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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information concerning the entry into force of the Agreement for scientific and technological cooperation between the European Union and the Republic of Lebanon setting out the terms and conditions for the participation of the Republic of Lebanon in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA)

The Agreement for scientific and technological cooperation between the European Union and the Republic of Lebanon setting out the terms and conditions for the participation of the Republic of Lebanon in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA) ⁽¹⁾, signed on 27 February 2018 has, in accordance with Article 5 (2) thereof, entered into force on 4 June 2018.

⁽¹⁾ OJ L 79, 22.3.2018, p. 3.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2018/919

of 27 June 2018

amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin

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⁾, and in particular Article 183(b) thereof,

Having regard to Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ⁽²⁾, and in particular Article 5(6)(a) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin.
- (3) Regulation (EC) No 1484/95 should therefore be amended accordingly.
- (4) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the text set out 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*.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 150, 20.5.2014, p. 1.

⁽³⁾ Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC (OJ L 145, 29.6.1995, p. 47).

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

Done at Brussels, 27 June 2018.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General
Directorate-General for Agriculture and Rural Development*

ANNEX

'ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security under Article 3 (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as '70 % chickens', frozen	101,3	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as '65 % chickens', frozen	127,4 225,0	0 0	AR BR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	240,2 225,9 333,9 236,6	18 22 0 19	AR BR CL TH
0207 27 10	Turkeys, boneless cuts, frozen	304,7 323,1	0 0	BR CL
0408 91 80	Eggs, not in shell, dried	242,1	1	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	247,7	12	BR

⁽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).'

COMMISSION IMPLEMENTING REGULATION (EU) 2018/920**of 28 June 2018****amending Implementing Regulation (EU) No 180/2014 as regards certain provisions on checks, notifications and annual reporting and on amendments to the POSEI programmes**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 ⁽¹⁾, and in particular Article 6(2), the second paragraph of Article 8 and Articles 12(3) and 14(1) thereof,

Whereas:

- (1) Experience gained with the application of Commission Implementing Regulation (EU) No 180/2014 ⁽²⁾ has shown that certain provisions relating to checks, notifications and annual reporting need to be clarified and simplified.
- (2) Articles 2, 3 and 5 of Implementing Regulation (EU) No 180/2014 lay down the provisions for the import licences, exemption certificates, aid certificates and payment relating to products imported from third countries or supplied from the Union. Article 4(1) of Commission Implementing Regulation (EU) 2016/1239 ⁽³⁾ makes the use of the Economic Operators Registration and Identification number ('EORI number') mandatory for import licences. It is appropriate to provide the same requirement for the import licences, exemption certificates and aid certificates covered by Articles 2, 3 and 5 of Implementing Regulation (EU) No 180/2014 respectively.
- (3) Article 8 of Implementing Regulation (EU) No 180/2014 contains the rules on the documents to be presented by operators and the validity of licences and certificates. It is appropriate to ease the electronic transmission of the accompanying documents of the licences and certificates.
- (4) Article 16 of Implementing Regulation (EU) No 180/2014 lays down the rules for the administrative and physical checks on the import, entry, export and dispatch of agricultural products. It is appropriate to separate the type of physical checks for import and entry from the type of physical checks for export and dispatch. The wording of that Article should make explicit the obligation of applying a representative sample when performing checks on export and dispatch operations provided for in Section 5 of that Regulation.
- (5) Article 22 of Implementing Regulation (EU) No 180/2014 provides the general principles for the checks in respect of aid applications for the measures to support local agricultural products. Taking into account the heterogeneity and different level of complexity of actions within the measures and to further ensure that all areas of expenditure are covered and represented in the sampling, it is necessary to specify that the competent authorities are to perform on-the-spot checks at the level of each action by sampling at least 5 % of the aid applications. The sample should also represent at least 5 % of the amounts covered by the aid for each action.
- (6) Article 24 of Implementing Regulation (EU) No 180/2014 provides the rules for the selection of aid applicants to be subject to on-the-spot checks. As in the outermost regions there might be a small number of applicants, Member States should have the possibility to select only one applicant.
- (7) Article 38(1) of Implementing Regulation (EU) No 180/2014 requires certain data relating to the specific supply arrangements balance to be notified at the end of each quarter of the year. That periodicity is burdensome and a notification only once per year is deemed sufficient.

⁽¹⁾ OJ L 78, 20.3.2013, p. 23.

⁽²⁾ Commission Implementing Regulation (EU) No 180/2014 of 20 February 2014 laying down rules for the application of Regulation (EU) No 228/2013 of the European Parliament and of the Council laying down specific measures for agriculture in the outermost regions of the Union (OJ L 63, 4.3.2014, p. 13).

⁽³⁾ Commission Implementing Regulation (EU) 2016/1239 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences (OJ L 206, 30.7.2016, p. 44).

- (8) Article 39 of Implementing Regulation (EU) No 180/2014 sets out the elements to be included in the annual reports on the implementation of the measures. In its report of 15 December 2016 ⁽¹⁾ the Commission concluded that the reporting on the implementation of the POSEI programmes should be improved, particularly to better assess compliance with the objectives, including for specific supply arrangements, and to better describe the situation of the agricultural sector and its development, including price monitoring and the competitive position of local production with regard to imports. As it is also opportune to clarify the reporting obligations and provide a new structure of the annual reports, the relevant details should be specified in a new Annex to Implementing Regulation (EU) No 180/2014.
- (9) Article 40 of Implementing Regulation (EU) No 180/2014 sets out the procedures for amending the POSEI programmes. Taking into account the experience gained with its application, those procedures need to be simplified in order to ensure a more flexible and smoother adaptation to the actual conditions relating to the supply arrangements and the local agricultural conditions. Therefore, it is appropriate to require that amendments covered by Article 40(1) and (2) of that Regulation be presented at the same time by 31 July.
- (10) In general, amendments to POSEI programmes do not need formal approval by the Commission. It is appropriate to revise the wording of Article 40(1) of Implementing Regulation (EU) No 180/2014 in order to express that principle in a more explicit way.
- (11) However, ‘major’ amendments to the programmes covered by Article 40(2) of Implementing Regulation (EU) No 180/2014 do need formal approval by the Commission. On the basis of the experience with that procedure, it is necessary to extend the deadline for approval to five months after the notification of the amendment. In addition, in order to simplify the procedure, the formal approval by the Commission should be limited to the first two cases currently covered by that provision.
- (12) Article 40(3) of Implementing Regulation (EU) No 180/2014 concerns ‘minor’ amendments. To ease the financial adjustment procedure within the Member States, the deadline for the notification of adjustments up to 20 % of the financial allocation should be extended to 31 May.
- (13) Finally, the definition of ‘measure’ in Article 40(5)(a) of Implementing Regulation (EU) No 180/2014 should be simplified.
- (14) Several Commission regulations have been repealed and replaced by delegated and implementing regulations. For reasons of clarity and legal certainty, it is appropriate to update the references to those regulations. In particular, as regards the system of import and export licences, references to Commission Regulation (EC) No 376/2008 ⁽²⁾ should be replaced by references to Commission Delegated Regulation (EU) 2016/1237 ⁽³⁾ and Implementing Regulation (EU) 2016/1239.
- (15) As regards the notifications to the Commission, references to Commission Regulation (EC) No 792/2009 ⁽⁴⁾ should be replaced by references to Commission Delegated Regulation (EU) 2017/1183 ⁽⁵⁾ and Commission Implementing Regulation (EU) 2017/1185 ⁽⁶⁾.

⁽¹⁾ Report from the Commission to the European Parliament and the Council on the implementation of the scheme of specific measures for agriculture in favour of the outermost regions of the Union (POSEI) (COM(2016)797 final).

⁽²⁾ Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ L 114, 26.4.2008, p. 3).

⁽³⁾ Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, amending Commission Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008 and repealing Commission Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008 (OJ L 206, 30.7.2016, p. 1).

⁽⁴⁾ Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States’ notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments’ regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).

⁽⁵⁾ Commission Delegated Regulation (EU) 2017/1183 of 20 April 2017 on supplementing Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council with regard to the notifications to the Commission of information and documents (OJ L 171, 4.7.2017, p. 100).

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/1185 of 20 April 2017 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents and amending and repealing several Commission Regulations (OJ L 171, 4.7.2017, p. 113).

- (16) As regards the rules based on Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽¹⁾ references to Commission Regulation (EC) No 1122/2009 ⁽²⁾ should be replaced by references to Commission Delegated Regulation (EU) No 640/2014 ⁽³⁾ and Commission Implementing Regulation (EU) No 809/2014 ⁽⁴⁾.
- (17) As regards provisions relating to the Union Customs Code, references to Commission Regulation (EEC) No 2454/93 ⁽⁵⁾ should be replaced by references to Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽⁶⁾ to Commission Delegated Regulation (EU) 2015/2446 ⁽⁷⁾ or to Commission Implementing Regulation (EU) 2015/2447 ⁽⁸⁾.
- (18) Implementing Regulation (EU) No 180/2014 should therefore be amended accordingly.
- (19) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 180/2014 is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Import licences shall be drawn up in accordance with the specimen set out in Annex I to Commission Implementing Regulation (EU) 2016/1239 (*).

Article 4 of Commission Delegated Regulation (EU) 2016/1237 (**) and Articles 2 and 3, Article 4(1), Article 5 and 7 and 13 to 16 of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*, without prejudice to this Regulation.

The negative tolerance provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*.

(*) Commission Implementing Regulation (EU) 2016/1239 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences (OJ L 206, 30.7.2016, p. 44).

(**) Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, amending Commission Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008 and repealing Commission Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008 (OJ L 206, 30.7.2016, p. 1).;

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

⁽²⁾ Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ L 316, 2.12.2009, p. 65).

⁽³⁾ Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).

⁽⁴⁾ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

⁽⁵⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

⁽⁶⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁽⁷⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

⁽⁸⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

(b) paragraph 6 is replaced by the following:

‘6. Import duties shall be levied on quantities which exceed those stated on the import licence. The positive tolerance of 5 % provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply, provided that the import duties relating thereto are paid.’;

(2) in Article 3, paragraph 2 is replaced by the following:

‘2. Exemption certificates shall be drawn up on the basis of the specimen import licence set out in Annex I to Implementing Regulation (EU) 2016/1239.

Article 4 of Delegated Regulation (EU) 2016/1237 and Articles 2 and 3, Article 4(1), Articles 5 and 7 and 13 to 16 of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*, without prejudice to this Regulation.

