COMMISSION IMPLEMENTING REGULATION (EU) 2021/607

of 14 April 2021

imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EC) No 1193/2008 ([2]) the Council imposed anti-dumping duties on imports of citric acid, originating in the People's Republic of China ('PRC', 'China or the 'country concerned') ('the original measures'). The investigation that led to the imposition of the original measures will be referred to as 'the original investigation'. The measures took the form of an *ad valorem* duty ranging from 6,6 % to 42,7 %.

(2) By Decision 2008/899/EC ([3]) the European Commission ('the Commission'), accepted price undertakings offered by six Chinese exporting producers (including a group of exporting producers) together with the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC'). The producers were Anhui BBCA Biochemical Co., Ltd. (now COFCO Bio-Chemical Energy (Yushu) Co., Ltd.); Laiwu Taihe Biochemistry Co., Ltd.; RZBC Co., Ltd. and RZBC (Juxian) Co., Ltd.; TTCA Co., Ltd.; Weifang Ensign Industry Co., Ltd. and Yixing Union Biochemical Co., Ltd. (now Jiangsu Guoxin Union Energy Co., Ltd.).

(3) By Decision 2012/501/EU ([4]) the Commission withdrew the undertaking offered by one exporting producer, i.e. Laiwu Taihe Biochemistry Co. Ltd. ('Laiwu Taihe').

(4) By Regulation (EU) 2015/82 ([5]) the Commission re-imposed the definitive anti-dumping measures on imports of citric acid originating in the PRC following an expiry review, (the 'previous expiry review').

(5) By Regulation (EU) 2016/32 ([6]), the Commission extended the measures on imports of citric acid originating in China to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not.

(6) By Regulation (EU) 2016/704 ([7]), the Commission withdrew the undertaking from two more companies based on findings of breaches of the undertaking and its impracticability, both of which justified the withdrawal of the acceptance of the undertaking.

(7) By Regulation (EU) 2018/1236 ([8]), the Commission terminated the investigation concerning the possible circumvention on imports of citric acid originating in China by imports of citric acid consigned from Cambodia, whether declared as originating in Cambodia or not.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ L 323, 3.12.2008, p. 1.
([3]) OJ L 323, 3.12.2008, p. 62.
([4]) OJ L 244, 8.9.2012, p. 27.
([5]) OJ L 15, 22.1.2015, p. 8.
([6]) OJ L 10, 15.1.2016, p. 3.
([7]) OJ L 122, 12.5.2016, p. 19.
([8]) OJ L 231, 14.9.2018, p. 20.

(8) The anti-dumping duties currently in force range from 15,3 % to 42,7 % on imports from the cooperating exporting producers and a duty rate of 42,7 % applies to imports from all other companies.

1.2. **Request for an expiry review**

(9) Following the publication of a notice of impending expiry ([9]), the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.

(10) The request for review was lodged on 21 October 2019 by N.V. Citrique Belge S.A. and Jungbunzlauer Austria AG ('the applicants') on behalf of Union producers representing 100 % of the total Union production of citric acid. The request for review was based on the grounds that the expiry of the measures would likely result in continuation of dumping and recurrence of injury to the Union industry.

1.3. **Initiation of an expiry review**

(11) Having determined that sufficient evidence existed for the initiation of an expiry review, and after consulting the Committee established by Article 15(1) of the basic Regulation, the Commission initiated an expiry review regarding imports of citric acid originating in China pursuant to Article 11(2) of the basic Regulation. On 20 January 2020, the Commission published a Notice of Initiation in the *Official Journal of the European Union* ([10]) ('the Notice of Initiation').

1.4. **Review investigation period and period considered**

(12) The investigation of continuation or recurrence of dumping covered the period from 1 January 2019 to 31 December 2019 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2016 to the end of the review investigation period ('the period considered').

1.5. **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 applicants, the known exporting producers, the Chinese authorities, known importers and users about the initiation of the review and invited them to participate.

(14) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. **Sampling**

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

1.6.1. *No sampling of Union producers*

(16) In the Notice of Initiation, the Commission stated that the two known Union producers, N.V. Citrique Belge S.A. and Jungbunzlauer Austria AG, had to submit the completed questionnaire within 37 days of the date of publication of the Notice of Initiation. The Commission also invited other Union producers and representative associations, if any, to make themselves known and request a questionnaire. No other Union producer or representative association came forward.

([9]) OJ C 165, 14.5.2019, p. 3.

([10]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of citric acid originating in the People's Republic of China (OJ C 18, 20.1.2020, p. 3).

1.6.2. *Sampling of importers*

(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) One unrelated importer provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary.

1.6.3. *Sampling of exporting producers in China*

(19) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in China to provide the information specified in the Notice of Initiation. In addition, it asked the mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(20) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary.

(21) Overall, the cooperation of Chinese exporting producers was insufficient. In fact, Laiwu Taihe, the biggest exporting producer accounting for over 53 % of exports from China to the Union, did not cooperate in the present expiry review. The Commission instead used the data of the four cooperating exporting producers.

