	97	101

Source: Union industry's data, Article 14(6) database

⁽¹⁴⁾ The 14(6) database contains data on imports of products subject to anti-dumping or anti-subsidy measures or investigations, both from the countries and exporting producers concerned by the proceeding and from other third countries and other exporting producers, at the level of the 10-digit TARIC codes and TARIC additional codes.

- (65) The consumption of sodium cyclamate in the Union first decreased by 7 % between 2011 and 2013, and increased in the subsequent period. Consumption during the investigation period reached more or less the same level as in 2011.

4.4. Imports from Fang Da

- (66) In order to ensure consistency of the data throughout the overall period considered, the Commission used the same source of information as above — Article 14(6) database — to establish the volume and price trends of imports from Fang Da. These data were cross-checked with the figures provided by Fang Da in its questionnaire reply and they were found to be consistent.

4.4.1. Volume and market share

- (67) Fang Da imports into the Union developed as follows:

Table 2

Import volume and market share

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Import volume	100	84	111	156	161
Market share	100	82	119	161	160

Source: Article 14(6) database

- (68) Dumped imports from Fang Da increased by 61 % over the period considered. First they dropped by 16 % from 2011 to 2012, but then they almost doubled from 2012 to the investigation period. Market shares followed the same trend, with an overall substantial increase of 60 %.
- (69) In 2014 and the investigation period, Fang Da became the biggest supplier on the Union market, with a market share slightly higher than the other imports all together, and much higher than the Union industry's market share.
- (70) Following disclosure, the exporting producer concerned submitted that, based on new Chinese export data, the increase of its own exports to the Union was more than offset by the fall in the sales of other Chinese exporters, which would contradict the findings of the investigation based on the data of the Article 14(6) database. As discussed in recital (63) above, the exporting producer concerned did not demonstrate that the new data it had presented on Chinese exporting producers other than Fang Da were more reliable than the data used in the present investigation, so these claims were rejected.

4.4.2. Prices of the imports from Fang Da and price undercutting

- (71) The average price of imports from Fang Da into the Union developed as follows:

Table 3

Import prices (EUR/kg)

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Fang Da	100	110	105	96	99

Source: Article 14(6) database

- (72) The average import price from Fang Da of the product concerned decreased by 1 % over the period considered. It however first increased by 10 % from 2011 to 2012, then it decreased by 14 index points from 2012 to 2014 and finally rose by 3 index points between 2014 and the investigation period.
- (73) In 2011 and 2012, Fang Da import prices were, on average, higher than the other import prices (established on the same source of information and including the anti-dumping duties), but aligned with the latter in 2013 and became lower than these prices in 2014 and investigation period.
- (74) The Commission determined the price undercutting during the investigation period on the basis of the data of FDYQ and the data of the Union producer by comparing:
- the weighted average sales prices per product type of the Union producer 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 FDYQ to the first independent customer on the Union market, established on an Union border cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.
- (75) The price comparison was made on a type-by-type basis, duly adjusted where necessary. The result of the comparison was expressed as a percentage of the Union producer's turnover during the investigation period. It showed a weighted average undercutting margin of 19,1 %.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (76) The production of sodium cyclamate consists of two main production steps. During the first step, which requires the use of reactors, the raw materials are converted into crude (impure) sodium cyclamate. During the second production step, the crude sodium cyclamate needs to be purified before it can be used, in view of the relevant regulatory rules, by downstream food, beverages or pharmaceutical industries.
- (77) Due to a technical incident that took place in July 2011 (explosion in the factory), the Union industry could not perform the first production step — the reaction process — between August 2011 and May 2012, and had to temporarily rely on imported sodium cyclamate which it further purified in order to be able to maintain its commercial activities.
- (78) Since the Union producer had no other choice, but to temporarily rely on imports, and given the limited duration and the volume of imports during the period considered, this incident and its consequences do not invalidate the above conclusions concerning the definition of the Union industry. It however had an important impact on the economic situation of the Union industry for the years 2011-2012, that is to say in the beginning of the period considered, in particular concerning capacity, the production and sales volume as well as the profitability indicators. It also had some impact — although minor — on the development of imports. These elements are taken into consideration when analysing the development of the injury indicators.
- (79) In this context, and 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. For the injury determination, the Commission evaluated the economic indicators on the basis of data related to the sole Union producer constituting the Union industry within the meaning of Article 4(1) of the basic Regulation.
- (80) The economic indicators of the sole Union producer, which were evaluated by the Commission, are as follows: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, labour costs, magnitude of dumping margin, and recovery from past dumping, average unit prices, unit costs, inventories, profitability, cash flow, investment, return on investment, and ability to raise capital.

4.5.2. Injury indicators

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Production volume	100	104	189	159	157
Production capacity	100	114	171	171	171
Capacity utilisation	100	91	110	93	92

Source: Union industry's data

- (82) Production overall increased by 57 % during the period considered. As explained in recitals (77) above and (83) below, the Union industry's production however was unusually low in 2011-2012. Between 2013 and the investigation period the production level sharply decreased, by 32 index points.
- (83) The production capacity also significantly increased during the period considered (by 71 %), but this trend is again explained by an abnormally low level in 2011 and 2012 which resulted from the technical incident in the production facilities. The capacity was calculated on the basis of months during which the Union industry could produce its own sodium cyclamate, thus only 7 months in 2011, 8 months in 2012 and 12 months for the other periods. Since 2013 the production capacity level remained stable until the investigation period.
- (84) The capacity utilisation rate decreased by 8 % between 2011 and the investigation period, but it followed a significant downward trend since 2013, in line with the decrease of the production volume.

4.5.2.2. Sales volume and market share

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

Table 5

Sales volume and market share

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Sales volume	100	69	146	108	104
Market share	100	67	157	111	104

Source: Union industry's data and Article 14(6) database

- (86) Sales volume on the Union market and the corresponding market share followed the same trend during the period considered. They increased overall by 4 %.
- (87) Since both figures reflect only the sales of the Union industry's own produced sodium cyclamate, the levels for 2011 and 2012 were unusually low, due to the reasons mentioned in recitals (77) and (83) above. Since 2013, when the production of its own sodium cyclamate was already permanently re-established, the Union industry's sales fell by 42 index points as a result of the loss of orders.
- (88) Market share also significantly decreased between 2013 and the investigation period. This is in contrast with the development of both the Union consumption, which increased by 8 index points, and imports of Fang Da, which also further increased and increased their market share over those three years.

4.5.2.3. Growth

- (89) The situation of the Union industry improved between 2011 and 2013, when it was able to increase its production, production capacity, sales and market share. This increase was caused by two factors: (i) the increase of the anti-dumping duties for certain PRC exporting producers, which were doubled in May 2012 and (ii) the fact that the Union industry was again in a position to produce its own sodium cyclamate during 12 months in 2013, as compared to only 7 months in 2011 and 8 months in 2012.
- (90) If the explosion had not taken place in July 2011, the production, capacity utilisation, sales and market shares figures would have been much higher in 2011 and 2012, since the Union industry could have supplied its customers with its own sodium cyclamate instead of imported one which it further processed (purified) between August 2011 and May 2012. As a result, the increase of production, sales and market shares between 2011 and 2013 would have been much smaller, whereas the production capacity would have even remained at its 2013 level during the entire period considered. From 2013 to the investigation period, all the above mentioned volume related trends, with the exception of production capacity, totally reversed. In fact, although the Union consumption followed an increasing trend since 2013, the Union industry entered into a phase of economic decline. At the same time, the profitability of the Union industry remained strongly negative over the entire period considered, which inhibited its prospects of growth.

4.5.2.4. Employment and productivity

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

Table 6

Employment and productivity

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Number of employees	100	100	105	105	105
Productivity	100	104	180	151	150

Source: Union industry's data

- (92) Despite the inability to produce its own sodium cyclamate between August 2011 and May 2012, the Union industry decided to maintain the employment constant in that period, since any reductions were considered to be too costly and unnecessary. Although one employee was laid off in 2012, the level of employment did not change between 2011 and 2012 since the Union industry hired a new employee in the same year. The number of employees was slightly increased in 2013 and then it remained stable until the investigation period.

- (93) Due to the explosion in the factory, the productivity of the Union industry was affected in a similar way as other economic indicators presented above. Like production, productivity was exceptionally low in 2011 and 2012 and then it sharply increased by almost 80 index points in 2013. Since then however, due to the loss of orders, it fell by 30 index points in 2014 and remained at this level until the investigation period.

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

- (94) The dumping margin was significantly above the de minimis level. The impact of the magnitude of the actual margin of dumping on the Union industry was substantial, given the volume and prices of imports from Fang Da.
- (95) Anti-dumping measures have been in place against imports of other Chinese and Indonesian exporting producers since 2004. In this context, it has to be mentioned that the level of the anti-dumping duty, which was imposed in the original investigation on two Chinese exporting producers other than Fang Da, was found to be insufficient in order to counteract the dumping which was causing injury to the Union industry. As a result, the anti-dumping duty for those Chinese exporting producers was more than doubled in May 2012, as explained in recital (2) above. Given the current analysis, it is clear that the dumping is still ongoing.

4.5.2.6. Prices and factors affecting prices

- (96) The average unit sales prices of the sole Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 7

Sales prices in the Union

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Average unit sales price	100	105	103	107	106
Average unit cost of production	100	107	97	95	96

Source: Union industry's data

- (97) The Union industry's average unit sales price increased by 6 % during the period considered. It first increased by 5 index points between 2011 and 2012 and then remained stable until the investigation period.
- (98) The Union industry average unit production cost increased by 7 index points between 2011 and 2012 and then it decreased by 10 index points in 2013 as compared to 2012. Since 2013 it remained stable until the investigation period. These changes mainly resulted from the fluctuation of the raw material costs.
- (99) In relation to the above, it should be mentioned that the Union industry could not precisely separate the purification costs from the total production costs. As a result, the indexes of 2011 and 2012, contrary to the indexes of 2013, 2014 and the investigation period, also reflect the purification costs of the sodium cyclamate which was imported by the Union industry.

- (100) Given the above, the interpretation of trends between 2011-2012 and the subsequent periods should be made with caution since their development has been influenced — although only slightly — due to the fact that the 2011-2012 indexes were based on different sets of data.
- (101) In any event, during the entire period considered, the average unit sales price was always below the Union industry's average unit costs of production reported in the above Table.

4.5.2.7. Labour costs

- (102) The average labour costs of the sole Union producer developed over the period considered as follows:

Table 8

Average labour costs per employee

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Average labour costs per employee	100	127	115	102	95

Source: Union industry's data

- (103) The average labour costs decreased by 5 % during the overall period considered. The costs, however, first increased by 27 % in 2012 — mainly due to compensations paid to a dismissed employee — and then they were constantly decreasing until the investigation period when they fell 5 % below their 2011 level.

4.5.2.8. Inventories

- (104) Stock levels of the sole Union producer developed over the period considered as follows:

Table 9

Inventories

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Closing stocks	100	258	339	406	708
Closing stocks as a percentage of production	100	249	179	255	451

Source: Union industry's data

- (105) During the period considered, the closing stocks expressed as a percentage of production fluctuated significantly. They first increased between 2011 and 2012, then decreased the next year and finally increased significantly until the investigation period. Overall, during the period considered, they increased by 351 index points. This increase is partially caused by the inability of the Union producer to sell its products due to competition with low-priced imports, but it is also the result of abnormally low stock levels in 2011 following the technical incident explained in recital (77) above.

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

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

Table 10

Profitability, cash flow, investments and return on investments

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Profitability	– 100	– 111	– 82	– 61	– 69
Cash flow	100	– 500	– 1 107	– 59	– 766
Investments	100	203	15	0	0
Return on investments	– 100	– 42	– 104	– 79	– 77

Source: Union industry's data

- (107) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of its sales of sodium cyclamate to unrelated customers in the Union as a percentage of the turnover of those sales. As mentioned in recital (99) above, the cost of production used to establish the level of profit/losses for 2011-2012 could only be established overall, i.e. also including costs related to imported sodium cyclamate. On this basis, the analysis of profitability figures showed that the Union industry generated significant losses during the entire period considered. They were particularly high in 2011-2012, but the situation improved since 2013.
- (108) The net cash flow is the ability of the Union industry to self-finance its activities. The trend in net cash flow, established in relation to the total sales ⁽¹⁵⁾ of sodium cyclamate, turned from positive in 2011 into strongly negative between 2012 and the investigation period.
- (109) The only significant investments were made in 2011-2013, and they exclusively relate to the replacement of production tools affected by the explosion in 2011. Those investments were fully covered by the insurance policy.
- (110) The return on investments consists of the profit expressed as a percentage of the net book value of the fixed assets. It was significantly negative over the entire period considered.
- (111) Given the level of losses incurred by the Union industry, its ability to raise capital was seriously affected.