The negative tolerance provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*.’;

(3) in Article 5, paragraph 2 is replaced by the following:

‘2. Aid certificates shall be drawn up on the basis of the specimen import licence set out in Annex I to Implementing Regulation (EU) 2016/1239.

Article 4 of Delegated Regulation (EU) 2016/1237 and Articles 2 and 3, Article 4(1), Articles 5 and 7 and 13 to 16 of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*, without prejudice to this Regulation.

The negative tolerance provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*.’;

(4) Article 8(1) is amended as follows:

(a) the first subparagraph is amended as follows:

(i) the introductory sentence is replaced by the following:

‘Subject to Articles 2(5), 3(6), 5(7) and Articles 11 and 12, the competent authorities shall accept the import licence, exemption certificate or aid certificate application presented by operators for each consignment. Those applications shall be accompanied by the original or a certified copy of the purchase invoice and the original, a certified copy or an authenticated electronic equivalent of the following documents:’;

(ii) point (b) is replaced by the following:

‘(b) regarding the aid certificate:

(i) the means of proof of the customs status of Union goods referred to in Article 199(1)(b) of Commission Implementing Regulation (EU) 2015/2447 (*); or

(ii) a declaration type CO pursuant to Chapters 2 and 3 of Title VIII of Commission Delegated Regulation (EU) 2015/2446 (**) in accordance with data elements No 1/1, 1/2 and 1/3 referred to in the data requirements table set out in Section 1 of Chapter 3 of Title I of Annex B to that Regulation.

(*) 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 Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).’;

(b) the second subparagraph is replaced by the following:

‘Those accompanying documents may take the form of an electronic message. In case the verifying competent authority has no access to the IT system managing and producing such electronic document, it shall be replaced by a duly certified true copy or its authenticated electronic equivalent print-out.’;

- (5) in Article 12, the third paragraph is replaced by the following:

‘The notification referred to in this Article shall be made in accordance with Commission Delegated Regulation (EU) 2017/1183 (*) and Commission Implementing Regulation (EU) 2017/1185 (**).

(*) Commission Delegated Regulation (EU) 2017/1183 of 20 April 2017 on supplementing Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council with regard to the notifications to the Commission of information and documents (OJ L 171, 4.7.2017, p. 100).

(**) Commission Implementing Regulation (EU) 2017/1185 of 20 April 2017 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents and amending and repealing several Commission Regulations (OJ L 171, 4.7.2017, p. 113).;

- (6) in Article 16, paragraph 2 is replaced by the following:

‘2. The physical checks carried out in the outermost region concerned on the import or entry of agricultural products shall involve a representative sample amounting to at least 5 % of the licences and certificates presented in accordance with Article 9.

The physical checks carried out in the outermost region concerned on the export or dispatch provided for in Section 5 shall involve a representative sample of at least 5 % of the operations, based on the risk profiles established by the Member States.

Commission Regulation (EC) No 1276/2008 (*) shall apply *mutatis mutandis* to those physical checks.

In addition, in special cases the Commission may request that physical checks cover different percentages.

(*) Commission Regulation (EC) No 1276/2008 of 17 December 2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts (OJ L 339, 18.12.2008, p. 53).;

- (7) in Article 22, the third paragraph is replaced by the following:

‘On the basis of a risk analysis in accordance with Article 24(1) of this Regulation, the competent authorities shall perform on-the-spot checks by sampling, for each action, at least 5 % of aid applications. The sample shall also represent at least 5 % of the amounts covered by the aid for each action.’;

- (8) in the second subparagraph of Article 24(1), the following sentence is added:

‘When the minimum number of aid applicants to be subjected to on-the-spot checks is lower than 12, Member States shall randomly select at least one applicant.’;

- (9) Articles 28 and 29 are replaced by the following:

‘Article 28

Recovery of undue payments and penalties

1. In the event of undue payment, Article 7 of Commission Implementing Regulation (EU) No 809/2014 (*) shall apply *mutatis mutandis*.

2. Where the undue payment has been made as a result of a false declaration, false documents or serious negligence on the part of the aid applicant, a penalty shall be imposed equal to the amount unduly paid, with interest calculated in accordance with Article 7(2) of Implementing Regulation (EU) No 809/2014.

Article 29

Force majeure and exceptional circumstances

In cases of *force majeure* or exceptional circumstances within the meaning of Article 2(2) of Regulation (EU) No 1306/2013, Article 4 of Commission Delegated Regulation (EU) No 640/2014 (**) shall apply *mutatis mutandis*.

(*) Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

(**) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).;

(10) in Article 32(3), the second subparagraph is replaced by the following:

‘The notification referred to in this paragraph shall be made in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.’;

(11) in Article 35, paragraph 2 is replaced by the following:

‘2. The competent authorities shall ensure that the products listed in Annex VII are used in compliance with the relevant Union rules, and in particular Articles 211, 214, 215, 218, 219 and 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council (*), Articles 161 to 164, 171 to 175, 178, 179 and 239 of Delegated Regulation (EU) 2015/2446 and Articles 260 to 269 of Implementing Regulation (EU) 2015/2447.

(*) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).’;

(12) Article 38 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, the introductory sentence is replaced by the following:

‘As regards the specific supply arrangements, the competent authorities shall notify the Commission, no later than 31 May each year, of the following data relating to the operations carried out in the previous year with respect to the supply balance of the reference calendar year, broken down by product and CN code and, where applicable, by individual destination.’;

(ii) in the second subparagraph, the second sentence is deleted;

(b) paragraphs 3 and 4 are replaced by the following:

‘3. The notifications referred to in this Article shall be made in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.

4. The notifications referred to in Article 23(3) and 32(1) of Regulation (EU) No 228/2013 shall also be made in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.’;

(13) Article 39 is replaced by the following:

‘Article 39

Annual report

1. The structure and content of the annual report referred to in Article 32(2) of Regulation (EU) No 228/2013 shall be as set out in Annex IX to this Regulation.

2. The report referred to in paragraph 1 shall be submitted to the Commission in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.’;

(14) Article 40 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Amendments made to each POSEI programme shall be submitted by Member States to the Commission once per calendar year and per programme, except in cases of *force majeure* or exceptional circumstances. They shall be sent to the Commission no later than 31 July of the year prior to their application. The amendments shall be duly substantiated, in particular by giving the following information:

(a) the reasons for any implementation problems justifying the amendment of the programme;

(b) the expected effects of the amendment;

(c) the implications for financing and eligibility conditions.

The Commission shall inform the Member State if it considers that the amendments do not comply with Union legislation, in particular with Article 4 of Regulation (EU) No 228/2013, without prejudice to the Articles 51 and 52 of Regulation (EU) No 1306/2013.

The amendments shall apply from 1 January of the year following that in which they were notified. In case an earlier application is deemed necessary, such amendments may apply earlier, unless the Commission objects.

2. By way of derogation from paragraph 1, the Commission shall evaluate separately the following amendments proposed by the Member States and decide on their approval within five months of their submission at the latest in accordance with the procedure referred to in Article 34(2) of Regulation (EU) No 228/2013:

- (a) the accession of a new outermost region;
- (b) the introduction into the general programme of new groups of products to be supported under the specific supply arrangements or of new measures to assist the local agricultural production.

The amendments thus approved shall apply from 1 January of the year following that in which the proposal for an amendment was made or as from the date explicitly indicated in the approval decision.;

(b) in paragraph 3, point (b) is replaced by the following:

- ‘(b) as regards all measures, adjustments up to 20 % of the financial allocation for each individual measure, without prejudice to the financial ceilings provided for in Article 30 of Regulation (EU) No 228/2013, on condition that such adjustments are notified not later than 31 May of the year following the calendar year to which the amended financial allocation refers;’;

(c) in paragraph 5, point (a) is replaced by the following:

- ‘(a) ‘measure’ means the grouping of actions necessary to achieve one or more objectives for the programme constituting a line for which a financial allocation is defined in the financing table referred to in Article 5(a) of Regulation (EU) No 228/2013;’;

(d) paragraph 6 is replaced by the following:

- ‘6. The notifications referred to in this Article shall be made in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185;’;

(15) Annex IX is added, the text of which is set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 28 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

'ANNEX IX

Structure and content of the annual report referred to in Article 39

The structure and content of the report over the previous year shall be as follows:

1. GENERAL CONTEXT IN THE PREVIOUS YEAR

- 1.1. Socioeconomic context.
- 1.2. Situation of agriculture and its development.

2. PHYSICAL AND FINANCIAL IMPLEMENTATION OF THE MEASURES AND ACTIONS

- 2.1. Overall table with financial data concerning support for local production and specific supply arrangements, including initial allocation per measure and action, as well as actual spending and, if relevant, any State aid provided in accordance with Article 23 of Regulation (EU) No 228/2013.
- 2.2. Comprehensive description of the physical and financial implementation of each measure and action, including technical assistance, comprised in the programme:
 - (a) for the specific supply arrangements: data and analysis of the annual supply balance of the region concerned;
 - (b) for the support for local production: data and analysis of the physical and financial implementation of each measure and action listed in the programme including such data as the number of beneficiaries, the number of animals covered by the payment, the eligible surface area and/or the number of holdings concerned. Where necessary, the data must be accompanied by a presentation and analysis of the sector to which the measure relates.

3. PERFORMANCE OF THE PROGRAMME IN THE PREVIOUS YEAR

- 3.1. Progress of the measures and actions towards the specific objectives and priorities of the programme and the general objectives set out in Article 2 of Regulation (EU) No 228/2013:
 - (a) evolution and analysis of the national indicators quantifying the specific objectives of the programme and assessment of the extent to which the specific objectives assigned to each of the measures contained in the programme have been achieved;
 - (b) for the specific supply arrangements, information on the manner in which the advantage granted was passed on as well as the measures taken and the checks performed to ensure that it was passed on in compliance with Article 6 of this Regulation;
 - (c) for the specific supply arrangements, analysis of the proportionality of the aid in relation to the additional cost of transport to the outermost regions and, in the case of products intended for processing and agricultural inputs, the additional costs of insularity and distant location;
 - (d) annual data on the common performance indicators referred to in Article 37 of this Regulation and their analysis in particular with regard to the attainment of the general objectives set out in Article 2 of Regulation (EU) No 228/2013.

