

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION REGULATION (EU) No 1043/2011

of 19 October 2011

**imposing a provisional anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China**

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

### 1. PROCEDURE

#### 1.1. Initiation

- (1) On 26 January 2011, the European Commission (the Commission) announced, by a notice published in the *Official Journal of the European Union*<sup>(2)</sup> (notice of initiation), the initiation of an anti-dumping proceeding with regard to imports into the Union of oxalic acid originating in India and the People's Republic of China (PRC) or (the countries concerned).
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 13 December 2010 by the European Chemical Industry Council (CEFIC) on behalf of Oxaquim S.A. (the complainant), representing a major proportion, in this case more than 25 %, of the total Union production of oxalic acid. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

#### 1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant, other known Union producers, exporting producers and representatives of the countries concerned, importers, and

users, and associations known to be concerned, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

- (4) In view of the apparent high number of exporting producers in the countries concerned, sampling was envisaged in the notice of initiation for the determination of dumping and injury in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, all exporting producers in the countries concerned were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 January 2010-31 December 2010. Four Indian companies, one of which did not report any sales to the Union, and three groups of companies from the PRC replied to the sampling exercise. In view of the limited number of cooperating companies or groups of companies, sampling was not considered necessary for either India or the PRC and all parties were informed that samples would not be selected.
- (5) Subsequently, one group of companies from the PRC withdrew from further cooperation with the investigation at an early stage. In addition, one Indian company refused the Commission access to its production plant for a verification visit. It was consequently deemed not to cooperate pursuant to Article 18(1) of the basic Regulation and was informed of the possible consequences thereof.
- (6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or to request individual treatment (IT), the Commission sent claim forms to the cooperating Chinese exporting producers, and the authorities of the PRC within the deadlines set out in the notice of initiation. One Chinese group of companies claimed MET pursuant to

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

<sup>(2)</sup> OJ C 24, 26.1.2011, p. 8.

Article 2(7)(b) of the basic Regulation or, failing that, IT, while another group of companies requested IT only.

- (7) Questionnaires were sent to all parties known to be concerned. Replies were received from three companies in India and by two groups of companies in the PRC, and the complainant. The other Union producer did not cooperate. Questionnaire replies were also received from three users and eight importers, among which all users and four importers were visited.
- (8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest and carried out verifications at the premises of the following companies:
- (a) *Union producers*
- Oxaquim S.A. (Spain)
- (b) *Users*
- OMG Kokkola (Finland)
  - P.A.G. Srl (Italy)
  - Third user asked to remain unknown
- (c) *Importers*
- Brenntag BV (Netherlands)
  - Brenntag Sp. z o.o. (Poland)
  - Norkem Limited (United Kingdom)
  - Geratech Marketing (Belgium)
- (d) *Exporting producers in India*
- Punjab Chemicals and Crop Protection Limited
  - Star Oxochem Pvt. Ltd
- (e) *Exporting producers in PRC*
- Shandong Fengyuan Chemicals Stock Co., Ltd; Shandong Fengyuan Uranus Advanced Material Co., Ltd and Qingdao Fengyuan Unite International Trade Co., Ltd (Shandong Fengyuan Group)
  - Yuanping Changyuan Chemicals Co., Ltd; Shanxi Reliance Chemicals Co., Ltd and Tianjin Chengyi International Trading Co., Ltd (Shanxi Reliance Group)

### 1.3. Investigation period

- (9) The investigation of dumping and injury covers the period from 1 January 2010 to 31 December 2010 ('investigation period' or 'IP'). The examination of the

trends relevant for the assessment of injury covered the period from 1 January 2007 to the end of the investigation period (period considered).

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (10) The product concerned is oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, currently falling within CN code ex 2917 11 00 and originating in India and the PRC. There are two types of oxalic acid: *unrefined* oxalic acid and *refined* oxalic acid. Refined oxalic acid, which is produced in the PRC but not in India, is manufactured through a purification process of unrefined oxalic acid, the purpose of which is to remove iron, chlorides, metal traces and other impurities.
- (11) Oxalic acid is used in a wide range of applications, e.g. as a reducing and bleaching agent, in pharmaceutical synthesis and in the manufacture of chemicals.

### 2.2. Like product

- (12) The investigation has shown that oxalic acid produced and sold by the Union industry in the Union, oxalic acid produced and sold on the domestic market of India and the PRC and oxalic acid imported into the Union from India and the PRC has essentially the same basic physical and chemical characteristics and the same basic end uses.
- (13) Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 3.1. India

#### 3.1.1. Preliminary remark

- (14) During the verification visit in India one company failed to provide requested information in either a timely manner or in the requested format. As a result the Commission was not able to verify the information submitted in response to the anti-dumping questionnaire. The company was informed in writing that it might not be considered as a cooperating party and that findings could be made on the basis of the facts available. In its response the company claimed mitigating circumstances which, however, were not such as to lead to a different conclusion. Consequently, Article 18 has been applied to this company and findings made on the basis of facts available. Accordingly, only one exporting producer from India is deemed to have cooperated with the Commission in the current investigation.