4.5.3. Conclusion on injury

- (112) Even though some economic indicators pertaining to the situation of the Union industry such as production, production capacity, sales, market share and productivity improved between 2011-2012 and 2013, these trends were only partially influenced by the genuine market developments resulting from the imposition of the higher anti-dumping duties on certain PRC exporting producers in May 2012.

⁽¹⁵⁾ Contrary to sales reported in Table 5, the total sales referred to in this recital cover sales, which were made both on the Union and export markets, of the Union industry's own sodium cyclamate and sodium cyclamate based on the material imported in 2011 and 2012.

- (113) In fact, as it was mentioned in recital (89) above, those improvements can be also explained to a significant extent by: (i) the explosion in the factory in July 2011, (ii) the fact that the Union industry could not produce as a result of that explosion its own sodium cyclamate between August 2011 and May 2012, and (iii) its return to a full 12 months production process in 2013 after the destroyed production lines had been replaced. Clearly, the increase of those indicators by 2013 would have been significantly lower if that explosion had not taken place.
- (114) The positive evolution of the above mentioned trends clearly changed since 2013, as the Union industry's production, sales, productivity as well as its market share substantially worsened.
- (115) In addition, during the overall period considered, the financial situation of the Union industry remained permanently in a precarious state. In particular, the Union industry's indicators such as profitability, cash flow and return on investments showed very negative results overall.
- (116) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (117) In its comments following final disclosure, the exporting producer concerned contested the conclusion in recital (115) that profitability, cash flow and return on investments showed injury since they developed in a positive manner between 2013 and the investigation period.
- (118) The Commission notes that although over the period considered the level of losses, negative cash flow and return on investment indeed slightly improved, their levels were nevertheless still very negative for 2013, 2014 and the investigation period. Moreover, in accordance with Article 3(5) of the basic Regulation none of the injury factors is decisive on its own but all of them are analysed together. The claim is therefore dismissed.
- (119) In addition, Fang Da argued that the period considered was not representative because it was affected by two major factors, namely, all data for 2011 and 2012 were skewed and the remaining period from 2013 to the investigation period was too short.
- (120) Concerning the first factor, Fang Da argued that all data for 2011 and 2012 were statistically useless and must be ignored in any injury analysis on the following grounds:
- (i) during these two years there was an on-going investigation against imports of sodium cyclamate from Fang Da and that this was sufficient to skew any data and make those periods unreliable for establishing a baseline against which future trends could be analysed;
 - (ii) those two years were significantly affected by the explosion at the factory of the Union producer.
- (121) As to point (i) above, Fang Da did not demonstrate why or how the previous investigation had skewed the Union industry data for that period. Consequently, this argument had to be disregarded by the Commission in its assessment of the above claims.
- (122) As to point (ii) above, the Commission clearly recognized that the explosion had an impact on the economic indicators of the Union industry in 2011-2012 and, as mentioned in recital (78) above, these elements were duly taken into consideration when analysing the development of the injury indicators. It is also recalled that the Commission concluded in recital (114) above that the situation of the Union industry clearly further deteriorated since 2013, i.e., after 2011-2012 period. Consequently, this claim had to be dismissed.
- (123) Concerning the second factor, Fang Da claimed that the remaining part of the period considered, 2013-2014 and the investigation period, was not sufficient to draw any meaningful conclusions on injury. The exporting producer concerned did not substantiate its claim. A finding of injury is made for the investigation period on the basis of analysis of the trends of the injury indicators during the period considered. Therefore, this claim had to be dismissed as well.

- (124) In addition to the above, Fang Da also claimed that 2013 could not be used as the benchmark year for the injury assessment because 2013 figures were exceptionally high. This was allegedly caused by the customers of the Union industry, which were unable to purchase sodium cyclamate after the explosion and, once the full production was reinstated, returned in force to the Union industry in order to increase their own stock levels.
- (125) First, this claim is based on a simple unsubstantiated allegation, since Fang Da did not submit any evidence that, as a result of the explosion, the Union industry lost a significant number of its customers who decided to return with increased orders in 2013. Second, the evidence on the record does not support this allegation. On the contrary, it shows that in 2011-2012 during the period when it could not produce its own sodium cyclamate, the Union industry maintained its clients and continued supplying them with imported sodium cyclamate, which was further processed, as mentioned in recital (77) above. Accordingly, this claim also had to be dismissed.

5. CAUSATION

- (126) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from Fang Da caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from Fang Da was not attributed to the dumped imports from Fang Da.

5.1. Effects of the dumped imports from Fang Da

- (127) The investigation has shown a strong correlation between Fang Da's import prices, its market share and the situation of the Union industry. This is illustrated in the table below:

Table 11

Import prices and market share

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Fang Da's import prices	100	110	105	96	99
Fang Da's market share	100	82	119	161	160
Union industry's market share	100	67	157	111	104
Chinese import prices (including anti-dumping duties), other than Fang Da	100	109	112	108	111
Chinese market share, other than Fang Da	100	110	79	73	77

Source: Union industry's data, Article 14(6) database

- (128) In the period 2011 to 2012, Fang Da's import prices into the Union increased by 10 % and its market share decreased by 18 %. In the subsequent period from 2013 to the investigation period, however, Fang Da managed to double its market share by significantly decreasing its prices.

- (129) From 2012 to 2013 Fang Da first decreased its prices by 5 % and aligned them with the other Chinese import prices. The latter were also affected, as from May 2012, by a significant increase of the anti-dumping duties applicable to one major Chinese exporting producer, a development that is illustrated in the above table by showing Chinese import prices including anti-dumping duties. From 2012 to 2013 this price alignment led to a significant increase of the market share of Fang Da by 37 index points, and was mainly at the expense of the other Chinese imports whose market share decreased by 31 index points.
- (130) From 2013 to 2014 Fang Da continued to decrease its prices by another 9 index points, so they reached a lower price level than that of the other Chinese imports, resulting in yet another significant increase in its market share by 42 index points. This time it was directly at the expense of the Union industry whose market share decreased by 53 index points during the same period.
- (131) As indicated in recital (75) above, the undercutting margin established for Fang Da was considerable. Given the continuously increasing volume of dumped imports from Fang Da at prices that significantly undercut those of the Union industry, the Union industry was not in a position to benefit from the increase of anti-dumping duties for another Chinese exporting producer in 2012 and was unable to regain its market share.
- (132) On the basis of the above, the Commission considers that the dumped imports from Fang Da have significantly contributed to the material injury suffered by the Union industry within the meaning of Article 3(6) of the basic Regulation.

5.2. Effects of other factors

5.2.1. Imports from exporting producers other than Fang Da

- (133) The volume of imports from other exporting producers than Fang Da developed as follows:

Table 12

Import volume Index

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
PRC (excluding Fang Da)	100	114	73	71	77
Indonesia	100	225	31	18	9

Source: Article 14(6) database

- (134) The volume of imports from Indonesia was low in 2011 and 2012, very low in 2013 and negligible during 2014 and the investigation period. So even though it fluctuated a lot over the period considered, its impact on the Union industry can be considered as very limited from 2011 to 2012 and as insignificant from 2013 to the investigation period.
- (135) The volume of imports from Chinese producers other than Fang Da decreased by 23 % over the period considered. They first increased by 14 % between 2011 and 2012, and dropped very significantly since then, in particular with a very sharp drop of 41 index points from 2012 to 2013.
- (136) Despite this overall decrease, the other Chinese imports remained at a significant level, which was very close to the level of Fang Da. Even if their average prices — including the anti-dumping duties applied to them — were, on average, slightly higher than Fang Da's, they were still at a low level, and much lower than the Union industry's prices. It can therefore be concluded that, over the period considered, low priced imports of Chinese producers other than Fang Da contributed to the injurious situation of the Union industry.

- (137) As explained in point 5.1 above, the further deterioration of the situation of the Union industry since 2013 was mainly caused by the increasing volume of dumped and low price imports from Fang Da. Accordingly, the effects of imports from other producers than Fang Da, even if they contributed to the injury, are not such as to break the causal link between dumped imports from Fang Da and the material injury suffered by the Union industry.

5.2.2. Technical incident (explosion) in the Union industry factory

- (138) As it was already explained in recitals (77) and (83) above, there was an explosion in the factory of the Union industry in July 2011 as a result of which the Union industry could not perform the reaction process and thus produce and sell its own sodium cyclamate between August 2011 and May 2012.
- (139) The inability to produce its own sodium cyclamate had a negative impact on the economic indicators of the Union industry between August 2011 and May 2012. Indeed, for example, the production, capacity utilisation, sales, market share and productivity figures would have been higher in that period, if the accident had not taken place, since the Union industry could have supplied its customers with its own sodium cyclamate instead of imported one which it was purifying and re-selling between August 2011 and May 2012.
- (140) Although the Union industry's economic indicators mentioned above were affected as a result of its inability to produce its own sodium cyclamate between August 2011 and May 2012, the Commission concluded that the explosion in the factory did not contribute significantly to the injury suffered by the Union industry between 2013 and the investigation period.
- (141) Indeed, the Union industry fully restored its ability to produce its own sodium cyclamate already in May 2012, and since then the explosion did not affect any longer the economic activity of the Union industry. In fact, between 2013 and the investigation period these were the dumped imports of Fang Da which started exerting an injurious impact on the economic situation of the Union industry. It is important to note that this negative impact started taking place several months after the replacement by the Union industry of the destroyed production lines and when the production of its own sodium cyclamate was fully restored and calculated on the basis of 12 months cycles in 2013, 2014 and the investigation period.
- (142) Taking the above into account, the Commission is of the opinion that the technical incident, which affected the business operations of the Union industry between August 2011 and May 2012, did not break the causal link between the dumped imports of Fang Da and the injurious situation of the Union industry caused by those imports between 2013 and the investigation period.

5.2.3. Export performance of the Union industry

- (143) The volume of exports of the Union producer developed over the period considered as follows:

Table 13

Export performance of the Union industry

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Investigation period
Export volume	100	118	198	212	180
Average price	100	102	106	106	108

Source: Union industry's data

- (144) The export sales represented a significant portion of the total sales volume of the Union industry in the period considered, ranging from around 30 % to around 50 %. The low sales volumes in 2011-2012 must be interpreted in the context of the Union industry's inability to produce and sell its own sodium cyclamate between August 2011 and May 2012. In the subsequent period, once the production of own sodium cyclamate restarted, the export sales first increased by 14 indexed points between 2013 and 2014, and subsequently dropped by 32 indexed points in the investigation period.
- (145) The average export sales prices were increasing over the period considered and they were 8 % higher in the investigation period as compared to 2011. Even if they remained systematically lower than the Union industry average unit production costs, the export prices were higher than the Union industry average sales prices on the Union market, and therefore generating much lower level of losses as compared to sales on the Union market.
- (146) Despite the fact that the export sales were generating some losses, the Commission nevertheless concluded that the export activity did not contribute significantly to the injury suffered by the Union industry. This is due to the following reasons. Firstly, the volumes of export sales decreased much less, both in absolute and relative terms, than the sales on the Union market between 2013 and the investigation period. The latter sales were particularly strongly affected in that period by large volumes of low priced and dumped imports of Fang Da. Secondly, due to their higher prices and thus lower loss margins, export sales allowed the Union industry to reduce its overall losses resulting from sales of the like product.
- (147) Consequently, in the Commission's view, the exports sales of the Union industry did not break the causal link between the dumped imports of Fang Da and the injurious situation of the Union industry caused by those imports.