Those analyses must pay special attention to price monitoring, to local agricultural development, and to the competitive position of local products with regard to imports from third countries and supplies from the Union.

- 3.2. Conclusions of the analyses on the suitability of the strategy of the measures and its possible improvement in order to achieve the objectives of the programme.

4. MANAGEMENT OF THE PROGRAMME

- 4.1. Brief account of any major problems encountered in managing and implementing the measures during the year in question.

- 4.2. Statistics on the checks carried out by the competent authorities and any penalties applied. Any additional information that could be useful for the understanding of the data submitted.

5. **AMENDMENTS**

Brief summary of any amendments to the programme presented during the year in question and their justifications.'

COMMISSION IMPLEMENTING REGULATION (EU) 2018/921**of 28 June 2018****imposing a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ prior to its amendment by Regulation (EU) 2017/2321 of the European Parliament and of the Council ⁽²⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

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

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

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

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

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

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

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

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

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

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

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

2. Request for an expiry review

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

3. Initiation of an expiry review

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

4. Investigation

4.1. Review investigation period and period considered

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

4.2. Parties concerned by this investigation

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

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

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

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

⁽⁴⁾ OJ C 329, 7.9.2016, p. 5.

⁽⁵⁾ OJ C 122, 19.4.2017, p. 8.

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

4.3. Sampling

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

4.3.1. Sampling of exporting producers in China

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

4.3.2. Sampling of Union producers

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

4.3.3. Sampling of unrelated importers

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

4.4. Questionnaires

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

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

4.5. Verification visits

- (28) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury and for assessing whether the imposition of measures would be against the Union interest. Verification visits were carried out at the premises of the following companies:

(a) Union producers:

- Alvinesa Alcoholera Vinícola SA, Daimiel, Spain
- Caviro Distillerie S.r.l., Faenza, Italy
- Comercial Química Sarasa S.L., Girona, Spain
- Distillerie Bonollo SpA, Formigine, Italy
- Giovanni Randi SpA, Faenza, Italy
- ICV — Industria Chimica Valenzana SpA, Padova, Italy
- Villapana SpA, Faenza, Italy

(b) Users:

- DuPont Nutrition Biosciences ApS, Copenhagen, Denmark
- Saint-Gobain Construction Products UK Ltd, Leicestershire, United Kingdom.

B. PRODUCT UNDER REVIEW AND LIKE PRODUCT

1. Product under review

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

2. Like product

- (31) It was considered that the product under review produced in the PRC and exported to the Union:

- the product produced and sold by the exporting producers on the domestic market of the PRC,
- the product produced and sold in the analogue country,
- the product produced and sold in the Union by the Union industry,

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

C. LIKELIHOOD OF CONTINUATION OF DUMPING

1. Preliminary remarks

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

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

2. Dumping

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

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

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

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

2.1. *Changmao Biochemical*

2.1.1. Normal value

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

2.1.2. Export prices

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

2.1.3. Comparison

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

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

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

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

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

2.1.4. Dumping margin

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

2.2. Ninghai Organic

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

2.2.1. Normal value

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

2.2.2. Export prices

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

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

⁽²⁾ Judgment of 3 May 2018, ECLI:EU:T:2018:251.

2.2.3. Comparison

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

2.2.4. Dumping margin

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

2.3. All other exporting producers

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

2.4. Conclusion on dumping

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

3. Development of imports should measures be repealed

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

3.1. Production capacity and spare capacity in China

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

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

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

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

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

3.2. Chinese export behaviour in other third countries

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

3.3. Attractiveness of the Union market

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

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

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

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

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

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

3.4. Conclusion

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

D. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

1. Definition of the Union industry and Union production

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

2. Union consumption

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

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

Table 1

Union consumption

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

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

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

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

Table 2

Import volume and market share of all imports from China

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

Source: 14(6) database

(ii) Imports of China subject to measures

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

Table 3

Import volume and market share of Chinese imports subject to measures

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

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

Source: 14(6) database

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

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

Table 4

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

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

Source: 14(6) database

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

3.2. *Prices and undercutting*

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

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

Table 5

Average price of imports from China subject to the measures

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

Source: 14(6) database

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

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

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

Table 6

Prices of imports from China not subject to the measures

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

Source: 14(6) database

4. Imports from other third countries

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

Table 7

Imports from third countries other than China

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

Source: 14(6) database

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

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

5. Economic situation of the Union industry

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

6. Production

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

Table 8

Production volume

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

Source: Questionnaire replies

7. Production capacity and capacity utilisation

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

Table 9

Production capacity and capacity utilisation

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

Source: Questionnaire replies

8. Sales volume

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

Table 10

Sales volume of the Union industry

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

Source: Questionnaire replies

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

Table 11

Total sales volume of all Union producers

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

Source: Questionnaire replies, expiry review request

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

9. Market share

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

Table 12

Market share of the Union industry

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

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

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

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

Table 13

Market share of all Union producers

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

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

10. Growth

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

11. Employment

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

Table 14

Employment

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

Source: Questionnaire replies

12. Productivity

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

Table 15

Productivity

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

Source: Questionnaire replies

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

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

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

14. Prices and factors affecting prices

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

Table 16

Average sales prices and unit cost

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

Source: Questionnaire replies

15. Labour costs

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

Table 17

Average labour cost per employee

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

Source: Questionnaire replies

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

16. Inventories

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

Table 18

Inventories

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

Source: Questionnaire replies

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

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

Table 19

Profitability, cash flow, investments and return on investments

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

Source: Questionnaire replies

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

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

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

18. Conclusion on injury

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

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

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Preliminary remarks

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

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

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

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

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

3. Prices of Chinese imports

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

4. Likely impact on the Union industry

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

5. Conclusion on the likelihood of recurrence of injury

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

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

G. UNION INTEREST

1. Introduction

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

2. Interest of the Union industry and other Union producers

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

3. Interest of importers

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

4. Interest of users

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

5. Conclusion on Union interest

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

H. ANTI-DUMPING MEASURES

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

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

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

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

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by one percentage point.

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

Article 2

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

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

Done at Brussels, 28 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/922

of 28 June 2018

derogating from Council Regulation (EC) No 1967/2006 as regards the minimum distance from the coast and the minimum sea depth for boat seines fishing for sand eel (*Gymnammodytes cicerelus* and *G. semisquamatus*) and gobies (*Aphia minuta* and *Crystallogobius linearis*) in certain territorial waters of Spain (Catalonia)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 ⁽¹⁾, and in particular Article 13(5) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EC) No 1967/2006 prohibits the use of towed gears within 3 nautical miles of the coast or within the 50 m isobath where that depth is reached at a shorter distance from the coast.
- (2) At the request of a Member State, the Commission may allow a derogation from Article 13(1) of Regulation (EC) No 1967/2006, provided that a number of conditions set out in Article 13(5) and (9) are fulfilled.
- (3) A derogation from the first subparagraph of Article 13(1) of that Regulation was granted until 8 May 2017 by Commission Implementing Regulation (EU) No 464/2014 ⁽²⁾.
- (4) On 6 November 2017, the Commission received from Spain a request for derogation from Article 13(1) of that Regulation.
- (5) Spain provided up-to-date scientific and technical information justifying the derogation.
- (6) The Scientific, Technical and Economic Committee for Fisheries ("STECF") assessed the derogation requested by Spain together with the implementation report of the related management plan in January 2018 ⁽³⁾.
- (7) STECF noted that the management plan is guided by the principles of good governance, including decision-making based on the best available scientific evidence, the maximum possible involvement of stakeholders and a long-term perspective. Moreover, STECF noted that Spain proposed new studies for finding ways for the reduction of discards and fixed strong limitations in the fishing effort, notably in the periods of reduced availability of the resources.
- (8) The derogation requested by Spain complies with the conditions laid down in Article 13(5) and (9) of Regulation (EC) No 1967/2006.
- (9) There are specific geographical constraints, given the limited size of the continental shelf and the spatial distribution of the target species which limit the fishing grounds.
- (10) The fishery has no significant impact on marine environment and is very selective, since the seines are hauled in the water column and do not touch the seabed because collection of material from the seabed would damage the target species and make the selection of the fished species virtually impossible due to their very small size.
- (11) The derogation requested by Spain affects a limited number of 26 vessels.

⁽¹⁾ OJ L 409, 30.12.2006, p. 11.

⁽²⁾ Commission Implementing Regulation (EU) No 464/2014 of 6 May 2014 derogating from Council Regulation (EC) No 1967/2006 as regards the minimum distance from the coast and the minimum sea depth for boat seines fishing for sand eel (*Gymnammodytes cicerelus* and *G. semisquamatus*) and gobies (*Aphia minuta* and *Crystallogobius linearis*) in certain territorial waters of Spain (Catalonia) (OJ L 134, 7.5.2014, p. 37).

⁽³⁾ STECF report (STECF-18-01): <https://stecf.jrc.ec.europa.eu/reports/management-plans>

- (12) The fishery cannot be undertaken with other gears since there is no other regulated gear, which, due to its structure, technical characteristics and the type of mesh used, can capture the target species.
- (13) The management plan guarantees no future increase in the fishing effort, as fishing authorisations are issued only to the specified 26 vessels and a maximum ceiling of effort is defined.
- (14) The request covers vessels registered in the maritime census managed by the Autonomous Community of Catalonia which have a track record in the fishery of more than five years and which operate under a management plan adopted by Spain on 27 March 2014 ⁽¹⁾ and prolonged on 26 April 2018 ⁽²⁾ until 31 December 2021.
- (15) Those vessels are included on a list communicated to the Commission in accordance with the requirements of Article 13(9) of Regulation (EC) No 1967/2006.
- (16) The fishing activities concerned fulfil the requirements of Article 4 of Regulation (EC) No 1967/2006 since the related management plan explicitly prohibits to fish above protected habitats.
- (17) The requirements of Article 8(1)(h) of Regulation (EC) No 1967/2006 are not applicable since they relate to trawlers.
- (18) As regards the requirement to comply with Article 9(3) establishing the minimum mesh size, the Commission notes that given the fishing activities concerned are highly selective, have a negligible effect on the marine environment and are not carried out above protected habitats, in line with Article 9(7) of Regulation (EC) No 1967/2006 Spain authorised a derogation from these provisions in its management plan.
- (19) The fishing activities concerned fulfil the recording requirements set out in Article 14 of Council Regulation (EC) No 1224/2009 ⁽³⁾.
- (20) The fishing activities concerned do not interfere with the activities of vessels using gears other than trawls, seines or similar towed nets.
- (21) The activity of boat seines is regulated in the Spanish management plan to ensure that catches of species mentioned in Annex III to Regulation (EC) No 1967/2006 are minimal.
- (22) Boat seines do not target cephalopods.
- (23) The Spanish management plan includes measures for the monitoring of fishing activities, as provided for in the third subparagraph of Article 13(9) of Regulation (EC) No 1967/2006.
- (24) The requested extension of derogation should therefore be granted.
- (25) Spain should report to the Commission in due time and in accordance with the monitoring plan provided for in the Spanish management plan.
- (26) The duration of the derogation should be limited in order to allow prompt corrective management measures in case the report to the Commission shows a poor conservation status of the exploited stock, while providing scope to improve the scientific basis for an improved management plan.
- (27) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

⁽¹⁾ Diari Oficial de la Generalitat de Catalunya, No 6591 of 27.3.2014, page 1.