### 3.1.2. Normal value

- (15) According to Article 2(2) of the basic Regulation the Commission first examined whether the domestic sales of the like product to independent customers by the exporting producer were representative. As these sales constituted more than 5 % of its sales volume of the product concerned to the Union, it is concluded that the overall sales of the like product were representative.
- (16) The Commission subsequently examined whether the domestic sales of the exporting producer could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers of all sales of the like product.
- (17) Where the profitable sales amount to at least 80 % of all sales, the normal value will be calculated on the basis of all sales, including the unprofitable ones. On the other hand, if the profitable sales account for less than 80 % but more than 20 % of all sales, and if the weighted average full cost is higher than the weighted average price, the normal value will be calculated on the basis of the profitable sales only. A sale is considered to be profitable where the unit price is equal to or above the cost of production.
- (18) The Commission's analysis of domestic sales showed that 41 % of all sales of the product concerned were profitable and the weighted average full cost is higher than the weighted average price. Accordingly, the normal value is calculated as a weighted average price of the profitable sales only.

### 3.1.3. Export price

- (19) The exporting producer in India exported the product concerned directly to independent customers in the Union. Therefore, pursuant to Article 2(8) of the basic Regulation, export prices are established on the basis of the prices actually paid or payable by those independent customers for the product concerned when exported to the Union.

### 3.1.4. Comparison

- (20) The comparison between normal value and export price is made on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price due allowances in the form of adjustments are made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (21) Accordingly, adjustments have been made for transport costs, insurance, handling and packaging costs, credit costs and commission.

### 3.1.5. Dumping margin

- (22) In accordance with Articles 2(11) and 2(12) of the basic Regulation the dumping margin for the cooperating

Indian producer is established on the basis of a comparison of the weighted average normal value with the weighted average export price.

- (23) On this basis, the provisional dumping margin, expressed as a percentage of the cif Union border price, duty unpaid, is 22,8 % for Punjab Chemicals and Crop Protection Limited (PCCPL).
- (24) In order to calculate the countrywide dumping margin applicable to all other exporting producers in India, the level of cooperation was established by comparing the volume of exports to the Union reported by the cooperating exporting producer with Eurostat statistics. Given that cooperation from India was low, i.e. 38 %, it is considered appropriate that the countrywide dumping margin applicable to all other exporters in India should be established on the basis of the most dumped transaction of the cooperating producer.
- (25) On this basis the countrywide level of dumping is provisionally established at 43,6 % of the cif Union frontier price, duty unpaid.

## 3.2. People's Republic of China

### 3.2.1. Market Economy Treatment (MET)/Individual treatment (IT)

- (26) Pursuant to Article 2(7)(b) of the basic Regulation, normal value for imports originating in the PRC shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty, and

— exchange rate conversions are carried out at market rates.

- (27) One group of companies in the PRC requested MET and submitted MET claim forms for the three companies involved in the production and commercialisation of the product concerned. The information provided was subsequently verified by the Commission at the premises of the companies in question.

- (28) The MET investigation demonstrated that one company failed to meet the requirements of criteria 1 to 3. First, it failed to demonstrate that its costs reflected market values due to significant State financial intervention affecting the company's cost structure in the form of, e.g. tax holidays and interest free loans. Second, the MET investigation established a number of serious shortcomings and errors in its accounting and that it was not audited in line with international accounting standards (IAS). Third, distortions carried over from the former non-market economy system were found in respect of the company's land-use rights. More particularly, the company had obtained a land-use right certificate without complying with the contractual terms or paying it in full.
- (29) Furthermore, another company in the group failed to demonstrate that it fulfilled criteria 2 given the fact that it did not have independently audited accounts.
- (30) The Commission disclosed the results of the MET findings to the group of companies concerned and to the complainant and gave them the opportunity to provide comments. The findings were also disclosed to the authorities of the PRC. No comments were submitted to the Commission.
- (31) In view of the above it was concluded that two of the companies in the group failed to fulfil the MET criteria. In compliance with the Union's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET, the group as a whole was refused MET.
- (32) As mentioned in recital 6 above, both of the cooperating Chinese groups of companies requested IT. As it was found that both groups fulfilled all of the criteria of Article 9(5) of the basic Regulation, it was provisionally decided that they be granted IT.

### 3.2.2. Analogue country

- (33) According to Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted MET has to be established on the basis of the domestic prices or constructed normal value in an analogue country.
- (34) In the notice of initiation the Commission indicated its intention to use India as the appropriate analogue country for the purpose of establishing normal value and invited interested parties to comment. No comments were received. In any event, the Commission considers India as an appropriate analogue country since

the only other producing country outside the Union, Japan, has a monopoly market closed to competition and manufactures oxalic acid through a unique method that is not comparable with the PRC. In contrast, Indian producers use a production method comparable with the PRC and are subject to competition on the domestic market.

### 3.2.3. Normal value

- (35) The Chinese companies manufacture and export two types of oxalic acid to the Union: *unrefined* oxalic acid and *refined* oxalic acid. Refined oxalic acid, which is not produced in the analogue country, is manufactured through a purification process of unrefined oxalic acid, the purpose of which is to remove iron, chlorides, metal traces and other impurities. The extra costs for producing refined oxalic acid is estimated at 12 % as compared to the production of unrefined oxalic acid. Accordingly, the Commission considered it appropriate to establish a normal value for both types of oxalic acid.
- (36) With regard to unrefined oxalic acid the normal value has been established on the basis of the normal value established for India in accordance with Article 2(7)(a) of the basic Regulation. Normal value was established, as described in recital 18 above, on the basis of profitable sales only. With regard to refined oxalic acid, which is not produced in the analogue country, in compliance with Article 2(7)(a) of the basic Regulation, the normal value has been constructed on the basis of the manufacturing costs for unrefined oxalic acid in the analogue country. The manufacturing costs are adjusted with an uplift of 12 % to take into account additional manufacturing costs (see recital 35 above) plus selling, general and administrative costs (SG&A) and profit.
- (37) SG&A costs and profit were established, by analogy to Article 2(6) of the basic Regulation, by adding the SG&A and profit for domestic sales of unrefined oxalic acid by the cooperating exporting producer in the analogue country.