5.2.4. Consumption

- (148) Injury cannot be the result of a change in the pattern of consumption as demand slightly increased between 2011 and the investigation period. During the period between 2013 and the investigation period when the injurious impact of dumped imports from Fang Da was particularly pronounced, consumption increased even by 8 %, a development that reinforces the above conclusion.

5.3. Conclusion on causation

- (149) The investigation showed that the Union industry was clearly suffering material injury in the investigation period. The Union industry has been loss making during the overall period concerned. Furthermore, since 2013, once the Union industry could produce normally after the incident that affected its production lines, the volume injury indicators such as production, sales and market share showed clear signs of deterioration.
- (150) This coincided with a significant increase of Fang Da's dumped imports at low prices, which first managed to displace other Chinese imports, and then take over the market share of the Union industry. There is thus a clear causal link between the injury suffered by the Union industry and Fang Da's dumped imports.
- (151) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Some other factors such as export performance of the Union industry and the technical incident in the factory contributed to that injury. These effects, even combined, were however considered insignificant as compared to the impact of the dumped imports. Given their volume and price level, imports from other Chinese exporting producers, however, were found to have significantly contributed to that injury.
- (152) Nevertheless, on the basis of the above, the Commission concluded that the material injury to the Union industry was caused by the dumped imports from Fang Da and the other factors did not break the causal link between the dumped imports of Fang Da and the injury suffered by the Union industry. The injury mainly consists of the loss in production, sales volume and market share, in particular since 2013, as well as financial losses and poor performance of all the other financial indicators such as cash flow and return on investments.

- (153) According to the comments received from Fang Da after the disclosure, the Commission's analysis on causality was deficient, incomplete and contained pure assumptions not based on facts. In this context, Fang Da specifically claimed that the low priced imports of Chinese producers other than Fang Da and the self-inflicted injury resulting from the factory explosion were more than enough to break the link between the imports of Fang Da and the injury caused by such imports to the Union industry.
- (154) This allegation was, however, not substantiated by any evidence showing that the Commission did not sufficiently distinguish and separate the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The Commission has indeed duly analysed the effects of imports from exporting producers other than Fang Da as explained under section 5.2.1. In addition, the use of the data of the Article 14(6) database instead of the new Chinese export data submitted after disclosure has already been addressed under recitals (63) and (70). The data of the Article 14(6) database do not support Fang Da's statement that the increase in Fang Da's exports to the Union has been more than offset by the fall in the sales of other Chinese exporters. Accordingly, the above mentioned claims concerning the impact of imports from exporting producers other than Fang Da have to be rejected.
- (155) The Commission duly analysed also the effects of the explosion in the Union industry factory under section 5.2.2 above and came to the conclusion that even though it affected the Union industry in 2011 and 2012, it did not break the causal link between the dumped imports by Fang Da and the injury suffered by the Union industry. Accordingly, this claim has to be rejected.
- (156) Fang Da also claimed that the impact of other super sweeteners, such as acesulfame potassium and aspartame, was one factor alone that was the real reason for the negative development of the Union market for sodium cyclamate and a very significant contributor to any injury suffered by the Union industry, a factor that should have been analysed by the Commission. These claims were not supported by any other evidence than references to the Commission's findings in the proceedings concerning imports of acesulfame potassium and of aspartame ⁽¹⁶⁾.
- (157) It should be recalled that the only Union producer of sodium cyclamate produces neither acesulfame potassium, nor aspartame, so the Union producer was not part of the Union industry as defined in the two anti-dumping proceedings concerning other sweeteners. Accordingly, the findings on the impact of dumped imports of acesulfame potassium and aspartame on the situation of the Union producers of acesulfame potassium and aspartame have no bearing on the situation of the Union industry in this proceeding. In any event, the unsubstantiated claim that acesulfame potassium is a preferable competing product to sodium cyclamate and a very significant contributor to any injury suffered by the Union industry should normally manifest itself in the contraction of the Union consumption of sodium cyclamate. As described in recitals (64) to (65), during the period considered the Union consumption of sodium cyclamate reached more or less the same level as in 2011, which would not be the case if, as alleged, acesulfame potassium had replaced sodium cyclamate as a preferred competing product. Accordingly, in the absence of any substantiated evidence contradicting the Commission's findings as outlined in recital (148), Fang Da's claim has to be rejected.

6. UNION INTEREST

- (158) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

6.1. Interest of the Union industry

- (159) The investigation established that the Union industry suffered material injury caused by Fang Da's dumped imports. The Union industry was indeed not able to fully benefit from the imposition of anti-dumping duties against Indonesia and the other Chinese exporters, including the increase of anti-dumping duties in 2012. The aggressive pricing behaviour and the resulting market share gain by Fang Da as of 2013 caused a considerable decrease of the sales volume and market share of the Union industry despite the presence of anti-dumping measures on imports from the PRC and Indonesia.

⁽¹⁶⁾ Commission Implementing Regulation (EU) 2015/1963 of 30 October 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of acesulfame potassium originating in the People's Republic of China (OJ L 287, 31.10.2015, p.52) and Commission Implementing Regulation (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China (OJ L 50, 26.2.2016, p.4).

- (160) The imposition of measures against dumped imports from Fang Da is expected to allow the Union industry to compete with imports under fair market conditions. This would relieve the industry from the severe price pressure currently exerted by the substantial import volumes of Fang Da on the Union market. Only under these circumstances the Union industry would be able to increase its price, production and sales volume.
- (161) In the absence of measures, the price pressure from Fang Da's dumped imports in substantial volumes is expected to continue leading to further deterioration of the already very precarious situation of the Union industry. This would ultimately force the Union industry to cease the production of sodium cyclamate altogether, with consequent loss of employment and alternative sources of supply in the Union.
- (162) The Commission therefore concluded that the imposition of anti-dumping duties on imports from Fang Da would be in the interest of the Union industry.

6.2. Interest of unrelated importers

- (163) The Commission received a questionnaire reply from two unrelated importers representing only a small proportion of total imports from Fang Da during the investigation period. One of these importers is also a user, which uses some quantities of the imported sodium cyclamate to produce its own sweetener blends that are further sold to food and beverage companies.
- (164) Concerning the re-sales of the sodium cyclamate imported from Fang Da, the Commission established that the profit margins of the two unrelated importers are low. It is thus expected that the imposition of measures would make this activity unprofitable and the importers are likely to either change suppliers or even cease their related activities. The Commission however also found that, for both companies, sodium cyclamate represented only a very small proportion of their total turnover. The impact of the imposition of measures on the overall activity of these companies would thus not be important. The blending activity of one of the cooperating companies also showed robust profit margins that could mitigate the effects of the anti-dumping duties.

6.3. Interest of users

- (165) With the exception to the above importer which is also a user of sodium cyclamate, the Commission did not receive any questionnaire replies from users.
- (166) The main final users of the product concerned/like product in the Union are in the food, beverage and pharmaceutical industries. In the previous investigations concerning imports of sodium cyclamate from producers other than Fang Da, it was established that sodium cyclamate accounted for a very low proportion of their cost of production. Therefore, the effect of the imposition of anti-dumping duties was deemed not significant. There are no indications that a significant proportion of sodium cyclamate imported from Fang Da would have any different end use than sodium cyclamate imported from other exporting producers. In the absence of any representations of food, beverage and pharmaceutical in this investigation, it is reasonable to conclude that the impact of measures on imports from Fang Da on them would not be significant.
- (167) In view of the above observation that, in the absence of measures, the Union industry may be forced to cease the production of sodium cyclamate and given the existence of only a few producers of sodium cyclamate globally, the measures are even likely to benefit users, in so far as they preserve the production of sodium cyclamate in the Union and the choice to source sodium cyclamate produced by different competing producers of sodium cyclamate.
- (168) Following the disclosure, Fang Da argued that the imposition of the proposed definitive anti-dumping measures would place the sole Union producer in a dominant market position, which it would be fully able to take advantage of.

- (169) In this context, it should be underlined that in the framework of the Union interest test no comments concerning competition issues were received from the relevant interested parties pursuant to Article 21 of the basic Regulation. In particular, no Union users sent any comments in this regard.
- (170) Moreover, despite the existing anti-dumping measures on imports from Chinese exporting producers other than Fang Da, these imports have continued in substantial volume and their market share remains considerably higher than the market share of the Union industry. Accordingly, it is unlikely that the Union industry would be able to achieve or take advantage of a dominant market position in the Union. Therefore, the above-mentioned claims from Fang Da have been rejected.

6.4. Conclusion on Union interest

- (171) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of the product concerned from Fang Da.

7. DEFINITIVE ANTI-DUMPING MEASURES

- (172) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

7.1. Injury elimination level (Injury margin)

- (173) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (174) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.
- (175) Throughout the period considered, there was not a single year in which such conditions prevailed. Because for almost a decade the Union industry has suffered double digit losses, the same applies for a period before the period considered.
- (176) The Union producer had proposed 10 % target profit. Such figure could not be accepted as target profit because of the findings mentioned in recital (175) above and because the Union producer could not demonstrate that this figure was achievable under normal market conditions of competition for sodium cyclamate, which is a commodity for which the market has matured.
- (177) Therefore, the Commission reverted to target profits used in other investigations concerning an industry of this type in the sector. In a recent anti-dumping investigation concerning another sweetener, aspartame, the Commission established at the provisional stage ⁽¹⁷⁾ that a target profit of 5 % — 10 % (range given for confidentiality reasons) corresponds to what can be achieved under normal market conditions and effective competition by the Union industry. Therefore, the Commission finds that this target profit is reasonable to be used for the current investigation as well.
- (178) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by adding the target profit margin to the cost of production during the investigation period of the Union producer.

⁽¹⁷⁾ Implementing Regulation (EU) 2016/262.

- (179) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the exporting producers concerned, duly adjusted for importation costs and customs duties, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union producer on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. Accordingly, the injury margin for the exporting producers was found to be 61,6 %.
- (180) After disclosure, the exporting producer concerned asserted that the target profit used in the injury elimination calculation was not disclosed. The Commission had, however, clearly explained in its disclosure that the target profit, as described in recital (177), could only be given as a range for confidentiality reasons and provided a reference to the legislative act where this was described in more detail. The target profit was disclosed as a meaningful range because quoting the exact target profit would have revealed confidential information of the sole Union producer of aspartame. Accordingly, Fang Da's claim has to be rejected.
- (181) After the disclosure, Fang Da claimed that because for almost a decade the Union industry had suffered double digit losses, the target profit or the maximum profit level the Union producer could expect to achieve in the absence of the allegedly dumped imports was – 10 %. It should be noted that a – 10 % is not a profit, but a loss, so it would be illogical and contrary to any economic thinking to use a loss as a target profit, as it would not eliminate or remove the injury. Furthermore, the fact that the Union industry had suffered losses due to a prolonged period of dumped imports also from other exporting producers than Fang Da justifies the use of a recent profit margin identified in this sector, as explained in recital (177). The Commission had already explained in recitals (174) to (177) why in the current investigation it used a target profit that was lower than both the target profit proposed by the Union producer and the target profit used in the anti-dumping proceeding concerning other exporting producers of sodium cyclamate. In view of the above, it has to be concluded that there is no evidence that the Commission's choice of target profit was unreasonable, so Fang Da's claim has to be rejected.

7.2. Definitive measures

- (182) Anti-dumping measures should be imposed on imports of sodium cyclamate produced and exported by Fang Da, in accordance with the lesser duty rule in Article 9(4) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (183) Regarding the form of the measures, it was considered that the anti-dumping duty should take the same form as the duties imposed by Commission Implementing Regulation (EU) 2016/1160 ⁽¹⁸⁾ concerning imports from other exporting producers in the PRC and Indonesia. To ensure efficiency of the measures and to discourage price manipulation, it was considered appropriate to impose duties in the form of a specific amount per kilogram.
- (184) On the basis of the above, the anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be based on the injury margin and be as follows:

Company	Dumping margin	Injury margin	Definitive anti-dumping duty (rate)	Definitive anti-dumping duty (euro per kg)
Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, People's Republic of China	88,7 %	61,6 %	61,6 %	EUR 1,17
Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, People's Republic of China	88,7 %	61,6 %	61,6 %	EUR 1,17

⁽¹⁸⁾ Commission Implementing Regulation (EU) 2016/1160 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (see page 49 of this Official Journal).