⁽²⁾ Orden APM/445/2018, de 26 de abril, por la que se prorroga la vigencia del Plan de gestión de la sonsera en el litoral catalán aprobado por la Orden AAM/87/2014, de 20 de marzo. Boletín Oficial del Estado, Num. 107, sec. III, página 47609, 3.5.2018.

⁽³⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Derogation

Article 13(1) of Regulation (EC) No 1967/2006 shall not apply in territorial waters of Spain adjacent to the coast of the Catalan region to fishing for sand eel (*Gymnammodytes cicerelus* and *G. semisquamatus*) and gobies (*Aphia minuta* and *Crystalllogobius linearis*) by boat seines which are used by vessels:

- (a) registered in the maritime census managed by the Autonomous Community of Catalonia;
- (b) having a track record in the fishery of more than five years; and
- (c) holding a fishing authorisation and operating under the management plan adopted by Spain in accordance with Article 19(2) of Regulation (EC) No 1967/2006.

Article 2

Reporting

Spain shall communicate to the Commission, within three years following the entry into force of this Regulation, a report drawn up in accordance with the monitoring plan established in the management plan referred to in Article 1(c).

Article 3

Entry into force and period of application

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

It shall apply until 2 July 2021.

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

Done at Brussels, 28 June 2018.

For the Commission

The President

Jean-Claude JUNCKER

DECISIONS

COUNCIL DECISION (EU) 2018/923

of 22 June 2018

establishing that no effective action has been taken by Romania in response to the Council Recommendation of 5 December 2017

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽¹⁾, and in particular the fourth subparagraph of Article 10(2) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 16 June 2017, the Council decided in accordance with Article 121(4) of the Treaty that a significant observed deviation from the adjustment path toward the medium-term budgetary objective existed in Romania. In view of the established significant deviation, the Council, on 16 June 2017, issued a Recommendation ⁽²⁾ for Romania to take the necessary measures to ensure that the nominal growth rate of net primary government expenditure ⁽³⁾ does not exceed 3,3 % in 2017, corresponding to an annual structural adjustment of 0,5 % of GDP.
- (2) On 5 December 2017, the Council concluded ⁽⁴⁾ that Romania had not taken effective action in response to the Council Recommendation of 16 June 2017. On that basis, on 5 December 2017, the Council issued a revised Recommendation ⁽⁵⁾ for Romania to take the necessary measures to ensure that the nominal growth rate of net primary government expenditure does not exceed 3,3 % in 2018, corresponding to an annual structural adjustment of 0,8 % of GDP. It also recommended that Romania use any windfall gains for deficit reduction and that budgetary consolidation measures should secure a lasting improvement in the general government structural balance in a growth-friendly manner. The Council established a deadline of 15 April 2018 for Romania to report on the action taken in response to that Recommendation.
- (3) On 10 and 11 April 2018, the Commission undertook an enhanced surveillance mission in Romania for the purpose of on-site monitoring under Article -11(2) of Regulation (EC) No 1466/97. After having transmitted its provisional findings to the Romanian authorities for comments, the Commission reported its findings to the Council on 23 May 2018. Those findings were subsequently made public. The Commission report finds that the Romanian authorities do not intend to act upon the Council Recommendation of 5 December 2017. The authorities confirmed to the mission that their target for 2018 remains the headline deficit of just below 3 % of GDP. Given the positive and increasing output gap, this indicates a further deterioration of the underlying structural deficit, contrary to what is set out in the Council Recommendation and reflects a clearly expansionary fiscal policy.
- (4) On 20 April 2018, after the deadline established by the Council, the Romanian authorities submitted a report on action taken in response to the Council Recommendation of 5 December 2017. In the report, the authorities reiterated that their target for 2018 remains the headline deficit of just below 3 % of GDP. The fiscal impact of the reported measures falls significantly short of the requirement stated in that Council Recommendation.

⁽¹⁾ OJ L 209, 2.8.1997, p. 1.

⁽²⁾ Council Recommendation of 16 June 2017 with a view to correcting the significant observed deviation from the adjustment path toward the medium-term budgetary objective in Romania (OJ C 216, 6.7.2017, p. 1).

⁽³⁾ Net primary government expenditure is comprised of total government expenditure excluding interest expenditure, expenditure on Union programmes fully matched by Union funds revenue and non-discretionary changes in unemployment benefit expenditure. Nationally financed gross fixed capital formation is smoothed over a four-year period. Discretionary revenue measures or revenue increases mandated by law are factored in. One-off measures on both the revenue and expenditure sides are netted out.

⁽⁴⁾ Council Decision (EU) 2017/2389 of 5 December 2017 establishing that no effective action has been taken by Romania in response to the Council Recommendation of 16 June 2017 (OJ L 340, 20.12.2017, p. 49).

⁽⁵⁾ Council Recommendation of 5 December 2017 with a view to correcting the significant observed deviation from the adjustment path toward the medium-term budgetary objective in Romania (OJ C 439, 20.12.2017, p. 1).

- (5) Based on the Commission spring 2018 forecast, the growth of net primary government expenditure is set to amount to 10,4 %, well above the expenditure benchmark of 3,3 %. The structural balance is set to deteriorate by 0,4 % of GDP in 2018, reaching a deficit of 3,8 % of GDP. This is contrary to the recommended structural improvement of 0,8 % of GDP relative to 2017. Therefore, both pillars indicate a deviation from the recommended adjustment by a wide margin. The expenditure benchmark indicates a deviation of 2,0 % of GDP. The structural balance confirms this reading, indicating a somewhat smaller deviation of 1,2 % of GDP. The size of the deviation indicated by the structural balance is negatively impacted by a higher underlying estimate of potential GDP growth as compared to the medium-term average underlying the expenditure benchmark. Taking this into account, the overall assessment confirms a deviation from the recommended adjustment by a wide margin.
- (6) The deterioration compared to 2017 is largely driven by increases in expenditure on the compensation of public employees, enacted in summer 2017 and which entered into force in January 2018. Since the Commission autumn 2017 forecast, which was the basis for the Council Recommendation of 5 December 2017, the Romanian authorities have partially reversed the past systemic pension reform by lowering the proportion of social contributions transferred to the second pension pillar from 2018. This cut is set to have a positive short-term effect on government revenues and thus on the general government balance. However, that fiscal gain is set to dissipate in the long term as the social contributions diverted from the second pillar are to be accompanied by an obligation to pay old-age pensions in the future.
- (7) This leads to the conclusion that Romania's response to the Council Recommendation of 5 December 2017 has been insufficient. The fiscal effort falls well short of the annual structural adjustment of 0,8 % of GDP for 2018, corresponding to a nominal growth rate of net primary government expenditure that does not exceed 3,3 % in 2018,

HAS ADOPTED THIS DECISION:

Article 1

Romania has not taken effective action in response to the Council Recommendation of 5 December 2017.

Article 2

This Decision is addressed to Romania.

Done at Luxembourg, 22 June 2018.

For the Council
The President
V. GORANOV

COUNCIL DECISION (EU) 2018/924**of 22 June 2018****abrogating Decision 2009/414/EC on the existence of an excessive deficit in France**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 126(12) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 27 April 2009, following a recommendation from the Commission, the Council decided, by Decision 2009/414/EC ⁽¹⁾, in accordance with Article 126(6) of the Treaty, that an excessive deficit existed in France. The Council noted that the general government deficit notified for 2008 was 3,2 % of GDP, thus above the 3 %-of-GDP Treaty reference value. The general government gross debt, which had been above the 60 %-of-GDP Treaty reference value since 2003, was planned to reach 66,7 % of GDP in 2008.
- (2) On the same date, in accordance with Article 126(7) of the Treaty and Article 3(4) of Regulation (EC) No 1467/97 ⁽²⁾, the Council, based on a recommendation from the Commission, issued a recommendation to France with a view to bringing the excessive deficit situation to an end by 2012 at the latest. The Council also set a deadline of 27 October 2009 for effective action to be taken.
- (3) On 2 December 2009, the Council addressed a new recommendation to France, on the basis of Article 126(7) of the Treaty, which extended the deadline for correcting the excessive deficit to 2013. The Council considered that France had taken effective action, but unexpected adverse economic events with major unfavourable consequences for government finances had occurred.
- (4) On 21 June 2013, on the basis of Article 126(7) of the Treaty, the Council addressed a new recommendation to France, which extended the deadline for correcting the excessive deficit to 2015. The Council considered that the available evidence did not allow one to conclude that there had been no effective action, but unexpected adverse economic events with major unfavourable consequences for government finances had occurred.
- (5) On 10 March 2015, the Council under Article 126(7) of the Treaty issued a new recommendation to France with a view to bringing an end to the excessive deficit situation by 2017. The Council established the deadline of 10 June 2015 for France to report in detail on action taken.
- (6) On 1 July 2015, the Commission concluded that the headline deficit targets for France were expected to be met both in 2015 and 2016, while the projected fiscal effort, according to all metrics, was projected to fall short of the recommended ones in 2015 and 2016. Therefore, according to the methodology for assessing effective action, the Commission considered that the procedure was to be held in abeyance.
- (7) In accordance with Article 4 of the Protocol on the excessive deficit procedure annexed to the Treaties, the Commission provides the data for the implementation of the procedure. As part of the application of that Protocol, Member States are to notify data on government deficits and debt and other associated variables twice a year, namely before 1 April and before 1 October, in accordance with Article 3 of Council Regulation (EC) No 479/2009 ⁽³⁾.
- (8) The Council takes a decision to abrogate a decision on the existence of an excessive deficit on the basis of notified data. Moreover, such a decision should be abrogated only if the Commission forecasts indicate that the deficit will not exceed the 3 %-of-GDP Treaty reference value over the forecast horizon.