### 3.2.4. Export price

- (38) Since both groups were granted IT, the export price has been based on the prices actually paid or payable by the first independent customer in the Union in accordance with Article 2(8) of the basic Regulation.
- (39) Both exporting producers in the PRC exported oxalic acid to the Union via related traders, which added a mark-up to the price paid to the producers. This mark-up is considered when comparing the export price with the established normal value (see recital 42 below).

### 3.2.5. Comparison

- (40) With regard to unrefined oxalic acid, the export price at ex-works level was compared with the normal value established for the analogue country.
- (41) The export price for refined oxalic acid at ex-works level was compared with the constructed normal value (see recital 36 above).
- (42) For the purpose of ensuring a fair comparison between the normal value or constructed normal value and the export price, due allowance in the form of adjustments was made pursuant to Article 2(10) of the basic Regulation. In particular, an adjustment was made pursuant to Article 2(10)(i) for commissions received by related traders.
- (43) In this regard it should be noted that the Commission has found that the related traders via which the exporting producers in the PRC exported oxalic acid to the EU cannot be considered as internal sales departments since they also trade in oxalic acid and other chemical products sourced from unrelated suppliers for either export purposes and/or for domestic sales. It is therefore concluded that the functions of these traders are similar to those of an agent working on a commission basis. Accordingly, the mark-up in price by the traders has been removed to ensure a fair comparison between the export price and the normal value. The adjustment has been calculated on the basis of the profit of an EU unrelated trader and the selling, general and administrative costs of the respective Chinese trader.
- (44) Moreover, further adjustments were made, where appropriate, in respect of indirect taxes, freight, insurance, handling and ancillary costs, packing and credit costs where they were found to be reasonable, accurate and supported by verified evidence.

### 3.2.6. Dumping margins

For the cooperating exporting producers

- (45) Pursuant to Articles 2(11) and (12) of the basic Regulation, the dumping margins were established on the basis of a comparison of a weighted average normal value of each product type with each company's weighted average export price of the product concerned to the Union, as indicated above.
- (46) On this basis, the provisional dumping margins expressed as a percentage of the cif Union frontier price, duty unpaid, are:

Company	Provisional dumping margin
Shandong Fengyuan Chemicals Stock Co., Ltd and Shandong Fengyuan Uranus Advanced Material Co., Ltd	37,7 %
Yuanping Changyuan Chemicals Co., Ltd	14,6 %

For all other non-cooperating exporting producers

- (47) In order to calculate the countrywide dumping margin applicable to all other exporting producers in the PRC, the level of cooperation was established by comparing the volume of exports to the Union reported by the cooperating exporting producers with Eurostat statistics.
- (48) Given that cooperation from the PRC was low at around 46 %, it is considered appropriate that the countrywide dumping margin applicable to all other exporters in the PRC should be based on the most dumped transaction of the cooperating exporters.
- (49) On this basis the countrywide level of dumping is provisionally established at 52,2 % of the cif Union frontier price, duty unpaid.

## 4. INJURY

### 4.1. Union production and Union industry

- (50) The complaint was lodged by the European Chemical Industry Council (CEFIC) on behalf of Oxaquim S.A. hereinafter 'the Complainant', a producer of oxalic acid in the Union, representing a major proportion of the total Union production during the IP. A second Union producer, Clariant, did not object to the initiation of the investigation but decided not to cooperate. There is currently no other producer of the product concerned in the Union. On this basis the two producers Oxaquim S.A. and Clariant constitute the Union industry within the meaning of Article 4(1) of the basic Regulation, representing 100 % of the Union production. They will hereinafter be referred to as 'the Union industry'.
- (51) All available information concerning the two producers Oxaquim S.A. and Clariant, including information provided in the complaint and data collected from the complainant before and after the initiation of the investigation, was used in order to establish the total Union production. On this basis, the total Union production ranged between 11 000 and 15 000 tonnes during the period considered.

### 4.2. Determination of the relevant Union market

- (52) It was found that one of the Union producers used some of its oxalic acid production as an intermediate material

for the production of oxalates (tetra-oxalate, acetosella and potassium bioxalates). This oxalic acid was simply transferred (without invoice) within the same company. This captive use of oxalic acid did not enter the free market and so is not exposed to direct competition with imports of the product concerned. By contrast, production destined for free market sales was found to be in direct competition with imports of the product concerned.

- (53) In order to provide as complete a picture as possible of the situation of the Union industry, data has been obtained and analysed for the entire oxalic acid activity and it was subsequently determined whether the production was destined for captive use or for the free market.
- (54) For the following economic indicators relating to the Union industry, it was found that the analysis and evaluation had to focus on the situation prevailing on the free market: sales volume and sales prices on the Union market, market share, growth, export volume, prices, profitability, return on investments and cash flow.
- (55) As regards other economic indicators however, it was found, on the basis of the investigation, that they could reasonably be examined only by referring to the whole activity. Indeed, production (for both captive use and destined for the free market), capacity, capacity utilisation, investments, stocks, employment, productivity, wages, and ability to raise capital depend upon the whole activity, whether the production is captive or sold on the free market.

