

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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

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

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

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

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

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

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

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

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

### 1.2. Initiation of the investigation

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

### 1.3. Subsequent procedure

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

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

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

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

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

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

#### 1.4. Interested parties

- (13) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the two exporting producers concerned and the Chinese authorities, known importers, suppliers, users and traders known to be concerned about the initiation of the investigation and invited them to participate.
- (14) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

#### 1.5. Analogue country producers

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

#### 1.6. Sampling

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

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

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

#### 1.8. Replies to the questionnaire

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

#### 1.9. Verification visits

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

*Union producer*

— Productos Aditivos S.A., Barcelona, Spain

*Importers*

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

*Exporting producers in the PRC*

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

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

- Zhong Hua Fang Da Ltd., Hong Kong

**1.10. Investigation period and period considered**

- (23) The investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

**2. PRODUCT CONCERNED AND LIKE PRODUCT****2.1. Product concerned**

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

**2.2. Like product**

- (27) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned;
  - the product produced and sold by the exporting producer on the domestic market of the People's Republic of China;
  - the product produced and sold in the Union by the Union industry.
- (28) The Commission therefore concluded that those products are like products within the meaning of Article 1(4) of the basic Regulation.

### 3. DUMPING

#### 3.1. Preliminary remarks

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

#### 3.2. Market Economy Treatment ('MET')

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

#### 3.3. Analogue country

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

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

#### **3.4. Normal value**

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

#### **3.5. Export price**

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

#### **3.6. Comparison**

- (48) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.
- (49) Where justified in order to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.
- (50) Appropriate adjustments for transport, insurance, handling, loading and ancillary costs, and bank charges were made where they were found to be reasonable, accurate and supported by verified evidence.

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

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

### 3.8. Dumping margin

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

<sup>(11)</sup> See footnote 4.

<sup>(12)</sup> See footnote 4.

<sup>(13)</sup> See footnote 3.

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

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

#### 4. INJURY

##### 4.1. Preliminary remark

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

##### 4.2. Definition of the Union industry and Union production

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

##### 4.3. Union consumption

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

Table 1

##### Union consumption

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

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

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



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

#### 4.4. Imports from Fang Da

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

##### 4.4.1. Volume and market share

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

Table 2

#### Import volume and market share

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

Source: Article 14(6) database

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

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

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

Table 3

#### Import prices (EUR/kg)

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

Source: Article 14(6) database

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

#### **4.5. Economic situation of the Union industry**

##### *4.5.1. General remarks*

- (76) The production of sodium cyclamate consists of two main production steps. During the first step, which requires the use of reactors, the raw materials are converted into crude (impure) sodium cyclamate. During the second production step, the crude sodium cyclamate needs to be purified before it can be used, in view of the relevant regulatory rules, by downstream food, beverages or pharmaceutical industries.
- (77) Due to a technical incident that took place in July 2011 (explosion in the factory), the Union industry could not perform the first production step — the reaction process — between August 2011 and May 2012, and had to temporarily rely on imported sodium cyclamate which it further purified in order to be able to maintain its commercial activities.
- (78) Since the Union producer had no other choice, but to temporarily rely on imports, and given the limited duration and the volume of imports during the period considered, this incident and its consequences do not invalidate the above conclusions concerning the definition of the Union industry. It however had an important impact on the economic situation of the Union industry for the years 2011-2012, that is to say in the beginning of the period considered, in particular concerning capacity, the production and sales volume as well as the profitability indicators. It also had some impact — although minor — on the development of imports. These elements are taken into consideration when analysing the development of the injury indicators.
- (79) In this context, and in accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered. For the injury determination, the Commission evaluated the economic indicators on the basis of data related to the sole Union producer constituting the Union industry within the meaning of Article 4(1) of the basic Regulation.
- (80) The economic indicators of the sole Union producer, which were evaluated by the Commission, are as follows: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, labour costs, magnitude of dumping margin, and recovery from past dumping, average unit prices, unit costs, inventories, profitability, cash flow, investment, return on investment, and ability to raise capital.

## 4.5.2. Injury indicators

## 4.5.2.1. Production, production capacity and capacity utilisation

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

Table 4

**Production, production capacity and capacity utilisation**

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

Source: Union industry's data

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

## 4.5.2.2. Sales volume and market share

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

Table 5

**Sales volume and market share**

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

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

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

#### 4.5.2.3. Growth

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

#### 4.5.2.4. Employment and productivity

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

Table 6

#### Employment and productivity

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

Source: Union industry's data

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

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

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

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

#### 4.5.2.6. Prices and factors affecting prices

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

Table 7

#### Sales prices in the Union

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

Source: Union industry's data

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

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

#### 4.5.2.7. Labour costs

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

Table 8

#### Average labour costs per employee

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

Source: Union industry's data

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

#### 4.5.2.8. Inventories

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

Table 9

#### Inventories

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

Source: Union industry's data

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

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

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

Table 10

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

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

Source: Union industry's data

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

## 4.5.3. Conclusion on injury

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

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

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



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

## 5. CAUSATION

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

### 5.1. Effects of the dumped imports from Fang Da

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

Table 11

#### Import prices and market share

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

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

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

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

## 5.2. Effects of other factors

### 5.2.1. Imports from exporting producers other than Fang Da

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

Table 12

### Import volume Index

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

Source: Article 14(6) database

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

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

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

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

#### 5.2.3. Export performance of the Union industry

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

Table 13

#### Export performance of the Union industry

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

Source: Union industry's data

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

#### 5.2.4. Consumption

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

### 5.3. Conclusion on causation

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

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

## 6. UNION INTEREST

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

### 6.1. Interest of the Union industry

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

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

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

## **6.2. Interest of unrelated importers**

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

## **6.3. Interest of users**

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

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

#### **6.4. Conclusion on Union interest**

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

### **7. DEFINITIVE ANTI-DUMPING MEASURES**

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

#### **7.1. Injury elimination level (Injury margin)**

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

<sup>(17)</sup> Implementing Regulation (EU) 2016/262.

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

## 7.2. Definitive measures

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

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

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



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

HAS ADOPTED THIS REGULATION:

#### Article 1

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

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

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

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

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

#### Article 2

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

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

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

Done at Brussels, 15 July 2016.

*For the Commission*

*The President*

Jean-Claude JUNKER

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