⁽¹⁾ Council Decision 2009/414/EC of 27 April 2009 on the existence of an excessive deficit in France (OJ L 135, 30.5.2009, p. 19).

⁽²⁾ Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).

⁽³⁾ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (OJ L 145, 10.6.2009, p. 1).

- (9) Based on data provided by the Commission (Eurostat) in accordance with Article 14 of Regulation (EC) No 479/2009, following the April 2018 notification by France, the 2018 Stability Programme and the Commission 2018 spring forecast, the following conclusions are warranted:
- After reaching 3,4 % of GDP in 2016, the general government deficit was reduced to 2,6 % of GDP in 2017. As compared to the 2017 budget targets, the deficit reduction in that year was mainly driven by the buoyancy of tax revenues (0,7 % of GDP), especially VAT and corporate taxes.
 - The Stability Programme for 2018-2022, submitted by the French Government on 25 April 2018, plans the general government deficit to decline to 2,3 % of GDP in 2018 and to slightly increase to 2,4 % of GDP in 2019. The Commission 2018 spring forecast projects a deficit of 2,3 % of GDP in 2018 and 2,8 % of GDP in 2019, thus remaining below the 3 %-of-GDP Treaty reference value over the forecast horizon.
 - The structural balance, which is the general government balance adjusted for the economic cycle and net of one-off and other temporary measures, improved by 0,5 % of GDP in 2017. The accumulated improvement in the structural balance since 2015 amounted to 0,7 % of GDP.
 - The gross government debt-to-GDP increased to 97,0 % in 2017, from 96,6 % in 2016, mainly due to the debt-increasing stock-flow adjustments as the primary deficit, and interest payments were broadly offset by the debt-reducing impact of real growth and inflation. The Commission 2018 spring forecast projects the debt ratio to decrease to 96,4 % in 2018 and 96,0 % in 2019 mainly due to high nominal growth that outweighs the primary deficits and interest payments.
- (10) In accordance with Article 126(12) of the Treaty, a Council decision on the existence of an excessive deficit is to be abrogated when the excessive deficit in the Member State concerned has, in the view of the Council, been corrected.
- (11) In the view of the Council, the excessive deficit in France has been corrected and Decision 2009/414/EC should therefore be abrogated.
- (12) As from 2018, the year following the correction of the excessive deficit, France is subject to the preventive arm of the Stability and Growth Pact and should progress towards its medium-term budgetary objective at an appropriate pace, including respecting the expenditure benchmark, and comply with the debt criterion in accordance with Article 2(1a) of Regulation (EC) No 1467/97,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that the excessive deficit situation in France has been corrected.

Article 2

Decision 2009/414/EC is hereby abrogated.

Article 3

This Decision is addressed to the French Republic.

Done at Luxembourg, 22 June 2018.

For the Council
The President
V. GORANOV

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2018/925**of 26 June 2018****on the appointment of the EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) and repealing Decision (CFSP) 2018/522 (ATALANTA/2/2018)**

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2008/851/CFSP, the Council authorised the Political and Security Committee (PSC) to take the relevant decisions on the appointment of the EU Force Commander for European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ('EU Force Commander').
- (2) On 27 March 2018, the PSC adopted Decision (CFSP) 2018/522 ⁽²⁾ appointing Rear Admiral Simone MALVAGNA as EU Force Commander.
- (3) The EU Operation Commander has recommended the appointment of Rear Admiral Alfonso PÉREZ DE NANCLARES Y PÉREZ DE ACEVEDO as the new EU Force Commander as from 6 August 2018.
- (4) On 31 May 2018, the EU Military Committee supported that recommendation.
- (5) Decision (CFSP) 2018/522 should therefore be repealed.
- (6) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications,

HAS ADOPTED THIS DECISION:

Article 1

Rear Admiral Alfonso PÉREZ DE NANCLARES Y PÉREZ DE ACEVEDO is hereby appointed EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) as from 6 August 2018.

Article 2

Decision (CFSP) 2018/522 is repealed.

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ Political and Security Committee Decision (CFSP) 2018/522 of 27 March 2018 on the appointment of the EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) and repealing Decision (CFSP) 2017/1356 (ATALANTA/1/2018) (OJ L 87, 3.4.2018, p. 14).

Article 3

This Decision shall enter into force on 6 August 2018.

Done at Brussels, 26 June 2018.

For the Political and Security Committee
The Chairperson
W. STEVENS

COUNCIL DECISION (EU) 2018/926
of 26 June 2018
appointing a member, proposed by the Kingdom of Spain, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Spanish Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ⁽¹⁾, (EU) 2015/190 ⁽²⁾ and (EU) 2015/994 ⁽³⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020. On 5 October 2015, by Council Decision (EU) 2015/1792 ⁽⁴⁾, Mr Ignacio GONZÁLEZ GONZÁLEZ was replaced by Ms Cristina CIFUENTES CUENCAS as a member.
- (2) A member's seat on the Committee of the Regions has become vacant following the resignation of Ms Cristina CIFUENTES CUENCAS,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Mr Ángel GARRIDO GARCÍA, *Presidente de la Comunidad Autónoma de Madrid*.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 26 June 2018.

For the Council

The President

E. ZAHARIEVA

⁽¹⁾ Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

⁽²⁾ Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

⁽³⁾ Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

⁽⁴⁾ Council Decision (EU) 2015/1792 of 5 October 2015 appointing five Spanish members and five Spanish alternate members of the Committee of the Regions (OJ L 260, 7.10.2015, p. 28).

COMMISSION IMPLEMENTING DECISION (EU) 2018/927

of 27 June 2018

amending Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.)*(notified under document C(2018) 3972)*

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular the fourth sentence of Article 16(3) thereof,

Whereas:

- (1) The third subparagraph of Article 4(2) of Commission Implementing Decision (EU) 2015/789 ⁽²⁾ is obsolete because all containment areas within the meaning of Article 7(1) are now listed in Annex II to that Decision.
- (2) On 12 March 2018 the Italian authorities notified outbreaks of *Xylella fastidiosa* (Wells et al.) (hereinafter 'the specified organism') detected in different parts of the buffer zone and in particular a large number of outbreaks in the last 20 km strip of the infected zone, adjacent to the buffer zone, in South of Apulia (Italy). The number of those outbreaks has led to the conclusion that eradication of the specified organism is no longer possible in the current buffer zone. Furthermore, due to the significant delays in the removal of plants infected by the specified organism, the risk of further spread towards the north of the Apulia region is high as the current containment and buffer zones no longer fulfil their functions
- (3) In the light of these developments, it is appropriate to expand the demarcated area subject to containment instead of having eradication measures in certain parts of the territory concerned. Such expansion should take place without delay taking into account the risk of further spreading of the specified organism in the rest of the Union territory which has increased with the start of the flight season of the insect vectors in early spring. The infected zone should therefore be extended to cover those municipalities of the provinces of Brindisi and Taranto where outbreaks of the specified organism have been detected. It should also cover the part of the province of Bari where it is likely that that organism has already spread and is established.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food, and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2015/789 is amended as follows:

- (1) the third subparagraph of Article 4(2) is deleted;
- (2) Part A of Annex II is amended as set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 June 2018.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.⁽²⁾ Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ L 125, 21.5.2015, p. 36).

ANNEX

Part A of Annex II to Implementing Decision (EU) 2015/789 is replaced by the following:

PART A

Infected zone in Italy

The infected zone of Italy includes the following areas:

1. The province of Lecce
2. The province of Brindisi
3. Municipalities located in the province of Taranto:

Avetrana

Carosino

Crispiano

Faggiano

Fragagnano

Grottaglie

Leporano

Lizzano

Manduria

Martina Franca

Maruggio

Monteiasi

Montemesola

Monteparano

Pulsano

Roccaforzata

San Giorgio Ionico

San Marzano di San Giuseppe

Sava

Statte

Taranto

Torricella

4. Municipality located in the province of Bari:

Locorotondo'.

COMMISSION IMPLEMENTING DECISION (EU) 2018/928**of 28 June 2018**

terminating the re-opening of the investigation concerning the judgments in joined cases C-186/14 P and C-193/14 P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China 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, and in particular Article 266 thereof,

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

Whereas:

A. MEASURES IN FORCE AND COURT PROCEEDINGS**1. Definitive measures**

- (1) On 6 October 2009, following an anti-dumping investigation in accordance with Article 5 of the basic Regulation ('the original investigation'), the Council imposed a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron and steel ('SPT') originating in the People's Republic of China ('China' or 'the PRC'), by Council Regulation (EC) No 926/2009 ⁽²⁾ (the 'original measures' or 'original Regulation'). The measures took the form of the following ad valorem duty rates: 17,7 % (Shandong Luxing Steel Pipe Co. Ltd), 27,2 % (for other cooperating companies), and 39,2 % (all other companies).
- (2) On 8 December 2015, following an expiry review investigation in accordance with Article 11(2) of the basic Regulation, by Commission Implementing Regulation (EU) 2015/2272 ⁽³⁾ ('the expiry review Regulation'), the Commission imposed definitive anti-dumping measures for a further five years on the basis of the existence of a likelihood of a recurrence of a threat of injury.

2. Judgments of the General Court and the Court of Justice

- (3) The original measures were based on a finding of a threat of injury and were annulled by a judgment of the General Court of 29 January 2014 in case T-528/09 ⁽⁴⁾, insofar as it concerned the exporting producer Hubei Xinyegang Steel Co. Ltd ('Hubei').
- (4) By judgment of 7 April 2016 in joined cases C-186/14 P and C-193/14 P ⁽⁵⁾, the Court of Justice ('ECJ') upheld the findings of the General Court, insofar as they concerned Hubei (together with the judgment of the General Court hereafter collectively referred to as 'the Hubei judgments').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron and steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

⁽³⁾ Commission Implementing Regulation (EU) 2015/2272 of 7 December 2015 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 322, 8.12.2015, p. 21).