#### 4.3. Union consumption

- (56) Given that oxalic acid is part of a CN code that also includes other products, it was not possible to establish import volumes on the basis of Eurostat data. Accordingly, consumption was established on the basis of import volume data provided by the complainant, cross-checked against the verified data provided by the exporting producers from the countries concerned, and the total sales volume on the Union market of the Union industry.
- (57) In view of the small number of suppliers and the need to protect confidential business information pursuant to Article 19 of the basic Regulation, the development of consumption during the period considered has been indexed.

Table 1

#### Consumption in the Union

Index 2007 = 100	2007	2008	2009	IP
Total consumption	100	124	61	95

- (58) In 2008 there was a sharp increase in total consumption in the Union by 24 %, while consumption decreased by

50 % during the following year before increasing again during the IP. Overall, consumption in the EU market decreased by 5 % during the period considered.

### 5. IMPORTS FROM THE COUNTRIES CONCERNED

#### 5.1. Cumulative assessment of the effects of the imports concerned

- (59) The Commission examined whether imports of oxalic acid from the PRC and India should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (60) With regard to the effects of the imports originating in the PRC and India, the investigation showed that the dumping margins were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation and the volume of dumped imports from each of the two countries concerned was not negligible in the sense of Article 5(7) of the basic Regulation.
- (61) With regard to the conditions of competition between the dumped imports from the PRC and India, on the one hand, and between the dumped imports from the PRC and India and the like product, on the other hand, the investigation revealed that they were similar. More specifically, the imported products are sold through the same sales channels and to similar categories of customers thus competing with each other and with the oxalic acid produced in the Union.
- (62) In view of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports from the PRC and India should be examined cumulatively.

#### 5.2. Volume and market share of dumped imports from the countries concerned

- (63) The investigation showed that the imports of oxalic acid from the PRC and India developed as follows:

Table 2

#### Imports from the PRC and India

Import volumes (MT)	2007	2008	2009	IP
PRC and India	7 629	11 763	4 707	7 969
(Index 2007 = 100)	100	154	62	104
Market share				
(Index 2007 = 100)	100	125	101	110

Source: Information from the complainant and questionnaire replies.

- (64) Imports from the countries concerned increased by 4 % in volume during the period considered while total consumption in the EU market decreased by 5 % over the same period (see Table 1 above). As shown in the Table above, there was also a significant gain in market share of 25 % between 2007 and 2008 and 10 % over the period considered.

### 5.3. Price of dumped imports and price undercutting

- (65) Average prices of imports from the countries concerned developed as follows:

Table 3

Price of imports from the PRC and India

Import prices (EUR/MT)	2007	2008	2009	IP
PRC and India	470	641	474	545
(Index 2007 = 100)	100	136	101	116

- (66) Import prices increased by 36 % between 2007 and 2008 before falling back in 2009 to prices similar to those in 2007. Prices increased again by almost 15 % in the IP. Prices increased by 16 % during the period considered. It is notable, however, that import prices decreased by 20 % between 2008 and the IP, despite the increase in the prices of the main inputs (carbon sources and energy) in this period.

- (67) For the purposes of analysing price undercutting the weighted average sales prices of the Union industry to unrelated customers on the Union market, adjusted to an ex-works level, i.e. excluding freight costs in the Union and after deduction of discounts and rebates, were compared to the corresponding weighted average prices of the cooperating exporters from the PRC and India to the first independent customer on the Union market, i.e. net of discounts and adjusted where necessary to cif Union frontier price duly adjusted for customs clearance costs and post-importation costs.

- (68) The comparison showed that during the IP the dumped product concerned originating in the PRC and India sold in the Union undercut the Union industry's sales prices by 16,9 % to 34,6 %. This level of undercutting was combined with a negative price development on the market thereby leading to substantial price depression.

## 6. ECONOMIC SITUATION OF THE UNION INDUSTRY

### 6.1. Preliminary remarks

- (69) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of dumped imports on the

Union industry included an evaluation of all economic factors and indices relating to the state of the Union industry from 2007 to the end of the IP.

- (70) The macroeconomic indicators (production, capacity, capacity utilisation, sales volumes, market share, employment, productivity, wages and magnitude of dumping margins) were assessed at the level of the Union industry, while microeconomic indicators (stocks, sales prices, profitability, cash flow, and return on investment, ability to raise capital and investments, production costs) were based on the information derived from the duly verified questionnaires submitted by the sole cooperating Union producer.

- (71) Taking into account the fact that the data for the injury analysis is derived mainly from one source only, data relating to the Union industry had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

### 6.2. Data relating to the Union industry (macro-economic indicators)

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

Table 4

Total Union production, production capacity and capacity utilisation

(Index 2007 = 100)	2007	2008	2009	IP
Total production	100	101	89	106
Total production capacity	100	100	77	77
Total capacity utilisation	100	101	116	138

- (72) The above Table includes data on the production, production capacity and capacity utilisation of the Union industry as well as, for 2007 and 2008, data of one other Union producer which ceased producing oxalic acid in 2008.

- (73) As shown in the Table above, the production of the Union industry was relatively stable in 2007 and 2008 before falling sharply in 2009. Production increased during the IP. Overall, during the period considered, production increased by 6 %.

- (74) Due to the closure of the production facility of one other Union producer in 2008 the production capacity of the Union industry fell sharply in 2008 by 23 %.