- (185) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of this investigation. Therefore, it reflected the situation found during this investigation with respect to this company. This duty rate is exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entity. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to that specifically mentioned, continue to be subject to the duty rates listed under Article 1 of Implementing Regulation (EU) 2016/1160.
- (186) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) to Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of sodium cyclamate originating in the People's Republic of China and produced by Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited, currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10).

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

Company	Definitive anti-dumping duty (euro per kg)	TARIC additional code
Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, People's Republic of China	EUR 1,17	A471
Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, People's Republic of China	EUR 1,17	A472

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of the Commission Implementing Regulation (EU) 2015/2447 ⁽¹⁹⁾, the amount of anti-dumping duty, calculated on the basis of paragraph 2 of this Article, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Unless otherwise specified, the relevant 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*.

⁽¹⁹⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

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

Done at Brussels, 15 July 2016.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1160**of 15 July 2016****imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

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 ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) Following an anti-dumping investigation under Article 5 of the basic Regulation, by Regulation (EC) No 435/2004 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('the PRC') and Indonesia. The original measures were subsequently subject to different review investigations ⁽³⁾. As a result, the rate of the duty for an individually named Indonesian producer is 0,24 EUR/kg with a residual duty rate of 0,27 EUR/kg imposed on imports of the product concerned produced by other Indonesian producers, whereas the rate of the duty for the PRC ranges between 0 and 0,23 EUR/kg for individually named Chinese producers with a residual duty rate of 0,26 EUR/kg imposed on imports of the product concerned produced by other Chinese producers ('the measures in force').
- (2) The measures in force apply to all imports of sodium cyclamate originating in the PRC and Indonesia, with the exception of imports of sodium cyclamate produced by the Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited. A zero duty rate was originally determined for these companies, as no dumping was found ⁽⁴⁾.
- (3) In line with the WTO Appellate Body report in case Mexico — Definitive Anti-dumping Measures on Beef and Rice ('the WTO Appellate Body report'), the Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited were not examined in the subsequent reviews of the measures as imposed by Regulation (EC) No 435/2004 and are not subject to the measures in force.

1.2. Initiation of an expiry review

- (4) Following the publication of a Notice of impending expiry of the anti-dumping measures in force ⁽⁵⁾, the Commission received on 6 March 2015 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 Productos Aditivos S.A., the sole Union producer of sodium cyclamate, thus representing 100 % of the total Union production.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Regulation (EC) No 435/2004 of 8 March 2004 imposing a definitive anti-dumping duty and collecting the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia (OJ L 72, 11.3.2004, p. 1).

⁽³⁾ Council Implementing Regulation (EU) No 492/2010 of 3 June 2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 140, 8.6.2010, p. 2), Council Implementing Regulation (EU) No 398/2012 of 7 May 2012 amending Implementing Regulation (EU) No 492/2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in, inter alia, the People's Republic of China (OJ L 124, 11.5.2012, p. 1).

⁽⁴⁾ See footnote 2.

⁽⁵⁾ OJ C 374, 22.10.2014, p. 4.

- (5) The request was based on the grounds that the expiry of the definitive anti-dumping measures would likely result in the continuation and recurrence of dumping and continuation and recurrence of injury to the Union industry.
- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 6 June 2015, by a notice published in the *Official Journal of the European Union* ⁽⁶⁾ (the Notice of Initiation), the initiation of an expiry review under Article 11(2) of the basic Regulation.
- (7) On 12 August 2015 the Commission also initiated an investigation under Article 5 of the basic Regulation with regard to imports of the same product manufactured and exported to the Union by Fang Da Food Additive (Shenzhen) Limited and Fang Da Food Additive (Yan Quan) Limited (both companies referred to as 'Fang Da') ('the parallel Article 5 investigation') ⁽⁷⁾. Imports from Fang Da are not subject to this expiry review investigation.

1.3. Interested parties

- (8) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission specifically informed the complainant, known exporting producers, the authorities of the PRC and Indonesia, known importers, suppliers, users, and traders known to be concerned about the initiation of the investigation and invited them to participate.
- (9) 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.

1.3.1. *Analogue country producers*

- (10) In the Notice of Initiation, in relation to imports from the PRC, the Commission informed interested parties that it envisaged Indonesia as a market economy third country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation.
- (11) However, in view of the available statistical data (see recital (32) below), the Commission also informed the authorities of the United States of America (the 'US') about the initiation of the investigation and invited them to provide names and identities of sodium cyclamate producers in the US, if any. No sodium cyclamate producers in the US were subsequently identified. There were no indications on the file pointing towards possible production of sodium cyclamate in other third countries.

1.3.2. *Sampling*

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

— Sampling of Union producers

- (13) In its Notice of Initiation, the Commission stated that Productos Aditivos S.A. is the sole Union producer of sodium cyclamate in the Union, thus representing 100 % of the total Union production. Consequently, the sampling was not necessary.

⁽⁶⁾ Notice on initiation of an expiry review of the anti-dumping measures applicable to sodium cyclamate originating in the People's Republic of China and Indonesia (OJ C 189, 6.6.2015, p. 2).

⁽⁷⁾ Notice of initiation of an anti-dumping proceeding concerning imports of sodium cyclamate originating in the People's Republic of China, limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited (OJ C 264, 12.8.2015, p. 32).

— Sampling of importers

- (14) 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.
- (15) Since only one unrelated importer came forward with the requested information, it was not necessary to sample unrelated importers.

— Sampling of exporting producers in the PRC and Indonesia

- (16) In view of the limited number of known exporting producers in the countries concerned, sampling of exporting producers was not foreseen.

1.3.3. *Questionnaire replies and verification visits*

- (17) The Commission sent questionnaires to the sole Union producer, all known exporting producers in the PRC and Indonesia, one Union unrelated importer and one Union user, which expressed an interest in the investigation.
- (18) A questionnaire reply was received from the sole Union producer and a partial reply from one Union user. No questionnaire replies were received from unrelated importers in the Union and from exporting producers in the PRC and Indonesia.
- (19) The Commission sought and verified all the information deemed necessary for the determination of the likelihood of continuation or recurrence 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 producer

— Productos Aditivos S.A., Barcelona, Spain.

1.4. Review investigation period and period considered

- (20) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 April 2014 to 31 March 2015 ('the review investigation period'). 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 2011 to the end of the review investigation period ('the period considered').

1.5. Disclosure

- (21) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the definitive anti-dumping measures in force. The parties were also granted a period within which they could make representations subsequent to this disclosure. No party submitted any comments after the disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (22) The product concerned is sodium cyclamate originating in the People's Republic of China and Indonesia ('the countries concerned'), currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10) ('the product concerned').

- (23) Sodium cyclamate is a commodity product used as a food additive and is widely used as a sweetener by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.
- (24) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. The content of the impurities, determined by the Union legislation, defines the quality of sodium cyclamate. Sodium cyclamate can be found in two different forms: hydrated (HC), with 15 % of moisture; and anhydrous (AC), with a content of up to 1 % of moisture. These two forms of sodium cyclamate have the same main characteristics and uses; it only varies in degree of sweetness; the HC type is less sweet due to the water content. Prices vary due to the same reason. The AC type is more expensive than the HC form. Both forms should be therefore considered as one product for the purposes of this proceeding.

2.2. Like product

- (25) 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 producers on the domestic market of the PRC and Indonesia;
 - the product produced and sold in the Union by the Union industry.
- (26) The Commission therefore concluded that those products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3.1. The PRC

3.1.1. Preliminary remarks

- (27) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place and whether the expiry of existing measures would be likely to lead to a continuation or recurrence of dumping.
- (28) Although there were significant imports of the product concerned during the review investigation period, none of the Chinese exporting producers subject to measures cooperated in this investigation. Therefore, the findings in relation to the likelihood of a continuation or recurrence of dumping set out below were based on statistical data as well as data contained in the expiry review request.

3.1.2. Dumping during the review investigation period

3.1.2.1. Analogue country

- (29) Pursuant to Article 2(7)(a) of the basic Regulation, due care was taken in identifying a market economy third country for establishing prices or constructed value to determine normal value.
- (30) In the Notice of Initiation, the Commission informed interested parties that it envisaged Indonesia as an appropriate analogue country and invited interested parties to comment. No comments were received. The Commission sought cooperation from producers in Indonesia. Letters and relevant questionnaires were sent to all known Indonesian exporting producers.

- (31) One Indonesian exporting producer came forward and provided a very incomplete questionnaire reply. The Commission received no reply to the subsequent letter requesting the company to complete its reply. The totality of data received was so incomplete that it could not be used to determine the normal value. As a result, the Indonesian exporting producer could no longer be considered as cooperating. Consequently, no cooperation from Indonesia could be obtained.
- (32) According to the information available to the Commission, there is only production of the product concerned in the Union and in the two countries concerned. However, Eurostat statistics suggested limited quantities of exports of the product concerned from the United States of America ('US') to the Union during the period considered. As sodium cyclamate is prohibited for use in the US this was probably a matter of misclassification but the Commission nevertheless contacted the US authorities to identify possible producers of the product concerned in the US, if any. No indications of the existence of such producers were subsequently received.
- (33) Consequently, no cooperation was obtained from any potential analogue country producer.

3.1.2.2. Normal value

- (34) In accordance with Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the prices in an appropriate market economy third country (the 'analogue country'), or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.
- (35) As explained in recitals (30)-(32) above, no cooperation could be obtained from any analogue country producers. Consequently, in accordance with Article 2(7)(a) of the basic Regulation, normal value had to be established on a reasonable basis. To that effect, the Commission considered reasonable to base the normal value on the verified price and costs data of the Union producer.
- (36) The like product was sold by the Union industry in representative quantities. However, the Union industry's domestic sales were loss-making. Therefore, the normal value was constructed, based on the Union industry's manufacturing costs plus a reasonable amount for selling, general and administrative costs (SGA) and profit. The SGA was based on the actual data of the Union producer. The profit rate added was based on the estimated reasonable profit margin of a recent anti-dumping investigation concerning another sweetener, aspartame. In this investigation, the Commission established at the provisional stage ⁽⁸⁾, that a profit of 5 %-10 % (range given for confidentiality reasons) corresponds to a reasonable profit. Therefore, the Commission finds that this profit is reasonable to be used for the current investigation in the construction of the normal value as well. The weighted average cost data of the two product types produced and sold by the Union producer was used, as no information was available on the product types sold by the Chinese exporting producers due to non-cooperation.

3.1.2.3. Export price

- (37) In the absence of cooperation of any Chinese exporting producer, the export price was based on the statistics collected pursuant to Article 14(6) ⁽⁹⁾ of the basic Regulation ('Article 14(6) database') for all Chinese exports to the Union (excluding Fang Da) of the product concerned during the review investigation period. As no information was available as regards the form (product type) sold, a simple average was taken to calculate the export price.

3.1.2.4. Comparison

- (38) The Commission compared the constructed normal value and the export price of the Chinese exporters on an ex-works basis.

⁽⁸⁾ Commission Implementing Regulation (EU) 2016/262 of 25 February 2016 imposing a provisional anti-dumping duty on imports of aspartame originating in the People's Republic of China (OJ L 50, 26.2.2016, p. 4).

⁽⁹⁾ The 14(6) database contains data on imports of products subject to anti-dumping or anti-subsidy measures or investigations, both from the countries and exporting producers concerned by the proceeding and from other third countries and other exporting producers, at the level of the 10-digit TARIC codes and TARIC additional codes.

- (39) 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.
- (40) Appropriate adjustments for transport, insurance, handling, loading and ancillary costs, and bank charges were made where they were found to be reasonable, accurate and supported by verified evidence. In the absence of more precise information, these adjustments were based on actual data relating to Fang Da in the parallel Article 5 investigation.

3.1.2.5. Dumping margin

- (41) The dumping margin was calculated as the amount by which the average normal value exceeded the average export price. The results so obtained point to an overall dumping margin of more than 100 %. The dumping margin found is substantially higher than the dumping margins established in the original investigation.