⁽⁴⁾ Judgment of 29 January 2014, *Hubei Xinyegang Steel v Council*, T-528/09, ECLI:EU:T:2014:35.

⁽⁵⁾ Judgment of 7 April 2016, *ArcelorMittal Tubular Products Ostrava and Others v Hubei*, joined cases C-186/14P and C-193/14P, ECLI:EU:C:2016:209.

- (5) As a direct consequence of the Hubei judgments, imports into the Union of SPT originating in the PRC, as produced by Hubei, were deemed to have never been subject to anti-dumping measures. Hence, the anti-dumping duties collected on these imports had to be reimbursed in accordance with the applicable customs legislation.
- (6) In June 2016, the Commission removed Hubei from the list of companies listed under the TARIC Additional Code A950 and listed it under a new TARIC Additional Code C129.
- (7) On 9 September 2016, the Commission published a notice concerning the judgments in joined cases C-186/14 P and C-193/14 P (the 'Notice') ⁽¹⁾, reopening the review investigation under Article 11(2) of the basic Regulation that led to the adoption of the expiry review Regulation. The re-opening was limited in scope to determining whether, in light of the Hubei judgments, it would be appropriate to repeal the expiry review Regulation for Chinese exporting producers other than Hubei.

B. PROCEDURE

- (8) The Commission officially informed the Union industry represented by the Defence Committee of the Seamless Steel Tube Industry of the European Union ('the Defence Committee'), the other known Union producers, the exporting producers in the PRC, importers/users which were known to be concerned, as well as the authorities of the PRC of the re-opening of the investigation.
- (9) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the Notice.
- (10) After the reopening of the investigation, the Chinese Iron and Steel Association ('CISA') and four Chinese exporting producers submitted comments. The Commission also received comments from the Defence Committee, representing the Union industry, within the time-limits specified in the Notice.
- (11) Two hearings were held with the Defence Committee in the presence of the Hearing Officer in trade proceedings. The other parties did not request to be heard.

C. COMMENTS OF INTERESTED PARTIES

- (12) As mentioned in recital 10, two groups of interested parties, namely the Defence Committee, on one side, and CISA and four Chinese exporting producers, on the other side, provided comments.
- (13) First, the Defence Committee argued that the Commission should not have annulled the anti-dumping duty in place for Hubei since the Hubei judgments entailed only the annulment of the original measures and not those imposed by the expiry review Regulation. The Defence Committee further asserted that the scope of the Hubei judgments could not be extended to legal acts that were not challenged before the Union courts even if these acts are vitiated by the same legal errors.
- (14) According to the jurisprudence of the European courts, the invalidity of an original regulation affects the validity of subsequent regulations alike ⁽²⁾. In this case, the invalidity of the original measure *vis-à-vis* Hubei also affected the validity of the expiry review Regulation, insofar as it concerned Hubei. As a result of the judgment, Hubei is deemed not to have ever been subject to the original measures, and, consequently, neither should it have been subject to the expiry review Regulation. Therefore, the Defence Committee's claim that Hubei should still be subject to anti-dumping duties as imposed by the expiry review Regulation was rejected.

⁽¹⁾ Notice concerning the judgments in Joined cases C-186/14P and C-193/14P in relation to Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China and Commission Implementing Regulation (EU) 2015/2272 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, (OJ C 331, 9.9.2016, p. 4).

⁽²⁾ Judgment of the Court of Justice of 4 February 2016, *C & J Clark International Ltd and Puma SE*, Joined cases C-659/13 and C-34/14, ECLI:EU:C:2016:74, paragraph 79.

- (15) Second, the Defence Committee claimed that the Commission had no legal basis to re-open the expiry review investigation or to repeal the measures imposed by the expiry review Regulation for all exporting producers in China. It also claimed that the Hubei judgments did not render the expiry review Regulation invalid since the Commission did not base its findings on the same grounds (declared illegal) in the original investigation.
- (16) The Commission also rejected those arguments. It follows from case-law that, while a legal consequence of a finding that an act of the European Union is invalid is that the institution that adopted the act must take the necessary measures to remedy the illegality established — the obligation set out in Article 266 TFEU in the event of annulment being applicable by analogy — that institution does nevertheless have a wide discretion in its choice of measures, it being understood that such measures must be compatible with the operative part of the judgment in question and the grounds that constitute its essential basis ⁽¹⁾. In this particular case, and by reference to the operative part and the grounds of the Hubei judgments, the Commission considered it appropriate to re-open the investigation in order to assess, after receiving comments from interested parties, whether duties in place on Chinese exporting producers other than Hubei should also be repealed.
- (17) In any case, the Commission considers that it has the power to re-open investigations, even where it is not legally bound to do so.
- (18) Third, the Defence Committee argued that by repealing the expiry review Regulation the Commission would infringe the principle of legal certainty since the expiry review Regulation became definitive due to the fact it had not been challenged before the Court.
- (19) However, as already stated, the invalidity of an original regulation may affect the validity of subsequent regulations to the same extent. Thus, even if a subsequent regulation is not challenged before the European courts, it may nonetheless be deemed to be affected by the illegality found in the original regulation — on the basis of which it was enacted — such that it would be necessary to repeal the former to that extent. In this case, the Commission decided to assess the effects of the Hubei judgments cited in recitals 3 and 4 on the expiry review Regulation. In doing so, and in order to respect the rights of defence of interested parties, it requested comments on the effects of those judgments on the expiry review Regulation. Consequently, it is incorrect to argue, without further qualification, that the principle of legal certainty is violated whenever the Commission considers repealing measures which were found partially invalid by the European courts altogether, in particular if it appropriately respected the rights of defence of interested parties.
- (20) Finally, the Defence Committee argued that the repeal of the measures would have a significant negative impact on the Union industry, as concluded in the expiry review investigation in terms of likelihood of recurrence of threat of injury, which should be taken into consideration.
- (21) The Union industry's comments regarding the impact of the repeal of the measures on their situation are addressed in recitals 58 to 66.
- (22) By contrast, CISA and the four Chinese companies claimed that the findings regarding the threat of injury affect Hubei and all other Chinese exporting producers equally. Therefore, according to them, repealing the measures only for Hubei and not for the rest of Chinese exporting producers would be in breach of the principle of non-discrimination.
- (23) That argument could also not be accepted. The principle of non-discrimination prohibits, first, treating similar situations differently and, secondly, treating different situations in the same way unless there are objective reasons for such treatment ⁽²⁾. However, since other Chinese exporting producers did not challenge the original and/or the expiry review Regulation before the General Court, they find themselves in a different position than Hubei. This fact justifies a different treatment *vis-à-vis* the application of the expiry review Regulation. Therefore, a difference in treatment alone cannot be considered discriminatory as long as the parties complaining against this differential position are not in the same position as Hubei. In fact, in this particular case, the Commission is under no legal obligation to repeal the measures *vis-à-vis* the remaining exporting producers as only Hubei chose to contest the findings of that regulation before the European courts.

⁽¹⁾ Judgment of the Court of Justice of 15 March 2018, *Deichmann*, Case C-256/16, ECLI:EU:C:2018:187, paragraph 87.

⁽²⁾ Judgment of the Court of Justice of 27 January 2005, *Europe Chemi-Con (Deutschland) v Council*, Case C-422/02 P, ECLI:EU:C:2005:56, paragraph 33.

- (24) CISA and the four Chinese companies also submitted that the illegality found by the Court of Justice meant that the investigation leading to the original measures should have never been initiated since the premise for its initiation was the alleged threat of injury which the Court found to never have existed. Accordingly, CISA and the four Chinese companies claimed that the nature of the illegality found by the Court affected the legality of the entire anti-dumping measure and thus raised an issue of public interest which should prevail over the principle of legal certainty.
- (25) CISA did not explain how maintaining the measures for the remaining exporting producers could be against the overall Union interest, in particular considering the findings during the expiry review investigation that concluded, *inter alia*, that they were no compelling reasons of Union interest against the maintenance of the anti-dumping measures on imports from China ⁽¹⁾. Therefore, this claim was rejected. As regards the claim that the Court's findings vitiated the original Regulation to such an extent that the expiry review Regulation cannot remain in force, it is noted that the findings of the Court were limited to Hubei alone. Interested parties which did not exercise their right to challenge the original Regulation before the European courts could, therefore, not claim that a judgment of the European courts should apply to them in like measure.
- (26) Finally, CISA and the four Chinese companies claimed that, if the expiry review Regulation was not repealed with *erga omnes* effects, this would be in breach of the principles of sound administration and good administrative behaviour.
- (27) The annulment of an anti-dumping regulation affects only the parties that challenged it before the Court. This is also reflected in the common practice of the Commission when implementing judgments. In view of the errors found by the European Courts, and in line with its duty as an independent investigating authority, the Commission decided nonetheless to re-open the investigation in order to determine whether the measures resulting from the expiry review Regulation should be repealed *erga omnes*.
- (28) For the reasons set out in recitals 65 and 66, this examination revealed that any such repeal would, in fact, not be appropriate. In any case, the Chinese companies concerned were not able to explain in what way the non-repeal vis-à-vis all Chinese exporting producers would bring about a violation of the principle of sound administration. Therefore, this claim, too, was rejected.

D. APPROPRIATENESS OF THE REPEAL OF THE MEASURES IN LIGHT OF THE JUDGMENTS OF THE COURT OF JUSTICE AND THE GENERAL COURT

- (29) The Commission examined whether it would be appropriate to repeal the extended anti-dumping duties on imports of SPT from China pursuant to the expiry review Regulation, in so far as those duties were imposed on the Chinese exporting producers other than Hubei.
- (30) First, the Commission examined, in light of the Hubei judgments, the effects of the Hubei judgments on the expiry review Regulation. Second, the Commission re-examined the development of the main injury indicators of the Union industry after the investigation period of the original investigation on the basis of the information collected at that time. Third, the Commission assessed whether the findings of the expiry review would still hold true without considering Hubei's exports. Fourth, the Commission considered the evidence collected during the expiry review investigation and the findings made on this basis, and determined the effect of a repeal of measures for the Union industry.

1. The effects of the Hubei judgments on the expiry review Regulation

- (31) The General Court annulled the original Regulation imposing anti-dumping duties on imports of SPT from China 'to the extent that it imposes anti-dumping duties on exports of products produced by Hubei Xinyegang Steel Co. Ltd and collects provisional duties imposed on those exports' ⁽²⁾.