(75) The combination of these two factors, i.e. increase in production volume and decrease in production capacity due to the closure of a production unit by the third Union producer from 2008, led to a significant increase in capacity utilisation of 38 % over the period considered.

#### 6.2.2. Sales volumes and market share

Table 5

##### Sales volumes and market share

(Index 2007 = 100)	2007	2008	2009	IP
Total sales	100	97	61	86
Market share (%)	100	79	99	91

(76) The sales volumes for 2007 and 2008 include the sales of the Union producer that ceased production in 2008.

(77) While Union consumption decreased by 5 % during the period considered (see recital 58 above) the sales volume of the product concerned by the Union industry to independent customers on the Union market decreased by 14 % during the same period, which was translated by a loss in market share of 9 %.

(78) When looking at the development over the period considered, the fall of 14 % in the sales volume of the Union industry was far more pronounced than the decrease of 5 % in Union consumption. As a consequence, the market share of the Union industry also decreased significantly by 9 percentage points during the same period.

#### 6.2.3. Employment, productivity and wages

Table 6

##### Employment, productivity and wages

(Index 2007 = 100)	2007	2008	2009	IP
Total number of employees	100	119	108	96
Total productivity (unit/employee)	100	85	83	111
Total yearly wages	100	121	110	99
Average labour costs per employee	100	119	118	104

(79) The number of employees fell by 4 % during the period considered. It should be noted that production of oxalic acid is not labour-intensive.

(80) During the period considered the total productivity per employee increased by 11 %, as the production increased, whilst there was a fall in the number of employees.

(81) Over the total period considered wages declined by 1 %. After an initial increase in wages of 21 % between 2007 and 2008, they fell continuously up to the IP.

#### 6.2.4. Magnitude of the actual margin of dumping

(82) The dumping margins are specified above in the dumping section. All margins established are significantly above the *de minimis* level. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

### 6.3. Data relating to the cooperating Union producer (Microeconomic indicators)

#### 6.3.1. General remark

(83) The analysis of microeconomic indicators (sales prices and cost of production, stocks, profitability, cash flow, return on investment, ability to raise capital and investments) was carried out at the level of the complainant only as no data was obtained from the other EU producer as described in recital 70.

#### 6.3.2. Average unit prices of the cooperating Union producer and cost of production

Table 7

##### Sales prices

Index 2007 = 100	2007	2008	2009	IP
Average unit selling price	100	143	136	131

Source: questionnaire reply.

(84) Average ex-works sales prices of the Union industry to unrelated customers on the Union market increased by 31 % during the period considered.

Table 8

##### Cost of production

Index 2007 = 100	2007	2008	2009	IP
Average COP/tonne	100	103	102	98

Source: questionnaire reply.

(85) The investigation revealed that the average cost of production of the cooperating Union producer had been relatively stable over the years due to a constant improvement in their production process, which was made possible only through heavy investments (see Tables 9 and 11 above).

## 6.3.3. Stocks

- (86) Given the nature of the product concerned, no stocks are held. The product concerned dries quickly and then cakes and therefore producers only produce goods for immediate shipment.

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

Table 9

**Profitability**

Index 2007 = - 100	2007	2008	2009	IP
Profitability (in EU)	- 100	4	- 2	3

Source: questionnaire reply.

- (87) Profitability for the like product was established by expressing the pre-tax net profit of the sales of the like product by the complainant as a percentage of the turnover of these sales.
- (88) After generating dramatic losses in 2007, the complainant made a small profit in 2008 before making losses again in 2009. The complainant made a small profit in the IP thanks to a decrease in some elements of the COP, as shown in Table 8 above.

Table 10

**Cash flow**

Index 2007 = - 100	2007	2008	2009	IP
Cash flow	- 100	3 054	1 994	868

Source: questionnaire reply.

- (89) The trend shown by the cash flow, which is the ability of the industry to self-finance its activities, reflects to a large extent the evolution of profitability. Consequently, the cash flow was negative in 2007 and, despite some improvement in 2008, it decreased between 2008 and the IP, thus weakening the financial situation of the cooperating Union producer.

Table 11

**Investments**

Index 2007 = 100	2007	2008	2009	IP
Total Investments	100	111	185	277

Source: questionnaire reply.

- (90) The Table above shows that the complainant increased its investments in the product concerned, even when

faced with low profitability. The investments were mainly in the implementation of new production tools and the introduction of new production processes in order to improve efficiency. The increase in investments shows that the industry has not faced difficulties in raising capital, thus demonstrating the continued viability of the industry.

- (91) Investments increased by 177 % over the period considered.
- (92) By increasing its investments in order to improve its production processes the industry, which is capital intensive, still showed an ability to raise capital; nevertheless, this ability is hampered by falling sales and increasing difficulties in generating cash flow.

Table 12

**Return on Investment (ROI)**

Index 2007 = - 100	2007	2008	2009	IP
ROI	- 100	13	- 14	- 51

Source: questionnaire reply.

- (93) Despite the increase in investment, the ROI of the product concerned did not meet the expected return. Although there has been some improvement in 2008, ROI remained negative during the period considered.
- (94) Therefore the industry's growth is limited and clearly disproportionate to the investments made over recent years.