3.1.3. *Development of imports should measures be repealed*

- (42) The Commission analysed whether there was a likelihood of a continuation of dumping, should the measures lapse. The following elements were analysed: the production capacity and spare capacity in the PRC, export prices to other destinations, and the absorption capacity by other third country markets.
- (43) The analysis was primarily based on information provided in the request and on information that was publicly available and/or submitted in the framework of this investigation. Other sources of information have also been used, such as Eurostat import statistics and export statistics from the country concerned.

3.1.3.1. Unused capacity

- (44) In the absence of cooperation, the information supplied in the review request, the Article 14(6) database and the Chinese export statistics were used. The Chinese capacity was conservatively estimated using publicly available capacity data for only one Chinese exporting producer ⁽¹⁰⁾. This resulted in a capacity of at least 40 000 tonnes, but information in the file shows that there are at least two more Chinese producers (excluding Fang Da) and that this conservative figure is therefore underestimating the actual capacity in the PRC.
- (45) Using the Chinese export statistics and the Article 14(6) import statistics to the Union (excluding Fang Da) for the product concerned, the above estimate points to a free capacity of nearly 17 000 tonnes for the Chinese and the Union market together or a spare capacity, which accounts for over three times the size of the Union market.

3.1.3.2. Export prices to third countries

- (46) Based on Chinese export statistics, average Chinese prices to their main other markets (such as South Africa, Brazil, Argentina and Turkey) are at the same level or sometimes even lower than their sales prices to the Union.
- (47) The above shows that the product concerned is being dumped on other third markets as well and that the Union would continue to be an attractive market for Chinese exporting producers should the measures be repealed.

⁽¹⁰⁾ <http://www.rainbowrich.com/factory/index.html>

3.1.3.3. Absorption by third markets

- (48) Sodium cyclamate is prohibited for use in food, beverage and pharmaceutical products in a number of large third country markets, including the US. There were no indications in the file that point towards an expected growth of other third country markets for sodium cyclamate nor was there any indication in the file of the size of the Chinese domestic market and the expected growth thereof.
- (49) Therefore, it is estimated that the absorption capacity of markets other than the Union market is rather low and hence, the Union would be an attractive market, should measures be repealed.

3.1.4. Conclusion on the likelihood of a continuation of dumping

- (50) The assessment of the abovementioned factors showed that the exporters concerned by the review have continued to export very significant volumes of the product concerned to the Union, at dumped prices. Chinese exports to other third countries are also made at dumped prices. Given the large freely available capacity of Chinese exporters, the lack of other sizeable markets for such capacity, and the attractiveness of the Union market, there is therefore an incentive for Chinese exporting producers to direct even larger volumes at dumped prices to the Union market, should the measures be repealed.
- (51) Having considered the data and information above, it is concluded that dumping from the PRC is likely to continue if the measures were allowed to lapse.

3.2. Indonesia

3.2.1. Preliminary remarks

- (52) Following initiation, one Indonesian exporting producer came forward. An incomplete questionnaire reply was submitted after which the Commission requested the company to complete the questionnaire as part of the deficiency procedure. No response to this request was received and therefore, none of the known Indonesian exporting producers could be considered as cooperating.
- (53) In view of the above, and according to Article 18 of the basic Regulation, information on domestic prices, export prices to other countries, production and capacity in Indonesia for the non-cooperating Indonesian exporting producers has been based on facts available, including the request and publicly available information.

3.2.2. Dumping during the review investigation period

3.2.2.1. Normal value

- (54) In the absence of cooperation from Indonesia, the Indonesian normal value as reported in the request was used as there was no other information available on the file. In the request, the Indonesian normal value was constructed using the cost structure of the Union producer and adjusting each of the cost elements to Indonesian levels. The cost elements were raw materials, personnel, energy and water, maintenance, depreciation and overhead. The adjustments made in the request were found to be reasonable. In the absence of other information available, the information in the request was therefore considered as best estimate for the Indonesian normal value.

3.2.2.2. Export price

- (55) In the absence of cooperation from any Indonesian exporting producer, other information available had to be used to establish export prices. During the review investigation period, imports from Indonesia to the Union nearly ceased. The imports found during the review investigation period were negligible (around 19 tonnes) and

therefore, the Article 14(6) import statistics to the Union could not be used. Instead, Indonesian export statistics were used to establish export prices. Twelve export destinations were identified. The average export price to all third countries was used as a proxy for the export price to the Union, should the measures be lifted.

3.2.2.3. Comparison

- (56) The Commission compared the constructed normal value and the export price of the Indonesian exporters on an ex-works basis.
- (57) 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.
- (58) Adjustments were made to bring the FOB export prices to ex-works level. In the absence of more precise information, these adjustments were based on actual data relating to Fang Da in the parallel Article 5 investigation, which the Commission considers to be an appropriate benchmark for the calculation of the adjustments. Appropriate adjustments for transport, insurance, handling, loading and ancillary costs, and bank charges were made where they were found to be reasonable, accurate and supported by verified evidence.

3.2.2.4. Dumping margin

- (59) The dumping margin was calculated as the amount by which the normal value, as calculated in recital (54), exceeded the export price, as established in recital (55). This resulted in a dumping margin of 33,6 %, which is higher than the highest dumping margin established in the original investigation (18,1 %). This shows that even though exports of the product concerned to the Union have nearly come to a halt, dumping to third countries by the Indonesian companies has continued at a level which is higher than that established in the original investigation.

3.2.3. *Development of imports should measures be repealed*

- (60) The Commission analysed whether there was a likelihood of recurrence of dumping should the measures lapse. The following elements were analysed: export price to other destinations, the production capacity and spare capacity in Indonesia and the absorption capacity by other third country markets.

3.2.3.1. Unused capacity

- (61) In the absence of cooperation, the Commission had to resort to the data available in the review request, the Eurostat database and Indonesian export statistics. Based on the information available for one Indonesian exporting producer, the Indonesian capacity is estimated to be at least 10 000 tonnes. Using Indonesian export statistics it could be established that Indonesian exports to third countries amounted to 4 700 tonnes during the review investigation period. On this basis, the free capacity of Indonesia for its domestic market and the Union market can conservatively be estimated at 5 300 tonnes. It needs to be noted that in the previous expiry review ⁽¹¹⁾, the total Indonesian capacity was estimated to be 18 000 tonnes for 2008.
- (62) As there is no data available on the domestic sales by the two Indonesian producers, the free (available) capacity that could be directed towards the Union market can only be roughly estimated. However, using the data of the previous expiry review, domestic sales by the two Indonesian companies amounted to ca. 2 000 tonnes, which on the current capacity estimate would still leave a free capacity of 3 300 tonnes for the Union market. This would account for more than 80 % of the Union market during the review investigation period.

⁽¹¹⁾ See footnote 3.

3.2.3.2. Export prices to third countries

- (63) Using Indonesian export statistics to other third countries during the review investigation period, it can be observed that average sales prices on two of the main export markets, i.e. Pakistan and the Philippines (accounting for over 50 % of Indonesian export sales to third countries) are considerably lower than the average sales price in the Union during the review investigation period. As explained in recitals (55) to (59), a dumping margin of 33,6 % was found when basing the Indonesian export price on all export sales prices to third countries. Therefore, the Union would be an attractive market for Indonesian exporting producers, should the measures lapse.

3.2.3.3. Absorption by third markets

- (64) As explained in recitals (48) and (49), the absorption capacity of markets other than the Union market is considered to be low. Due to the lack of cooperation, there is no information in the file on the Indonesian domestic consumption of the product concerned, but with an estimated free capacity of 5 300 tonnes for both the Indonesian market and the Union market considering the low absorption capacity of other markets, it is clear that Indonesia would have ample free capacity to cover the Union market.
- (65) Consequently, it cannot be expected that the Indonesian excess capacity will be directed towards other markets than the Union to any significant extent.

3.2.4. Conclusion on the likelihood of a recurrence of dumping

- (66) The assessment of the above factors showed that Indonesian exports to markets other than the Union have been made at prices which are well below the average price level in the Union. Given the large freely available capacity of Indonesian exporters and the lack of other sizeable markets for such capacity, it is therefore likely that the Indonesian exporting producers will direct large volumes at dumped prices to the Union market, should measures be repealed.
- (67) Having considered the data and information above, it is concluded that dumping from Indonesia is likely to recur, if the measures were allowed to lapse.

4. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

4.1. Preliminary remark

- (68) As the Union industry consists of only one producer and dumped imports concern a limited number of Chinese and Indonesian exporting producers, injury indicators and import data had to be indexed in order to ensure the confidentiality of business sensitive data.

4.2. Definition of the Union industry and Union production

- (69) The like product was manufactured by only one producer in the Union during the review investigation period, which thus constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

4.3. Union consumption

- (70) Sodium cyclamate is produced only in the Union, the PRC and Indonesia. The Commission established the Union consumption on the basis of the sales volume of the Union industry on the Union market, plus the volume of imports of sodium cyclamate from the PRC and Indonesia, established as explained in recital (73).

- (71) Union consumption developed as follows:

Table 1

Union consumption

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Total Union consumption	100	103	93	97	101

Source: Union industry's data, Article 14(6) database

- (72) The consumption of sodium cyclamate in the Union first decreased by 7 % between 2011 and 2013, and increased in the subsequent period. Consumption during the review investigation period reached more or less the same level as in 2011.

4.4. Imports from the countries concerned

- (73) For the purpose of this investigation imports from the PRC are total imports from the PRC excluding imports from Fang Da, which are not subject to this review. Imports from Fang Da were taken into account only for the calculation of the total Union consumption. In the absence of cooperation of any Chinese and Indonesian exporting producers in this investigation, the Commission used the statistics available in Article 14(6) database to establish the volume and prices of imports from these two countries during the period considered, as it contained sufficiently detailed information at the level of the 10-digit TARIC codes and TARIC additional codes.
- (74) Given that the volumes of imports from Indonesia are negligible within the meaning of Article 3(4) of the basic Regulation, imports from the countries concerned were assessed separately.

4.4.1. The PRC**4.4.1.1. Volume and market share**

Table 2

Import volume and market shares

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Import volume	100	114	73	71	77
Market share	100	110	79	73	77

Source: Article 14(6) database

- (75) The volume of imports from the PRC decreased by 23 % over the period considered. They first increased between 2011 and 2012 and subsequently dropped significantly, in particular with a very sharp drop of 41 index points between 2012 and 2013. There was a further slight decrease between 2013 and 2014, followed by an increase of 6 index points between 2014 and the review investigation period.
- (76) The corresponding market share over the period considered followed a similar trend, also with an overall decrease of 23 %.

4.4.1.2. Prices of imports

- (77) The Chinese import price trends have been established and analysed separately with and without the inclusion of anti-dumping duties. This was done in this particular case because the level of these duties was amended in 2012, as explained in recital (1) above, and showing price trends including anti-dumping duties allowed to illustrate the impact of these amendments.

Table 3

Import prices (EUR/kg) Index

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
excluding anti-dumping duties	100	105	105	101	104
including anti-dumping duties	100	109	112	108	111

Source: Article 14(6) database

- (78) Over the period considered the average CIF Union frontier prices (prices without anti-dumping duties) of imports from the PRC from other producers than Fang Da increased by 4 %.
- (79) When considering the effect of the anti-dumping duties, import prices increased by 11 % during the period considered. It should be recalled that in May 2012 the anti-dumping duties were more than doubled for the Chinese exporting producers belonging to the Rainbow Rich group, which is reflected in the increase of the average import prices (including anti-dumping duties) from 2011 to 2012.

4.4.1.3. Price undercutting

- (80) In the absence of cooperation from any Chinese exporting producers subject to this review, the Commission determined the price undercutting during the review investigation period by comparing the weighted average sales price of the Union producer charged to independent customers on the Union market, adjusted to an ex-works level and the average Chinese import price based on the Article 14(6) database. As no information was available as regards the form (product type) of the Chinese imports, a simple average was taken to calculate the average Chinese import price.
- (81) The comparison showed that, during the review investigation period, the average price undercutting margin, expressed as a percentage of the Union industry's sales prices was 22,8 % when taking into consideration the effect of the anti-dumping duties applied on the Chinese imports. Should the anti-dumping duties applicable to the Chinese exporting producers subject to measures be deducted, the undercutting margin would amount to 32,3 %.