⁽¹⁾ See Implementing Regulation (EU) 2015/2272, recitals 112 to 121.

⁽²⁾ Judgment of the General Court of 29 January 2014, Case T-528/09 *Hubei Xinyegang Steel v Council*, ECLI:EU:T:2014:35, paragraph 93.

- (32) Thus, it is clear from the operative part of the judgment, which was explicitly confined to the duty imposed on Hubei, that the annulment was limited to the anti-dumping duties imposed on Hubei alone.
- (33) As set out in recital 6, the Commission implemented the Hubei judgments in June 2016 by removing Hubei from the list of companies listed under the TARIC Additional Code A950, and listing it under a new TARIC Additional Code C129.
- (34) However, contrary to the claims of certain interested parties, the annulment of the original Regulation did not affect the validity of that regulation vis-à-vis Chinese exporting producers other than Hubei.
- (35) This arises from the fact that anti-dumping regulations contain both measures of general application in that they impose an anti-dumping duty on the imports of the products concerned with a particular provenance on a category of addressees determined in a general and abstract manner, and bundles of individual decisions affecting those addressed by the regulation ⁽¹⁾. The case-law, accordingly, recognises the possibility of a partial annulment of those regulations. In such situations, annulment in favour of only those addressees concerned by a judgment leaves in place the contested regulation for all parties which did not, in fact, challenge it.
- (36) It is for those reasons that the Notice specifically spells out that the re-opening would be ‘limited in scope to the repeal of the extended anti-dumping duties ... insofar as those duties are imposed on the Chinese exporting producers named in [the expiry review Regulation].’ ⁽²⁾
- (37) Accordingly, the purpose of the re-opening was, not to examine the validity of the original Regulation for Chinese exporting producers other than Hubei, but rather to assess the impact of the Hubei judgments on the expiry review Regulation and the measures still in place on those other exporting producers.
- (38) Those effects are limited as the other Chinese exporting producers did not challenge the original Regulation. It follows that, in this case, the expiry review Regulation remains valid in so far as it applies to Chinese exporting producers other than Hubei.

2. Development of the main injury indicators after the investigation period of the original investigation

- (39) The Hubei judgments annulled the definitive duties insofar as Hubei was concerned on the basis that two factors laid down in Article 3(9) of the basic Regulation to determine a threat of injury (i.e. Chinese import volume and import prices) showed inconsistencies and that one factor (Chinese capacity and risk of re-direction of exports to the Union) was incomplete with respect of the relevant evidence to be taken into account. Regarding the fourth factor laid down in Article 3(9) of the basic Regulation (inventories of the Union industry), the General Court stated that this factor was considered irrelevant by the Commission.
- (40) The Commission considered it appropriate to look into more detail into the development of other main injury indicators in the period after the investigation period of the original investigation. The investigation period of the original investigation covered the period from 1 July 2007 to 30 June 2008 (‘IP’). After the imposition of provisional measures in the original investigation, additional information was collected for the period covering 1 July 2008 to March 2009 (‘Post IP’).
- (41) The analysis was done with the purpose of determining whether the Union industry’s situation showed a deterioration which could point to an injurious situation after the investigation period. In this regard, and for comparison purposes, the Commission also took into consideration the trends during the period relevant for the assessment of injury during the original investigation, i.e. the period from 2005 up to the end of the investigation period of that investigation (the ‘period considered’).

⁽¹⁾ See judgment of the Court of Justice of 16 April 2015, Case C-143/14 *TMK Europe* EU:C:2015:236, paragraph 19; Opinion of Advocate General Sharpston of 21 May 2015, Case C-687/13 *Fliesen-Zentrum Deutschland*, EU:C:2015:349, paragraph 40; and Opinion of Advocate General Warner of 14 February 1979, Case 113/77 *NTN v Council* (EU:C:1979:39), p. 1212, at p. 1243 by analogy, Case C-200/13 P *Council v Bank Saderat Iran and Commission* EU:C:2016:284, at paragraph 119 and the case-law cited.

⁽²⁾ Notice, page 4.

- (42) The indicators in question were Union consumption, production, production capacity, and capacity utilisation, sales volume and market share of the Union industry as well as sales prices of the Union industry and its profitability.

(i) *Consumption*

- (43) While Union consumption increased during the period considered by 24 %, it decreased sharply afterwards from 3 172 866 tons in the investigation period (IP) to 1 720 968 tons in the period thereafter. As explained in recital 51 of the original Regulation, the Union consumption contracted by almost 30 % in the post IP period ⁽¹⁾.

Table 1

Union consumption

	2005	2006	2007	IP	Post-IP
Union consumption (tons)	2 565 285	2 706 560	3 150 729	3 172 866	1 720 968

Source: the original Regulation.

(ii) *Production, production capacity and capacity utilisation*

- (44) As shown in Table 2, production volume of the Union industry also showed a significant decrease in the post-IP, reflecting the contraction in consumption. Likewise, capacity decreased after the investigation period. However, despite this decrease in capacity, due to the more significant decrease of production volume, the capacity utilisation dropped to a level of 77 % (as compared to 90 % during the IP). In recital 53 of the original Regulation, it is noted that the capacity utilisation was only 60 % in March 2009.

Table 2

Production, production capacity and capacity utilisation

	2005	2006	2007	IP	Post-IP
Production (tons)	2 022 596	2 197 964	2 213 956	2 158 096	1 477 198
Capacity (tons)	2 451 187	2 469 365	2 446 462	2 398 283	1 889 180
Capacity utilisation	83 %	89 %	90 %	90 %	78 %
Index (2005 = 100)	100	108	110	109	88

Source: the original Regulation.

(iii) *Sales volume and market share*

- (45) As shown in table 3, in line with the decrease in consumption sales volume of the Union industry on the Union market also dropped substantially, so that market share remained stable.

⁽¹⁾ As also mentioned in the original Regulation in footnote 7, the comparison was carried out between monthly average volumes.

- (46) To be noted, as shown in recital 52 of the original Regulation, Chinese exports managed to increase their import volume and keep stable market share in the Union during the same period and in a situation of a strongly declining market.

Table 3

Sales volume and market share

	2005	2006	2007	IP	Post-IP
Sales volume (tons)	1 766 197	1 907 126	2 061 033	2 017 525	1 093 175
Market share	68,8 %	70,5 %	65,4 %	63,6 %	63,5 %

Source: the original Regulation.

(iv) Sales price and profitability

- (47) Although sales prices increased during the period considered and continued to increase after that, the profitability dropped significantly. Profitability already slightly decreased in the IP and reached very low levels thereafter. During the original investigation it was established that profitability even reached negative levels in the first quarter of 2009 (– 0,8 %) ⁽¹⁾.
- (48) This deterioration of profitability can at least partly be attributed to the significant loss of production and sales volume that had an impact on the capacity utilisation which decreased as well, and which had a negative impact on the average cost of production.

Table 4

Sales price, profitability

	2005	2006	2007	IP	Post-IP
Sales price (Euro/ton)	983	1 047	1 188	1 192	1 415
Profitability	12,1 %	17,5 %	17,9 %	15,4 %	3,5 %

Source: the original Regulation.

- (49) In summary, all main injury indicators showed a significant downturn after the investigation period. Production and sales volume dropped significantly with a negative impact on capacity utilisation. Market share remained stable, but which was due to the parallel contraction of the Union market. The financial situation of the Union industry also deteriorated with a dramatic drop in profitability after the investigation period, resulting even in losses at the end of the first quarter in 2009. The increase in sales prices could not alter this downward development.
- (50) Therefore, it can be concluded that the Union injury was suffering injury in the period after the IP of the original investigation.

3. The findings of the expiry review in the absence of Hubei's exports

- (51) The Commission also assessed whether the findings of the expiry review would still hold true without Hubei's exports to the Union in the assessment of the likelihood of a recurrence of a threat of injury.

⁽¹⁾ Recital 54 of the original Regulation.

- (52) In this regard, it is recalled that, because Hubei did not cooperate during the expiry review investigation, the Commission did not receive any data concerning its imports during that period. Specific import data for Hubei's imports was also not available in the Article 14(6) database. Imports from Hubei were made under the TARIC additional code A950, which applied to all companies that cooperated during the original investigation but did not receive an individual duty rate. Thus, only the aggregated import data for 16 Chinese exporting producers (including Hubei), all of which were attributed the TARIC additional code A950, was available to the Commission.
- (53) The Commission could, therefore, not make use of this aggregated import data to distil therefrom Hubei's exports alone. Accordingly, due to the non-cooperation and in the absence of statistics on Hubei's imports, the Commission estimated Hubei's import volume during the review investigation period on the basis of its import volume during the original investigation. This information was reported by Hubei in its reply to the questionnaire in the original investigation and was verified by the Commission during the on-spot verification visit that occurred at Hubei's premises in October 2008.
- (54) To recall, during the original investigation period, imports from Hubei accounted for around [8-13 %] of all Chinese imports. The Commission, accordingly, assumed that this percentage of the total of Chinese imports remained unchanged in the absence of cooperation from Hubei during the expiry review investigation.
- (55) According to the expiry review Regulation, total imports from China into the Union during the review investigation period were 67 977 tonnes. On this basis, and transposing that same percentage of Hubei in the total imports from the PRC (that is to say [8-13 %] of total imports) also to the findings in the expiry review Regulation, Hubei's imports were calculated to be [6 000 to 7 500] tonnes out of the 67 977 tonnes recorded in the expiry review Regulation.
- (56) Given that around [87-92 %] of imports were calculated to be from Chinese exporting producers other than Hubei, and given that Article 3(9) of the basic Regulation requires a global assessment of these indicators, the Commission concluded that the exclusion of Hubei's imports from the total Chinese imports during the review investigation period would not call into question the qualitative assessment of the Commission contained in the expiry review Regulation.
- (57) The findings set out in recitals 105 to 109 of the expiry review Regulation were, therefore, confirmed and can be retained without changes thereto, even in the absence of imports deriving from Hubei.