**7. CONCLUSION ON INJURY**

- (95) The investigation has shown that some injury indicators show a positive trend: production volume increased by 6 %, capacity utilisation increased by 38 %, investment increased by 177 %, allowing the company to achieve a somewhat relative profit (from a significant loss in 2007 to a small profit in the IP). However, as shown above, a number of indicators pertaining to the economic situation of the Union industry deteriorated significantly during the period considered.
- (96) Following the closure of the production facility of one Union producer, sales volume decreased by 14 %. Employment had to be reduced by 4 % and production capacity decreased by 23 %. While consumption decreased by only 5 %, market share decreased by almost 9 %. Hence profitability was low, affecting negatively returns on investments and cash flow, especially between 2008 and the IP. The profitability level improved during the period concerned but remained very low in the IP and is insufficient to maintain production in the medium term.

- (97) Even though overall production grew, the Union industry lost significant market share. At the same time, dumped imports from the countries concerned showed a significant increase.
- (98) Considering the above, it is provisionally concluded that the Union industry suffered material injury during the IP within the meaning of Article 3(5) of the basic Regulation.

## 8. CAUSALITY

### 8.1. Introduction

- (99) In accordance with Article 3(6) and (7) of the basic Regulation it was examined whether the material injury suffered by the Union industry has been caused by the dumped imports from the countries concerned. Furthermore, known factors other than dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those factors was not attributed to dumped imports.

### 8.2. Effect of the dumped imports

- (100) The Union consumption of oxalic acid decreased by 5 % over the period considered, while dumped imports from the countries concerned increased by more than 4 % over this period. The highest increase in dumped imports took place between 2007 and 2008, when they increased by 54 %. Imports from the countries concerned increased their market share by 25 % between 2007 and 2008, which coincided with a decrease of 21 % in the market share of the Union industry during that period.
- (101) While average import prices increased by 16 % over the period considered, import prices undercut those of the cooperating Union producer by an average of 21,9 % during the IP, thereby exerting price pressure on the Union industry and preventing the cooperating Union producer from raising prices to more profitable levels.
- (102) It is recalled that the Union industry faced a significant drop in its sales volume (- 14 %). However, this decrease in sales was much more pronounced than the fall in demand and led to a loss of market share of 9 %. At the same time, the market share of the countries concerned increased by 10 %. This shows that the Union industry's market share has largely been taken over by the dumped imports from the countries concerned.
- (103) It is therefore considered that the continued pressure exerted by the low-priced dumped imports from the countries concerned on the Union market did not allow the Union to adapt its sales prices to the

increased raw material and energy costs. This led to the loss of market share and a continuously poor profitability situation for the Union industry.

- (104) In view of the above, it was provisionally concluded that the surge in the low-priced dumped imports from the countries concerned had a considerable negative impact on the economic situation of the Union industry.

### 8.3. Effect of other factors

- (105) The other factors which were examined in the context of the causality are the development of demand on the Union market, the prices of raw material, the export performance of the Union industry, the imports from other countries of the product concerned and the industry's captive use of oxalic acid and the economic crisis.

#### 8.3.1. Development of demand on the Union market

- (106) As indicated in Table 1 above, the Union consumption of oxalic acid first increased by 24 % in 2008, while it decreased by 39 % during the following year to increase again during the IP. Overall, the consumption in the EU market decreased by 5 % during the period considered. During the same period the Union industry lost market share.
- (107) Although the investigation revealed that imports from the countries concerned were also affected by the fall in demand on the Union market in 2009, it is noteworthy that, over the period considered, the exporters in the countries concerned managed to increase their sales volumes and market share through the price pressure exerted on the market by the dumped imports.
- (108) Accordingly, it is provisionally considered that the deterioration of the economic situation of the Union industry is caused mainly by the surge in the dumped imports from the countries concerned and the undercutting practised by exporters in the countries concerned and not by decreasing consumption. Even though the contraction in demand contributed to the injury, it could not break the causal link between the material injury suffered and the increase in dumped imports.

#### 8.3.2. Prices of the main raw material

- (109) As shown in Table 8 above, the average cost of production remained relatively stable despite a sharp increase in the cost of the main raw material (sugar). Indeed, the investigation showed that the cost of production of the cooperating Union producer did not follow the same trend as the evolution of the prices of

one of the main raw materials in the production of oxalic acid. The sharp increase of average sugar prices by 50 % over the period considered has been mitigated by the investments made by the cooperating Union producer to improve its production processes. Overall, therefore, the net effect was a decrease of 12 % in the cost of production. Nonetheless, as shown in Table 7 above, unit sales price increased by 31 % during the period considered. It was found that the exporters in the countries concerned were subject to the same economic conditions with regard to the evolution of prices of raw materials, as unit import prices followed the same trend as the unit sales prices of the cooperating Union producer, albeit at lower levels.

- (110) In the absence of injurious dumping it could be expected that prices would have been regularly adapted to reflect the development of the various components of the cost of production. However, this did not happen. The cooperating Union producer was not able to achieve the solid profit margins necessary for this capital-intensive producer and its cash flow also decreased.
- (111) Accordingly, it is provisionally considered that the dumped imports from the countries concerned, which undercut the cooperating Union producer's prices, depressed the prices on the Union market and prevented the cooperating Union producer from increasing its sales prices to cover its costs or to achieve a reasonable level of profitability.
- (112) Given that the raw material prices were also affecting the exporters in the countries concerned, it was provisionally concluded that the increase in the prices of raw materials could not have had an impact on the material injury suffered by the Union industry during the period considered.

### 8.3.3. Export performance of the Union industry

Table 13

#### Export volume and unit prices

Index 2007 = 100	2007	2008	2009	IP
Exports in tonnes	100	80	140	152
Average export price	100	104	103	91

Source: questionnaire reply.