4.4.2. *Indonesia*

4.4.2.1. Volume and market share

Table 4

Import volume and market shares

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Import volume	100	225	31	18	9
Market share	100	218	34	19	9

Source: Article 14(6) database

- (82) During the period considered both the volume and the market share of imports of sodium cyclamate from Indonesia into the Union decreased by 91 %. It should be noted that the absolute volume of imports from Indonesia was low in 2011 and 2012, very low in 2013 and negligible during 2014 and the review investigation period. Even though Indonesian imports fluctuated a lot over the period considered, their impact on the Union industry can be considered as very limited from 2011 to 2012 and even insignificant from 2013 to the review investigation period.

4.4.2.2. Prices of imports

Table 5

Import prices (EUR/kg) Index

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Excluding anti-dumping duties	100	104	107	105	106

Source: Article 14(6) database

- (83) Over the period considered the average CIF Union border Indonesian import prices increased by 6 %.

4.4.2.3. Price undercutting

- (84) In the absence of cooperation from any Indonesian exporting producers, the Commission determined the price undercutting during the review investigation period by comparing the weighted average sales price of the Union producer charged to independent customers on the Union market, adjusted to an ex-works level and the average Indonesian import price based on the Article 14(6) database. As no information was available as regards the form (product type) of the Indonesian imports, a simple average was taken to calculate the average Indonesian import price
- (85) The comparison showed that, during the review investigation period, the average price undercutting margin, expressed as a percentage of the Union industry's sales prices was 24,1 %. Should the anti-dumping duties applicable to the Indonesian exporting producers subject to measures be deducted, the undercutting margin would amount to 33,6 %.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (86) The production of sodium cyclamate consists of two main production steps. During the first step, which requires the use of reactors, the raw materials are converted into crude (impure) sodium cyclamate. During the second production step, the crude sodium cyclamate needs to be purified before it can be used, in view of the relevant regulatory rules, by downstream food, beverages or pharmaceutical industries.
- (87) Due to a technical incident that took place in July 2011 (explosion in the factory), the Union industry could not perform the first production step — the reaction process — between August 2011 and May 2012, and had to temporarily rely on imported sodium cyclamate which it further purified in order to be able to maintain its commercial activities.
- (88) Since the Union producer had no other choice, but to temporarily rely on imports, and given the limited duration and the volume of imports during the period considered, this incident and its consequences do not invalidate the above conclusions concerning the definition of the Union industry. It however had an important impact on the economic situation of the Union industry for the years 2011-2012, that is to say in the beginning of the period considered, in particular concerning capacity, the production and sales volume as well as the profitability indicators. It also had some impact — although minor — on the development of imports. These elements are taken into consideration when analysing the development of the injury indicators.
- (89) In this context, and 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. For the injury determination, the Commission evaluated the economic indicators on the basis of data related to the sole Union producer constituting the Union industry within the meaning of Article 4(1) of the basic Regulation.
- (90) The economic indicators of the sole Union producer, which were evaluated by the Commission, are as follows: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, labour costs, magnitude of dumping margin, and recovery from past dumping, average unit prices, unit costs, inventories, profitability, cash flow, investment, return on investment, and ability to raise capital.

4.5.2. Injury indicators

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Production volume	100	104	189	159	157
Production capacity	100	114	171	171	171
Capacity utilisation	100	91	110	93	92

Source: Union industry's data

- (92) Production overall increased by 57 % during the period considered. As explained in recitals (87) above and (93) below, the Union industry's production however was unusually low in 2011-2012. Between 2013 and the review investigation period, the production level sharply decreased, by 32 index points.
- (93) The production capacity also significantly increased during the period considered (by 71 %), but this trend is again explained by an abnormally low level in 2011 and 2012 which resulted from the technical incident in the production facilities. The capacity was calculated on the basis of months during which the Union industry could produce its own sodium cyclamate, thus only 7 months in 2011, 8 months in 2012 and 12 months for the other periods. Since 2013 the production capacity level remained stable until the review investigation period.
- (94) The capacity utilisation rate decreased by 8 % between 2011 and the review investigation period, but it followed a significant downward trend since 2013, in line with the decrease of the production volume.

4.5.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Sales volume	100	69	146	108	104
Market share	100	67	157	111	104

Source: Union industry's data and Article 14(6) database

- (96) Sales volume on the Union market and the corresponding market share followed the same trend during the period considered. They increased overall by 4 %.
- (97) Since both figures reflect only the sales of the Union industry's own produced sodium cyclamate, the levels for 2011 and 2012 were unusually low, due to the reasons mentioned in recitals (87) and (93) above. Since 2013, when the production of its own sodium cyclamate was already permanently re-established, the Union industry's sales fell by 42 index points as a result of the loss of orders.
- (98) Market share also significantly decreased between 2013 and the review investigation period. This is in contrast with the development of the Union consumption, which increased by 8 index points.

4.5.2.3. Growth

- (99) The situation of the Union industry improved between 2011 and 2013 when it was able to increase its production, production capacity, sales and market share. This increase was caused by two factors: (i) the increase of the anti-dumping duties for certain PRC exporting producers, which were doubled in May 2012 and (ii) the fact that the Union industry was again in a position to produce its own sodium cyclamate during 12 months in 2013, as compared to only 7 months in 2011 and 8 months in 2012.

- (100) If the explosion had not taken place in July 2011, the production, capacity utilisation, sales and market shares figures would have been much higher in 2011 and 2012, since the Union industry could have supplied its customers with its own sodium cyclamate instead of imported one which it further processed (purified) between August 2011 and May 2012. As a result, the increase of production, sales and market shares between 2011 and 2013 would have been much smaller, whereas the production capacity would have even remained at its 2013 level during the entire period considered. From 2013 to the review investigation period, all the above mentioned volume related trends, with the exception of production capacity, totally reversed. In fact, although the Union consumption followed an increasing trend since 2013, the Union industry entered into a phase of economic decline. At the same time, the profitability of the Union industry remained strongly negative over the entire period considered, which inhibited its prospects of growth.

4.5.2.4. Employment and productivity

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

Table 8

Employment and productivity

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Number of employees	100	100	105	105	105
Productivity (production volume over a number of employees)	100	104	180	151	150

Source: Union industry's data

- (102) Despite the inability to produce its own sodium cyclamate between August 2011 and May 2012, the Union industry decided to maintain the employment constant in that period, since any reductions were considered to be too costly and unnecessary. Although one employee was laid off in 2012, the level of employment did not change between 2011 and 2012 since the Union industry hired a new employee in the same year. The number of employees was slightly increased in 2013 and then it remained stable until the review investigation period.
- (103) Due to the explosion in the factory, the productivity of the Union industry was affected in a similar way as other economic indicators presented above. Like production, productivity was exceptionally low in 2011 and 2012 and then it sharply increased by almost 80 index points in 2013. Since then, however, due to the loss of orders, it fell by 30 index points in 2014 and remained at this level until the review investigation period.

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

- (104) Anti-dumping measures have been in place against imports of Indonesian exporting producers and all Chinese exporting producers other than Fang Da since 2004.
- (105) As established above, the dumping margins of the Indonesian and the Chinese producers other than Fang Da during the review investigation period were significantly above the de minimis level. The impact on the economic situation of the Union industry is substantial, given the continued imports of significant volumes of sodium cyclamate at dumped prices from Chinese producers.

4.5.2.6. Prices and factors affecting prices

- (106) The average unit sales prices of the sole Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 9

Sales prices in the Union

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Average unit sales price	100	105	103	107	106
Average unit cost of production	100	107	97	95	96

Source: Union industry's data

- (107) The Union industry's average unit sales price increased by 6 % during the period considered. It first increased by 5 index points between 2011 and 2012 and then remained stable until the review investigation period.
- (108) The Union industry average unit production cost increased by 7 index points between 2011 and 2012 and then it decreased by 10 index points in 2013 as compared to 2011. Since 2013 it remained stable until the review investigation period. These changes mainly resulted from the fluctuation of the raw material costs.
- (109) In relation to the above, it should be mentioned that the Union industry could not precisely separate the purification costs from the total production costs. As a result, the indexes of 2011 and 2012, contrary to the indexes of 2013, 2014 and the review investigation period, also reflect the purification costs of the sodium cyclamate which was imported by the Union industry.
- (110) Given the above, the interpretation of trends between 2011-2012 and the subsequent periods should be made with caution since their development has been influenced — although only slightly — due to the fact that the 2011-2012 indexes were based on different sets of data.
- (111) In any event, during the entire period considered, the average unit sales price was always below the Union industry's average unit costs of production reported in the above Table.

4.5.2.7. Labour costs

- (112) The average labour costs of the sole Union producer developed over the period considered as follows:

Table 10

Average labour costs per employee

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Average labour costs per employee	100	127	115	102	95

Source: Union industry's data

- (113) The average labour costs decreased by 5 % during the overall period considered. The costs, however, first increased by 27 % in 2012 — mainly due to compensations paid to a dismissed employee — and then they were constantly decreasing until the review investigation period when they fell 5 % below their 2011 level.

4.5.2.8. Inventories

- (114) Stock levels of the sole Union producer developed over the period considered as follows:

Table 11

Inventories

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Closing stocks	100	258	339	406	708
Closing stocks as a percentage of production	100	249	179	255	451

Source: Union industry's data

- (115) During the period considered, the closing stocks expressed as a percentage of production fluctuated significantly. They first increased between 2011 and 2012, then decreased the next year and finally increased significantly until the review investigation period. Overall, during the period considered, they increased by 351 index points. This increase is partially caused by the inability of the Union producer to sell its products due to competition with low-priced imports, but it is also the result of abnormally low stock levels in 2011 following the technical incident explained in recital (87) above.

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

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

Table 12

Profitability, cash flow, investments and return on investments

<i>Index (2011 = 100)</i>	2011	2012	2013	2014	Review investigation period
Profitability	– 100	– 111	– 82	– 61	– 69
Cash flow	100	– 500	– 1 107	– 559	– 766
Investments	100	203	15	0	0
Return on investments	– 100	– 42	– 104	– 79	– 77

Source: Union industry's data

- (117) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of its sales of sodium cyclamate to unrelated customers in the Union as a percentage of the turnover of those sales. As mentioned in recital (109) above, the cost of production used to establish the level of profit/losses for 2011-2012 could only be established overall, i.e. also including costs related to imported sodium cyclamate. On this basis, the analysis of profitability figures showed that the Union industry generated significant losses during the entire period considered. They were particularly high in 2011-2012, but the situation improved since 2013.
- (118) The net cash flow is the ability of the Union industry to self-finance its activities. The trend in net cash flow, established in relation to the total sales ⁽¹²⁾ of sodium cyclamate, turned from positive in 2011 into strongly negative between 2012 and the review investigation period.
- (119) The only significant investments were made in 2011-2013, and they exclusively relate to the replacement of production tools affected by the explosion in 2011. Those investments were fully covered by the insurance policy.
- (120) The return on investments consists of the profit expressed as a percentage of the net book value of the fixed assets. It was significantly negative over the entire period considered.
- (121) Given the level of losses incurred by the Union industry, its ability to raise capital was seriously affected.

4.5.3. Conclusion on injury

- (122) Even though some economic indicators pertaining to the situation of the Union industry such as production, production capacity, sales, market share and productivity improved between 2011-2012 and 2013, these trends were only partially influenced by the genuine market developments resulting from the imposition of the higher anti-dumping duties on certain PRC exporting producers in May 2012.
- (123) In fact, as it was mentioned in recital (99), those improvements can be to a significant extent also explained by: (i) the explosion in the factory in July 2011, (ii) the fact that the Union industry could not produce as a result of that explosion its own sodium cyclamate between August 2011 and May 2012, and (iii) its return to a full 12 months production process in 2013 after the destroyed production lines had been replaced. Clearly, the increase of those indicators by 2013 would have been significantly lower, if that explosion had not taken place.
- (124) The positive evolution of the above mentioned trends clearly changed since 2013, as the Union industry's production, sales, productivity as well as its market share substantially worsened.
- (125) In addition, during the overall period considered, the financial situation of the Union industry remained permanently in a precarious state. In particular, the Union industry's indicators such as profitability, cash flow and return on investments showed very negative results overall.
- (126) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

4.6. Likelihood of a continuation of injury

4.6.1. Preliminary remark

- (127) As concluded in recitals (122)-(126) above, the Union industry suffered material injury during the review investigation period. While the level of Chinese imports remained significant, imports from Indonesia were almost inexistent during the review investigation period.