4. Impact of a repeal of measures on the Union industry

- (58) The Commission, subsequently, assessed the impact of the repeal of the measures against China *erga omnes* on the situation of the Union industry.
- (59) Here, it is recalled that the relevant economic data were collected during the expiry review investigation referred to in recital 2. These findings were based on facts and evidence collected during a more recent period (July 2013 to June 2014), while the findings in the original investigation were based on evidence collected for the period July 2007 to June 2008.
- (60) The expiry review investigation clearly indicated the following: should measures be repealed, the industry would be faced with a significant increase of imports from China made at dumped prices. It was established that import volumes, given the low prices, could reach a similar level to the one found during the original investigation. In parallel, the investigation found a decrease of Union consumption of 19 % during the period considered. Indeed, it was established that the expected price level of Chinese imports without anti-dumping duty would be likely to undercut the Union industry prices by around 40 %. The Union industry would not be able to cope with an increase of such low-priced imports. Customers would indeed be able to switch their short-term orders easily from the Union producers to the Chinese exporting producers. This would lead to a significant increase in market share of Chinese imports from 6,3 % during the review investigation period expiry review investigation up to 30 %. Given the substantial increase of Chinese production capacity since the original investigation (60 %), Chinese imports would imminently flood the Union market and gain substantial market share at the expense of the Union industry.

- (61) Moreover, the expiry review investigation revealed significant spare capacity in China (more than the entire Union consumption) that would be likely oriented to the Union market which remained very attractive for Chinese exports despite the measures in force. Indeed, spare capacity was estimated at 2 million tonnes during the review investigation period which exceeded the total Union consumption during the same period. Therefore, China would be able to increase significantly its export volumes to the Union. This conclusion is supported by the fact that a number of other important export markets of China (such as Canada, USA, Colombia, Mexico and Brazil) had trade defence measures in place against Chinese imports of the product concerned and in a number of other countries trade defence investigations were on-going. It was also established that, due to the downturn of the Chinese economy in combination with the high overcapacity, a strong pressure was exerted on the Chinese producers to produce at high capacity utilisation rates.
- (62) Regarding the likely price evolution of the Chinese imports, Chinese import prices were already substantially below the Union industry sales prices during the review investigation period, despite the dumping measures in force. Without anti-dumping duties, Chinese import prices were expected to decrease even further and undercutting margins from around 40 % would be expected. This price pressure would likely be accentuated by the likely imminent surge of Chinese import volumes.
- (63) The expiry review investigation confirmed that the level of inventories was not of any particular significance for the analysis because the Union producers mainly produced on the basis of short-term orders from customers and the inventories therefore only represented an insignificant percentage of the Union producers' production.
- (64) The expiry review also showed that the negative effect on the Union industry would manifest in a shift of customers in the Union to the low-priced Chinese imports. As Union capacity was not expected to increase, this would also lead to a significant gain in market share of Chinese imports to the detriment of the Union industry. This would result in a lower capacity utilisation rate for the Union industry, thus higher unit costs. At the same time, the low-priced imports would exert a price pressure on the Union market which would not allow Union producers to raise prices, thus leading to a decrease in profitability.
- (65) Thus, the expiry review concluded that the repeal of the measures would likely to lead to a recurrence of threat of injury. That conclusion was not called into question by any of the interested parties, nor was the Commission able to retrieve evidence that would call those findings into question.
- (66) Therefore, and considering that even when disregarding import volumes from Hubei, the findings of the expiry review would not have been different, the Commission concluded that, should the measures be repealed, the economic impact on the Union industry would be severe.

E. CONCLUSION AND DISCLOSURE

- (67) Consequently, on balance and with particular consideration for the significant negative effects for the Union industry should measures be repealed, the Commission considered that it would be inappropriate to repeal the measures in force against other Chinese exporting producers other than Hubei.
- (68) On 28 July 2017 the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it decided not to repeal the anti-dumping measures in force for Chinese exporting producers other than Hubei and invited them to comment on these conclusions within a specific time limit.

F. COMMENTS OF INTERESTED PARTIES AFTER DISCLOSURE

- (69) Following disclosure, the Commission received substantive comments on behalf of the CISA and four exporting producers of SPT.
- (70) Those parties submitted that the question to be considered was more whether the repeal of the anti-dumping measures in force would be lawful and consistent with the principle of good administration rather than whether the repeal was appropriate.

- (71) To support that claim the parties argued that, in the Hubei judgments, the Court of Justice and the General Court found that anti-dumping measures were adopted without a proper finding of injury within the meaning of Article 3 of the basic Regulation (and Article 3 of the WTO Anti-dumping Agreement) and that therefore the original measures were legally flawed in their entirety. By referring to the judgment of the Court of Justice in *Clark and Puma* ⁽¹⁾, the parties argued that an illegality found in an original regulation is deemed to affect the legality of the subsequent prolonging regulation, so that it should be concluded that the entirety of the original Regulation on SPT was vitiated by the same error. It follows that by not repealing the measures vis-à-vis Chinese exporting producers other than Hubei, the Commission would act inconsistently with Articles 1, 3(1) and 3(9) of the basic Regulation and with Article VI GATT 1994, as well as Articles 1 and 18.1 of the WTO Anti-dumping Agreement.
- (72) The same parties further argued that it would also not be in line with the principle of good administration to maintain the anti-dumping measures.
- (73) Those parties moreover clarified that they did not request to repeal the measures with *erga omnes* effect by extension of the effects of the Hubei judgments. Rather, they argued that their request to repeal the measures was based on Articles 1, 3(1) and 3(9) of the basic Regulation and with Article VI GATT 1994, and Articles 1 and 18.1 of the WTO Anti-dumping Agreement as mentioned in recital 71. Such repeal would have an *ex post* effect, which would be legally distinct from the extension of the effects of the Hubei judgments which would have a retroactive effect.
- (74) Finally, those parties noted that any negative effects of the repeal of the measures on the situation of the Union industry should be addressed in a new anti-dumping investigation to be initiated in accordance with Article 5 of the basic Regulation.
- (75) The Commission rejected those arguments. Regarding the claim that maintaining the measures in force with regard to the Chinese exporting producers of SPT other than Hubei would be inconsistent with Articles 1, 3(1) and 3(9) of the basic Regulation and with Article VI GATT 1994, as well as Articles 1 and 18.1 of the WTO Anti-dumping Agreement, and as mentioned in recital 23 the Commission recalled that the Hubei judgments limited the annulment of the original regulation to the anti-dumping duties imposed on Hubei alone. As also explained in recital 25, the expiry review investigation concerning the SPT measures against China remained valid to the same extent as the original Regulation, that is, in so far as it applies to the Chinese exporting producers other than Hubei.
- (76) Moreover, under the principle of legal certainty, the definitive nature of measures adopted by the Union institutions precludes them from being called in question once the time-limit laid down in Article 263 TFEU for bringing an action against those measures has expired ⁽²⁾. So, wherever a party has a clear right to seek the annulment of a measure in a direct action before the European courts – as all other Chinese exporting producers other than Hubei did – that party must either exercise that right or forever hold its peace ⁽³⁾.
- (77) It follows that there is no legal obligation stemming from the basic Regulation or GATT 1994 and the WTO Anti-dumping Agreement to repeal the measures in force with regard to Chinese exporting producers other than Hubei. The claims in this regard were rejected.
- (78) Regarding the claim that the Commission did not act in line with the principle of good administration, it is noted, first, that, according to the case-law, the principle of good administration does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights ⁽⁴⁾. Since no interested party was able to raise a violation of a specific right in this regard, the Commission believes the invocation of arguments in that regard is unfounded. Second, and in any case, the Commission believes that it acted namely in line with this principle by re-opening the investigation and performing an assessment of the appropriateness of the measures in force in light of the Hubei judgments. The fact that the parties do not agree with the outcome of the assessment does not make it unlawful or against the principle of the good administration. In addition, reference is made to recital 27.

⁽¹⁾ Judgment of the Court of Justice of 4 February 2016 in joined cases C-659/13 and C-34/14, C&J Clark International Ltd and Puma SE.

⁽²⁾ Judgment of 1 July 2008, *Compagnie maritime belge v Commission*, Case T-276/04, EU:T:2008:237, paragraph 59 and the case-law cited.

⁽³⁾ Opinion of Advocate General Jacobs of 16 November 2000, *Nachi Europe*, Case C-239/99, EU:C:2000:639, paragraph 58.

⁽⁴⁾ Judgments of the General Court of 2 October 2003, Case T-196/99 *Area Cova v Council and Commission*, EU:T:2001:281 paragraph 43; of 4 October 2006, Case T- 193/04 *Tillack v Commission*, EU:T:2006:292, paragraph 127; and of 13 November 2008, Case T-128/05 *SPM v Council and Commission*, EU:T:2008:494, paragraph 127.

- (79) Finally, regarding the possibility of the Union industry to lodge an anti-dumping complaint within the meaning of Article 5 of the basic Regulation, it is noted that the availability of any redress does not invalidate the assessment about the inappropriateness of the possible repeal of measures as performed in recitals 27-51.
- (80) Therefore, the claims made by CISA and the four exporting producers in question were rejected. Therefore, and as concluded in recital 67, on balance and taking into consideration the significant negative effects for the Union industry should measures be repealed, the Commission considered that it would not be appropriate to repeal the measures in force against China in light of the Hubei judgments.

G. CONCLUSION

- (81) Considering the above, following the disclosure sent on 28 July 2017 none of the comments provided by the interested parties could call into question the Commission's findings and the overall conclusions as set out in recital 67 are hereby confirmed.

H. DISCLOSURE

- (82) Given the additional considerations outlined above, in particular in recitals 31 to 38 and 39 to 50, the Commission considered it appropriate to re-disclose to all interested parties those additional facts and considerations on the basis of which it decided not to repeal the anti-dumping measures in force for Chinese exporting producers other than Hubei and invited them to comment on these conclusions within a specific time limit. No comments were received from the interested parties after the additional disclosure.
- (83) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS DECISION:

Article 1

The investigation concerning the judgments in joined cases C-186/14 P and C-193/14 P in relation to Regulation (EC) No 926/2009 and Implementing Regulation (EU) 2015/2272 is hereby terminated.

Article 2

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

Done at Brussels, 28 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

CORRIGENDA**Corrigendum to Commission Implementing Regulation (EU) 2018/583 of 16 April 2018 entering a name in the register of protected designations of origin and protected geographical indications ('Lough Neah Pollan' (PDO))**

(Official Journal of the European Union L 98 of 18 April 2018)

On page 17, in the title of the Regulation, in recitals 1 and 2 and in the first subparagraph of Article 1:

for: 'Lough Neah Pollan',

read: 'Lough Neagh Pollan'.