- (113) Export performance was also examined as one of the known factors other than the dumped imports, which could at the same time have injured the Union industry, to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

- (114) The analysis showed that the export sales to unrelated parties made by the cooperating Union producer represented an important part of their total sales (around 30 %). During the period considered, the export volumes of the cooperating Union producer increased by 52 %, while the unit price of export sales decreased considerably, in contrast with the sales price of the cooperating Union producer within the Union, which increased significantly. The investigation revealed that exports played an important role in keeping capacity utilisation high to cover the fixed costs and costs of investments in machinery. Even though export sales were made at prices lower than those on the Union market, these low prices resulted from competition with low-priced oxalic acid in the export markets by the exporters from the countries concerned. The investigation showed that these exports allowed the cooperating Union producer to mitigate the injury suffered on the EU market and are thus not such as to break the causal link established between the dumped imports from the countries concerned and the injury suffered by the Union industry.

### 8.3.4. Imports from other third countries

- (115) In the absence of any imports from countries other than the countries concerned, this element had no impact on the EU market.

### 8.3.5. Captive use

- (116) As mentioned in recitals 52 to 55 above, captive use is limited to captive transfers within one of the Union producers, where oxalic acid is transformed into oxalates within the company. The profits made by selling oxalates are considerable and actually allowed the producer to continue its activities despite the losses on oxalic acid. Therefore this element does not contribute to the material injury suffered by the Union industry.

### 8.3.6. Economic crisis

- (117) In 2009 the Union consumption of oxalic acid halved compared to 2008 due to the economic crisis, contributing to a loss in sales volume (- 40 %) and value (- 45 %) for the Union industry. However, by reducing prices in this period by around 5 % the industry was able to gain market share (11 %) and so minimise the negative effects of the crisis. Indeed, the industry was close to breakeven in 2009.

- (118) Although the economic crisis in 2008-2009 might have contributed to the Union industry's poor performance, overall, this could not be considered to have an impact such as to break the causal link between the dumped imports and the injurious situation of the Union industry.

#### 8.4. Conclusion on causation

- (119) The above analysis demonstrated that there was an increase in the sales volume and market share of the countries concerned over the period considered. In addition, it was found that these imports were made at dumped prices which were significantly — almost 22 % — below the prices charged by the Union industry on the Union market for the product concerned during the IP.
- (120) This increase in volume and market share of the low-priced dumped imports from the countries concerned was achieved despite an overall decrease in demand on the Union market during the period considered. The growing market share of the imports coincided with the negative development in the market share of the Union industry during the same period. At the same time a negative development in the main indicators of the economic and financial situation of the Union industry were observed as shown above.
- (121) The fall in consumption on the Union market in 2009 affected negatively the performance of the Union industry. However, overall, this and the other factors could not be considered to have an impact such as to break the causal link between the dumped imports and the injurious situation of the Union industry.
- (122) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it is provisionally concluded that the dumped imports from the countries concerned have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.
- (125) One of the two Union producers did not object to the initiation of the investigation, but provided no further information and did not cooperate during the investigation.
- (126) The Union industry has suffered material injury caused by the dumped imports from the countries concerned. It is recalled that most relevant injury indicators showed a negative trend during the period considered. In particular, injury indicators relating to the financial performance of the Union industry, such as profitability, cash flow and return on investments, were seriously affected. In the absence of measures, it is considered that the recovery in the oxalic acid sector will not be sufficient to allow the recovery of the Union industry's financial situation and might deteriorate further.
- (127) It is expected that the imposition of measures will restore effective and fair trading conditions on the Union market, allowing the Union industry to align the prices of oxalic acid to reflect the cost of production. It can be expected that the imposition of measures would enable the Union industry to regain, at least part of the market share lost during the period considered, with a further positive impact on its economic situation and profitability.
- (128) It was therefore concluded that the imposition of provisional anti-dumping measures on imports of oxalic acid originating in the PRC and India would be in the interest of the Union industry.

### 9. UNION INTEREST

#### 9.1. Preliminary remark

- (123) In accordance with Article 21 of the basic Regulation it was examined whether, despite the provisional conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt provisional anti-dumping measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users of the product concerned.

#### 9.2. Interest of the Union industry

- (124) The Union industry consists of two producers, with factories located in different Member States of the Union, employing directly 30-50 people in the production and sale of the like product.

#### 9.3. Interest of importers

- (129) Questionnaire replies were received from eight unrelated importers. Three of these importers only imported small volumes of the product concerned and could transfer the price increase to their clients. Some of them indicated that they might consider removing the product from their product range if anti-dumping duties were imposed.
- (130) The fourth importer claimed that its clients could use the inward processing scheme for all their end-products using oxalic acid in the production process and re-exported outside the EU. Accordingly, the impact of the imposition of anti-dumping measures on this importer would not be significant.
- (131) On the basis of the above, it is provisionally concluded that the imposition of measures should not, overall, have a significant impact on the importers. In general, profit margins on oxalic acid are considerably high for importers and they expect to be able to transfer the price increases to their customers.