⁽¹²⁾ Contrary to sales reported in Table 7, the total sales referred to in this recital cover sales, which were made both on the Union and export markets, of the Union industry's own sodium cyclamate and sodium cyclamate based on the material imported in 2011 and 2012.

- (128) To assess the likelihood of a continuation of injury if the measures were allowed to lapse, the actual and potential impact of the Chinese imports, on the one hand, and Indonesian imports, on the other hand, on the Union industry was analysed pursuant to Article 11(2) of the basic Regulation. The determination of the potential impact of imports on the situation of the Union industry was based on (i) the availability of spare capacity of the exporters; (ii) the likely development of the volume of dumped imports and (iii) the level of prices of the Chinese and Indonesian imports.

4.6.2. *The PRC*

- (129) Even if imports from the PRC decreased during the period considered (see Table 2 above), they remained at a significant level, with a market share ranging between 40 % and 60 %. As mentioned in recital (81) above, the corresponding prices significantly undercut Union prices, i.e. by 23 % when considering the impact of the anti-dumping measures currently in force. There is no doubt that with such a volume of imports at that level of price, the Chinese dumped imports have a price depressing impact on the Union market, thus also contributing to the injury suffered by the Union industry.
- (130) As regards the potential impact of Chinese imports in case measures would be repealed, it should first be recalled that the above analysis of available capacities in the PRC (see recital (45) above) has shown that the freely available production capacity of the companies concerned by the review in the PRC is at least three times the size of the Union market. It was furthermore concluded that the Union is still an attractive market for Chinese exporters — as also confirmed by the current level of imports — and that at least part of the additional excessive capacities would be exported to the Union, should measures be repealed.
- (131) Given the significant levels of dumping and undercutting — in particular when discounting the effect of the anti-dumping duties in place — the additional export volumes to the Union mentioned above would be made at dumped prices and be significantly lower than the prices and costs of the Union producer.
- (132) The combined effect of such volumes and prices would likely continue to cause and even increase the injury to the Union industry which is already in a precarious situation.

4.6.3. *Indonesia*

- (133) Indonesian imports were almost inexistent on the Union market during the review investigation period and therefore the analysis below will focus on the likely development of imports should the measures be repealed.
- (134) The above analysis has shown that Indonesia would have a spare capacity corresponding to almost the entire Union market for sodium cyclamate. Based on Indonesian export prices to third country markets and given the fact that sodium cyclamate is prohibited for use in food, beverage and pharmaceutical products in a number of large third country markets, there is a high likelihood that if measures were repealed, Indonesia would resume its exports to the Union market.
- (135) In terms of prices, the investigation has showed that Indonesian export prices to other third countries during the review investigation period were dumped and these prices were generally low, and much lower than the prices and costs of the Union producer.
- (136) Based on the above, it can be concluded that, if the measures were repealed, it is very likely that Indonesia would resume exports of significant quantities of sodium cyclamate to the Union at dumped and low prices, which would undercut the Union industry price. This would in all likelihood have the effect of continuing the material injury currently suffered by the Union industry and even worsen its situation.

4.7. **Conclusion**

- (137) Based on the above, it is concluded that there is a likelihood of continuation of injury, if the measures are repealed.

5. UNION INTEREST

- (138) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures on imports from the PRC and Indonesia would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers/traders and users.
- (139) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (140) On this basis, the Commission examined whether, despite the above conclusions, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

5.1. Interest of the Union industry

- (141) The investigation established that during the whole period considered, despite the existing measures against Indonesia and the PRC (with the exception of Fang Da), the Union industry remained loss-making and lost production, sales volume and market share on the Union market. During the same period imports from the PRC remained significant and undercut the Union industry's prices. As explained above, should measures be repealed, there is a high likelihood that Chinese imports other than Fang Da will further increase and Indonesian imports will resume at dumped and low prices. It was established above that a lapse of the existing measures is likely to lead to further deterioration of the already precarious situation of the Union industry and may ultimately force it to cease the production of sodium cyclamate altogether, with consequent loss of employment and alternative sources of supply in the Union.
- (142) Should measures be maintained, it is expected that the Union industry would be able to increase its prices, production and volume and gradually return to profit.
- (143) The Commission therefore concluded that maintaining the measures in force against the PRC and Indonesia would be in the interest of the Union industry.

5.2. Interest of importers/traders

- (144) There was no cooperation from any importers/traders. Given this non-cooperation, it is reasonable to assume that the product concerned does not represent a major proportion of the importers/traders' turnover and that there are no factors suggesting that importers/traders would be disproportionately affected if measures were to be maintained.

5.3. Interest of users

- (145) There was only partial cooperation from one user in this investigation.
- (146) The main final users of the product concerned in the Union are in the food, beverage and pharmaceutical industries. In the previous investigations concerning imports of sodium cyclamate it was established that sodium cyclamate accounted for such a low proportion of the cost of production that the effect of the imposition of anti-dumping duties was not significant. This was confirmed in the partial questionnaire reply that the Commission received from the above user. In the absence of any other representations of food, beverage and pharmaceutical in this investigation, it is reasonable to assume that if the measures were to be extended, the impact on the users would not be significant.
- (147) In view of the above observation that in the absence of measures, the Union industry may be forced to cease the production of sodium cyclamate and in view of the existence of only a few producers of sodium cyclamate globally, the measures are even likely to benefit users in so far as they preserve the production of sodium cyclamate in the Union and choice for users to source cyclamate produced by different competing producers.

5.4. Conclusion on Union interest

- (148) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the extension of the current anti-dumping measures on imports from the PRC and Indonesia.

6. ANTI-DUMPING MEASURES

- (149) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of sodium cyclamate originating in the PRC and Indonesia, imposed by Regulation (EU) No 492/2010, as amended by Regulation (EU) No 398/2012, should be maintained. Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited should be excluded from these measures since no dumping was established for these exporters in the original investigation.
- (150) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10) and originating in the People's Republic of the PRC and Indonesia.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Rate of anti-dumping duty (EUR per kilogramme)	TARIC additional code
The People's Republic of China	Golden Time Enterprise (Shenzhen) Co. Ltd, Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, People's Republic of China; Golden Time Chemical (Jiangsu) Co., Ltd, No 90-168, Fangshui Road, Chemical Industry Zone, Nanjing, Jiangsu Province, People's Republic of China	0,23	A473
The People's Republic of China	All other companies (except Fang Da Food Additive (Shen Zhen) Limited — TARIC additional code A471 and Fang Da Food Additive (Yang Quan) Limited — TARIC additional code A472)	0,26	A999
Indonesia	PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1- D2, Jalan Pakin No 1, Sunda Kelapa, Jakarta 14440, Indonesia	0,24	A502
Indonesia	All other companies	0,27	A999

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

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of the Commission Implementing Regulation (EU) 2015/2447 ⁽¹³⁾, the amount of anti-dumping duty, calculated on the basis of paragraph 2 of this Article, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. Unless otherwise specified, the relevant 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.

Done at Brussels, 15 July 2016.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹³⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1161**of 15 July 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 15 July 2016.

*For the Commission,
On behalf of the President,*

*Jerzy PLEWA
Director-General for Agriculture and Rural Development*

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	166,2
	ZZ	166,2
0709 93 10	TR	136,9
	ZZ	136,9
0805 50 10	AR	144,6
	BO	217,8
	CL	120,9
	UY	200,2
	ZA	176,3
	ZZ	172,0
0808 10 80	AR	193,6
	BR	92,6
	CL	130,5
	CN	102,6
	NZ	147,2
	US	117,0
	ZA	111,6
	ZZ	127,9
0808 30 90	AR	182,6
	CL	112,1
	NZ	156,3
	ZA	137,7
	ZZ	147,2
0809 10 00	TR	191,2
	ZZ	191,2
0809 29 00	TR	281,0
	ZZ	281,0

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

DECISION (EU) 2016/1162 OF THE EUROPEAN CENTRAL BANK

of 30 June 2016

on disclosure of confidential information in the context of criminal investigations (ECB/2016/19)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.3 thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank ⁽¹⁾, and in particular Articles 23 and 23a thereof,

Whereas:

- (1) With the establishment of the single supervisory mechanism (SSM), both the European Central Bank (ECB) and national competent authorities (NCAs) could receive requests from national criminal investigation authorities for the disclosure of confidential information created or received in the course of carrying out their supervisory tasks and responsibilities.
- (2) Pursuant to Article 136 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽²⁾, where, in carrying out its tasks under Council Regulation (EU) No 1024/2013 ⁽³⁾, the ECB has reason to suspect that a criminal offence may have been committed, it will request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law.
- (3) There is a history of cooperation between NCAs and national criminal investigation authorities in dealing with access to confidential information about supervised entities or supervised groups, within the meaning of Article 2(20) and Article 2(21), respectively, of Regulation (EU) No 468/2014 (ECB/2014/17), in accordance with national law. The conditions for such cooperation and for disclosure of confidential information to national criminal investigation authorities are largely determined by national law. However, Union law has certain implications for the conditions under which confidential information held by competent authorities, including the ECB, within the SSM may be disclosed to national criminal investigation authorities upon their request. Those Union law provisions establish, for example, the principle of sincere cooperation, the principles of cooperation in good faith and the obligation to exchange information within the SSM, the obligation to protect personal data and the obligation of professional secrecy.
- (4) In addition to applying to the disclosure of confidential information related to the tasks conferred on the ECB by Regulation (EU) No 1024/2013, including information held by an NCA when assisting the ECB in the exercise of the ECB's tasks under that Regulation, such conditions may in principle also apply to disclosure of confidential information related to monetary policy and other ESCB/Eurosystem-related tasks.
- (5) The ECB should uphold its duty of professional secrecy and its duty to safeguard its functioning and independence. In addition, the ECB should continue to respect the public interest and certain private interests, which includes refraining from disclosing certain documents or information where such disclosure would undermine those interests. However, these duties should not lead to an absolute prohibition on disclosure by the ECB to national criminal investigation authorities of confidential information covered by the obligation of professional secrecy.

⁽¹⁾ OJ L 80, 18.3.2004, p. 33.

⁽²⁾ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

⁽³⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

- (6) Union law provides that confidentiality of certain information or documents must be protected, including personal data, and, subject to certain exceptions, prohibits disclosure to third parties of confidential information or documents. In particular, pursuant to the rules on professional secrecy contained in Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾, confidential information received in the course of their duties by 'persons working for or who have worked for competent authorities, and auditors or experts acting on behalf of competent authorities', may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.
- (7) Pursuant to Article 37.2 of the Statute of the European System of Central Banks and of the European Central Bank, persons having access to data covered by Union legislation imposing an obligation of secrecy should be subject to such legislation.
- (8) A procedural framework for the management of requests received by the ECB, NCAs or national central banks (NCBs) from national criminal investigation authorities for confidential information related to the tasks conferred on the ECB by Regulation (EU) No 1024/2013, including information held by an NCA or NCB when assisting the ECB in the exercise of the ECB's tasks under Regulation (EU) No 1024/2013, or related to monetary policy and other ESCB/Eurosystem-related tasks has not yet been established in Union law. However, the application of national procedural rules which apply to such requests should be consistent with the general principles of Union law, in particular the principle of sincere cooperation, and the principle of cooperation in good faith and the obligation to exchange information as provided for in Article 6 of Regulation (EU) No 1024/2013. In this regard, in accordance with Union law the ECB would welcome being consulted on or informed of, as appropriate, requests for confidential information related to the tasks conferred on the ECB by Regulation (EU) No 1024/2013, including information held by an NCA or NCB when assisting the ECB in the exercise of the ECB's tasks under Regulation (EU) No 1024/2013, or related to monetary policy and other ESCB/Eurosystem-related tasks, which are received by an NCA or NCB from national criminal investigation authorities.
- (9) This Decision should not apply to requests for access to information concerning persons who have an employment relationship with the ECB or a direct or indirect contractual relationship with the ECB for the execution of works, the supply of products or the provision of services.
- (10) This Decision should therefore set out the conditions applied by the ECB with regard to the disclosure by the NCAs and NCBs of confidential information related to the tasks conferred on the ECB by Regulation (EU) No 1024/2013 or to monetary policy and other ESCB/Eurosystem-related tasks to a national criminal investigation authority and the related procedural framework.
- (11) The ECB's Compliance and Governance Office acts as coordinator, within the ECB, of requests for access to documents falling within the scope of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision, the following definitions apply:

- (a) 'confidential information' means any confidential information, including information covered by data protection rules, by the obligation of professional secrecy, by the professional secrecy rules contained in Directive 2013/36/EU or documents classified as 'ECB-CONFIDENTIAL' or 'ECB-SECRET' under the ECB's confidentiality regime, and excluding any information concerning persons who have an employment relationship with the ECB or a direct or indirect contractual relationship with the ECB for the execution of works, the supply of products or the provision of services;

⁽¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (b) 'national criminal investigation authority' means a national authority with competence in criminal law matters;
- (c) 'national competent authority' (NCA) has the same meaning as defined in Article 2(2) of Regulation (EU) No 1024/2013. This meaning is without prejudice to arrangements under national law that assign certain supervisory tasks to an NCB that is not designated as an NCA. With regard to such arrangements, a reference to an NCA in this Decision shall also refer to the NCB in respect of the supervisory tasks assigned to it by national law.

Article 2

Requests received by the ECB from national criminal investigation authorities

1. At the request of a national criminal investigation authority, the ECB may provide confidential information held by it and related to the tasks conferred on the ECB by Regulation (EU) No 1024/2013, or to monetary policy or other ESCB/Eurosystem-related tasks to an NCA or NCB for disclosure to the national criminal investigation authority in question under the following conditions:

- (a) the NCA or NCB in question commits to acting on behalf of the ECB in responding to such a request;
- (b) either: (i) there is an express obligation to disclose such information to a national criminal investigation authority under Union or national law; or (ii) the relevant legal framework permits the disclosure of such confidential information and there are no overriding reasons for refusing to disclose such information relating to the need to safeguard the interests of the Union or to avoid any interference with the functioning and independence of the ECB, in particular by jeopardising the accomplishment of its tasks;
- (c) the NCA or NCB in question commits to asking the requesting national criminal investigation authority to guarantee the protection from public disclosure of the confidential information provided.

2. Paragraph 1 is without prejudice to any specific provisions under Union or national law related to disclosure of such confidential information.

Article 3

Requests received by NCAs or NCBs from national criminal investigation authorities

1. The ECB shall request the NCAs and NCBs to agree that on receipt of a request from a national criminal investigation authority for disclosure of confidential information related to the tasks conferred on the ECB by Regulation (EU) No 1024/2013, or to monetary policy or other ESCB/Eurosystem-related tasks, they consult the ECB, where possible, on how to respond to the request, irrespective of whether the ECB, or the NCA or NCB concerned holds the information in question. The ECB shall advise as to whether the information in question may be disclosed, and, where applicable, whether there are overriding reasons relating to the need to safeguard the interests of the Union or to avoid any interference with the functioning and independence of the ECB for refusing to disclose the confidential information concerned. The ECB shall advise the NCA or NCB, provided that it is consulted in a timely manner before the NCA or NCB makes a final decision and provides a final response to the request.

2. The ECB shall request the NCAs to agree to inform the ECB in a timely manner and, in any event, before providing a final response, of requests for confidential information received from national criminal investigation authorities concerning less significant credit institutions directly supervised by the NCA concerned in the exercise of its supervisory responsibilities under Regulation (EU) No 1024/2013, where that NCA considers that the information requested is material, or that disclosure thereof has the potential to adversely affect the reputation of the SSM. The ECB shall use its best efforts to provide its response by the deadline set by the NCA concerned, provided the deadline is reasonable, objectively justifiable and expires before the NCA takes a final decision and provides a final response to the national criminal investigation authority.

3. The ECB shall request the NCAs and the NCBs to agree to regularly inform the ECB of all requests from national criminal investigation authorities where the ECB was not consulted, in accordance with paragraph 1 or informed in accordance with paragraph 2, for reasons beyond their control and, if possible, of any information disclosed by reason of those requests.

*Article 4***Entry into force**

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

Done at Frankfurt am Main, 30 June 2016.

The President of the ECB
Mario DRAGHI

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 3/2016 OF THE ACP-EU COMMITTEE OF AMBASSADORS

of 12 July 2016

regarding the revision of Annex III to the ACP-EU Partnership Agreement [2016/1163]

THE ACP-EU COMMITTEE OF AMBASSADORS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part ⁽¹⁾ ('ACP-EU Partnership Agreement'), and in particular Article 100 thereof,

Whereas:

- (1) Article 100 of the ACP-EU Partnership Agreement states that Annexes Ia, Ib, II, III, IV and VI thereto may be revised, reviewed and/or amended by the ACP-EU Council of Ministers on the basis of a recommendation from the ACP-EU Development Finance Cooperation Committee.
- (2) Article 15(4) of the ACP-EU Partnership Agreement states that the ACP-EU Council of Ministers may delegate powers to the ACP-EU Committee of Ambassadors.
- (3) Article 2 of Annex III to the ACP-EU Partnership Agreement relates to the Centre for the Development of Enterprise ('CDE'). Under point (a) of Article 2(6) of that Annex III, the ACP-EU Committee of Ambassadors is appointed as the supervisory authority of the CDE with, amongst other things, the responsibility to lay down the statutes of the CDE, which were adopted by Decision No 8/2005 of the ACP-EC Committee of Ambassadors ⁽²⁾ ('CDE Statutes'). Under point (a) of Article 2(7) of Annex III the CDE Executive Board is made, amongst other things, responsible for adopting the CDE's financial regulation and staff regulation.
- (4) Article 1 of the CDE Statutes defines the principle of the legal personality of the CDE.
- (5) Articles 9 and 10 of the CDE Statutes define the CDE Executive Board's mandate and composition.
- (6) At its 39th session held on 19 and 20 June 2014 in Nairobi, Kenya, the ACP-EU Council of Ministers agreed, in a Joint Declaration, to proceed with the orderly closing of the CDE and to the amendment of Annex III to the ACP-EU Partnership Agreement, and for this purpose, to grant a delegation of powers to the ACP-EU Committee of Ambassadors to take the matter forward with a view to adopting the necessary decisions, including the relevant amendment to that Annex III.
- (7) That Joint Declaration of the ACP-EU Council of Ministers established the ACP-EU Joint Working Group to ensure that the CDE is closed under the best possible conditions.
- (8) The ACP-EU Committee of Ambassadors, in its Decision No 4/2014 ⁽³⁾ authorised the CDE Executive Board to take all appropriate measures to prepare for the closure of the CDE. Subsequently, the CDE Executive Board signed a contract with a Curator until 31 December 2016.

⁽¹⁾ Agreement signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3), as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

⁽²⁾ Decision No 8/2005 of the ACP-EC Committee of Ambassadors of 20 July 2005 on the Statutes and rules of procedure of the Centre for the Development of Enterprise (OJ L 66, 8.3.2006, p. 16).

⁽³⁾ Decision No 4/2014 of the ACP-EU Committee of Ambassadors of 23 October 2014 regarding the mandate to be given to the Executive Board of the Centre for the Development of Enterprise (CDE) (OJ L 330, 15.11.2014, p. 61).

- (9) In accordance with Article 2(3) of Decision No 4/2014, the closure plan envisages the finalisation of the winding-up by 31 December 2016 ('closure phase'). With the CDE Executive Board's approval of the definitive closure plan on 29-30 June 2015, the CDE entered into its closure phase.
- (10) The closure phase should be followed by a 'passive phase' in which the CDE will solely exist for the purposes of its liquidation. The passive phase, to be managed by a Curator, may comprise administrative tasks, amongst other things, keeping the archives of the CDE, replying to any administrative formality, or managing residual litigations that could not have been settled during the closure phase. The passive phase should start on the day after the closure phase, namely on 1 January 2017. The passive phase should end after a period of 4 years, or when the CDE has settled all its liabilities and realised all its assets, whichever happens earlier.
- (11) Under Article 26(1) of the CDE Financial Regulation, adopted by Decision No 5/2004 of the ACP-EC Committee of Ambassadors ⁽¹⁾, the CDE's accounts should be closed at the end of the financial year in order to draw-up the CDE's financial statements. Therefore, the statutory audit of the year 2016 related to the closure phase should be finalised at the latest by 30 June 2017.
- (12) The amendments to Annex III to the ACP-EU Partnership Agreement concern the deletion of the references to the CDE. This Decision constitutes the new legal framework of the CDE as from the start of the passive phase, namely as of 1 January 2017.
- (13) Pursuant to Article 95(1) of the ACP-EU Partnership Agreement, the Agreement will expire in 2020. The governance structures applicable to the CDE's functioning in the passive phase should therefore be determined also for the period after 29 February 2020,

HAS ADOPTED THIS DECISION:

Article 1

In order to reflect the cessation of activities of the CDE by 31 December 2016, Annex III to the ACP-EU Partnership Agreement is amended as follows:

- (1) the title of Annex III is replaced by the following:

'INSTITUTIONAL SUPPORT';

- (2) Article 1 is replaced by the following:

'Cooperation shall support the institutional mechanism to promote agriculture and rural development. In this context, cooperation shall help to strengthen and reinforce the role of the Technical Centre for Agricultural and Rural Cooperation (CTA) in ACP institutional capacity development, particularly information management, in order to improve access to technologies for increasing agricultural productivity, commercialisation, food security and rural development.';

- (3) Article 2 is deleted;

- (4) Article 3 is renumbered as Article 2.

Article 2

1. Before the end of the closure phase, namely 31 December 2016, the European Commission shall contract a Curator to ensure the implementation of the passive phase as from 1 January 2017 for a period of 4 years, or until the CDE has settled all its liabilities and realised all its assets, whichever happens earlier.

2. The Curator shall be responsible for the implementation of the passive phase. The Curator shall provide annual reports to the ACP-EU Committee of Ambassadors on the progress made on the implementation of the passive phase.

⁽¹⁾ Decision No 5/2004 of the ACP-EC Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise (OJ L 70, 9.3.2006, p. 52).

Article 3

1. The CDE Statutes, the CDE Financial Regulation and the CDE Staff Regulation shall remain in force until the end of the closure phase.

This Decision constitutes the new legal framework of the CDE as from 1 January 2017.

2. As from 1 January 2017 the legal personality of the CDE, as defined in Article 1 of the CDE Statutes, shall be maintained solely for the purposes of the liquidation of the CDE.

3. During the passive phase, the CDE Executive Board, as established in Articles 9 and 10 of the CDE Statutes, will continue to exist until the date of the ACP-EU Committee of Ambassadors decision on the discharge proposal pursuant to Article 4 of Decision No 4/2014.

As from the passive phase, the tasks of the CDE Executive Board shall be limited to the approval of the closure report, adoption of the accounts related to the closure phase and the transmission of a discharge proposal to the ACP-EU Committee of Ambassadors for decision. From 1 January 2017, it shall hold no more than one meeting per year. This does not exclude the possibility for the CDE Executive Board to decide by written procedure.

Unless decided otherwise by the ACP-EU Committee of Ambassadors, the discharge is deemed to be approved 3 months following the date of the transmission of the discharge proposal, or by 31 December 2017, whichever is the earlier.

4. The costs related to the passive phase shall be financed under the 11th European Development Fund.

5. The entitlements of the CDE in respect of third parties and entitlement of third parties in respect of the CDE shall be subject to a limitation period of 3 years as from 1 January 2017.

Article 4

The assignment of the ACP-EU Joint Working Group on the closure of the CDE, as established by the Joint Declaration of the ACP-EU Council of Ministers of 19-20 June 2014, shall end with the ACP-EU Committee of Ambassadors decision on the discharge proposal pursuant to Article 4 of Decision No 4/2014.

Article 5

This Decision shall enter into force upon its adoption, with the exception of Article 1 which shall enter into force on 1 January 2017.

Done at Brussels, 12 July 2016.

For the ACP-EU Committee of Ambassadors

The President

R.J. MENGA