#### 9.4. Interest of users

- (132) The cooperating users accounted for 22 % of the Union consumption of oxalic acid during the IP. The investigation showed that the distinction between the uses of *unrefined* oxalic acid and *refined* oxalic acid is pertinent for the EU interest test with regard to users. The cooperating Union industry produces unrefined, whilst the other non-cooperating EU producer produces refined, which is used mainly in the pharmaceutical, food and fine metal powder extraction sectors.
- (133) The users of unrefined oxalic acid claimed that the imposition of measures would lead to a price increase by the cooperating Union industry, which is the only EU supplier. On the other hand, users also mentioned that it would not be desirable to be completely dependent on foreign imports.
- (134) For users producing cleaning and bleaching products, oxalic acid represents only a small part of their inputs and they could probably transfer the price increase resulting from anti-dumping duties to their clients or change the formulas of their products where possible to use substitute products in place of oxalic acid.
- (135) For the users producing polishing products, oxalic acid represents a major share of their input costs and is not substitutable. It is unlikely that users would be able to fully transfer price increases to their clients due to competition from non-EU producers. However, they export 95 % of their products outside the EU and could reclaim duties in the framework of the inward processing system.
- (136) For users using oxalic acid for other applications such as recycling metals from scrap, oxalic acid represents an important portion of the total production costs of the end-product for which oxalic acid is used. The market of the end-product is very volatile. Oxalic acid is not replaceable in the production process. The main Union scrap recycler currently buys all of its oxalic acid from the Union producers. With the imposition of anti-dumping duties, the industry is in a position to choose to what extent it will increase prices, if at all, in order to benefit from the imposition of duties. Therefore, the impact of the imposition of measures on this user is unclear. However, given that this user is currently making low profits on its sales of the finished product, any price increase will have a negative impact if the company is not able to pass on the price increase.
- (137) 'Refined' oxalic acid is used, amongst others, for the production of powder of certain metals. Oxalic acid represents a considerable part of the total production costs. In this process oxalic acid is not replaceable.

Profits in this sector can, however, be significant. As annual contracts are commonplace in this sector, in the short term, passing on price increases will not be easy. However, bearing in mind that the lowest proposed duty rate is 14,6 % and that high profits are being achieved, it would be possible to absorb any price increase in the short term.

- (138) One user claimed that the production of refined oxalic acid was not sufficient to meet demand. In this regard, it was found that the shortfall in the Union between production of the refined type and consumption was around 1 000-2 000 tonnes/year. Given that the bulk of the end-products for which *refined* oxalic acid is used during the production process is exported, users could, in any event, operate under the inward processing regime if they so wished.

#### 9.5. Conclusion on Union interest

- (139) In view of the above, it was provisionally concluded that, overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of provisional measures on imports of acid oxalic originating in the PRC and India.

### 10. PROVISIONAL ANTI-DUMPING MEASURES

#### 10.1. Injury elimination level

- (140) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.
- (141) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry.
- (142) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union. It is considered that the profit that could be achieved in the absence of dumped imports is 8 % of turnover and that this profit margin could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious dumping.

- (143) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adding the above-mentioned profit margin of 8 % to the cost of production.
- (144) The necessary price increase was then determined on the basis of a comparison per product type of the weighted average import price of the cooperating exporting producers in the PRC and India, duly adjusted for importation costs and customs duties with the non-injurious price of the product types sold by the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average cif import value of the types compared.

## 10.2. Provisional measures

- (145) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping measures should be imposed in respect of imports originating in the PRC and India at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.
- (146) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These
- (147) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (148) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.
- (149) The dumping and injury margins established are as follows:

Country	Company	Dumping margin (%)	Injury margin (%)
India	Punjab Chemicals and Crop Protection Limited (PCCPL)	22,8	40,8
	All other companies	43,6	50,7
PRC	Shandong Fengyuan Chemicals Stock Co., Ltd and Shandong Fengyuan Uranus Advanced Material Co., Ltd	37,7	54,5
	Yuanping Changyuan Chemicals Co., Ltd	14,6	22,1
	All other companies	52,2	66,3

## 11. FINAL PROVISIONS

- (150) Any exporting producer of oxalic acid in the PRC which has not yet made itself known, since it considered that it met neither the MET nor the IT criteria, but which considers that a separate duty rate should be established, is invited to make itself known to the European Commission within 10 days from the day following the publication of this Regulation in the *Official Journal of the European Union* <sup>(2)</sup>.

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

<sup>(2)</sup> In such situations, the Commission will gather information in the light of the considerations expressed by the Appellate Body of the World Trade Organisation in its report in DS 397 (EC-Fasteners), in particular points 371-384 thereof (see [www.wto.org](http://www.wto.org)). However, the fact that the Commission gathers this information does not prejudice whether and which consequences the European Union will attach to that ruling in this investigation.

- (151) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing.
- (152) The findings concerning the imposition of anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, currently falling within CN code ex 2917 11 00 (TARIC code 2917 11 00 91) and originating in the People's Republic of China and India.

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

Country	Company	Provisional duty (%)	TARIC additional code
India	Punjab Chemicals and Crop Protection Limited	22,8	B230
	All other companies	43,6	B999
PRC	Shandong Fengyuan Chemicals Stock Co., Ltd; Shandong Fengyuan Uranus Advanced Material Co., Ltd	37,7	B231
	Yuanping Changyuan Chemicals Co., Ltd	14,6	B232
	All other companies	52,2	B999

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

*Article 2*

1. Without prejudice to Article 20 of Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing

and apply to be heard orally by the Commission within 1 month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within 1 month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of 6 months.

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

Done at Brussels, 19 October 2011.

*For the Commission*  
*The President*  
 José Manuel BARROSO