1.7. **Replies to the questionnaire**

(22) At the initiation, the Commission made the questionnaires for the Union producers, importers, users, and exporting producers in China available in the file for inspection by interested parties and on DG Trade's website ([11]). In addition, the Commission sent a questionnaire concerning the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation in China to the Government of the People's Republic of China ('GOC').

(23) The Commission received questionnaire replies from the applicants, one importer, four users, and four exporting producers. The GOC did not reply to the questionnaire concerning the existence of significant distortions in China.

1.8. **Verification**

(24) Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak as detailed in a notice published to the case file ('the COVID-19 Notice' ([12])), the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at the premises of the entities which submitted the questionnaire replies.

(25) Instead the Commission remotely cross-checked all the information deemed necessary for its determinations. The Commission carried out remote cross-checks of the following companies/parties:

Union producers:

— S.A. Citrique Belge N.V., Tienen, Belgium,

— Jungbunzlauer Austria AG, Vienna, Austria and Jungbunzlauer Ladenburg GmbH, Ladenburg, Germany;

Users:

— Reckitt Benckiser (ENA) BV, Schiphol, the Netherlands,

— Henkel AG & Co. KGaA, Düsseldorf, Germany;

([11]) Link to the case-specific website:https://trade.ec.europa.eu/tdi/case_details.cfm?id=2432

([12]) Notice available on the case file under number t20.002450.

Exporting producers in China:

— COFCO Bio-Chemical Energy (Yushu) Co. Ltd., Changchun, Jilin Province, People's Republic of China,

— Jiangsu Guoxin Union Energy Co., Ltd., Yixing, Jiangsu Province, People's Republic of China,

— RZBC Group, Rizhao, Shandong Province, People's Republic of China,

— Weifang Ensign Industry Co., Ltd., Weifang, Shandong Province, People's Republic of China.

1.9. **Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation**

(26) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions in China within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.

(27) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in China to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing citric acid. Four Chinese exporting producers submitted the relevant information.

(28) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the GOC. The GOC, however, did not reply to that questionnaire. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China.

(29) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. In reaction to the Notice of Initiation, CCCMC made comments on the existence of significant distortions. These comments were analysed in detail below under point 3.2.

(30) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a), first indent of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

(31) On 5 March 2020, the Commission published a first note to the file on the sources for the determination of the normal value ('the Note of 5 March 2020') seeking the views of the interested parties on the relevant sources that the Commission might use for the determination of the normal value, in accordance with Article 2(6a)(e) second paragraph of the basic Regulation ([13]). In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified at that stage Brazil, Colombia and Thailand as possible representative countries. On 13 March 2020, upon the request of CCCMC, the Commission disclosed Annex IV to the Note of 5 March 2020, containing the publicly available Global Trade Atlas ('GTA') ([14]) data that the Commission services proposed to use for the input materials and by-products listed in the Note of 5 March 2020.

(32) The Commission gave all interested parties the opportunity to comment. The Commission received comments from four Chinese exporting producers, from CCCMC and the applicants. The GOC did not provide any comments.

([13]) Notice available on the case file under number t20.002149.

([14]) Trade information database provided by IHS Markit,https://ihsmarkit.com/products.html

(33) The Commission addressed the comments received on the Note of 5 March in the Second Note on the Sources for the Determination of the Normal Value of 30 November 2020 ('the Note of 30 November 2020') ([15]). The Commission also established a provisional list of factors of production and concluded that, at that stage, it intended to use Colombia as the representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment and it received comments from the applicants and CCCMC. These comments were analysed in detail below under points 3.3. and 3.4.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(34) The product subject to this review is the same as in the original investigation and previous expiry review, namely citric acid and trisodium citrate dihydrate, currently falling under CN codes 2918 14 00 and ex 2918 15 00 (TARIC code 2918 15 00 11 and 2918 15 00 19) ('the product under review').

(35) Citric acid is used as an acidulant and pH regulator in a wide range of applications, for example home care detergents, beverages, food, cosmetics and pharmaceuticals. Its main raw materials are sugar/molasses, tapioca, corn or glucose (obtained from cereals) and different agents for the submerged microbial fermentation of carbohydrates.

2.2. Like product

(36) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product under review originating in the country concerned,

— the product produced and sold on the domestic market of the country concerned, and

— the product produced and sold in the Union by the Union industry.

(37) Those products were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

(38) The Commission did not receive claims regarding the product scope. CCCMC noted in its comments on initiation that the product under review as defined in the Notice of Initiation covers the product types subject to the original measures as well as the types covered by the first expiry review.

3. DUMPING

3.1. Preliminary remarks

(39) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from China.

(40) The total declared production capacity of the cooperating exporting producers amounted roughly to 72 % of the total estimated Chinese production capacity. Given the low level of cooperation, the Commission applied Article 18 and based its findings on the Chinese market of citric acid including production, capacity and spare capacity, on facts available.

(41) The findings in relation to the likelihood of continuation of dumping set out below were based in particular on the information contained in the request for review, the statistics based on the data reported to the Commission by the Member States in accordance with Article 14(6) of the basic Regulation ('Article 14(6) database'), as well as the sampling replies provided at the time of initiation and the questionnaire replies. In addition, the Commission used other sources of publicly available information such as the GTA and the Orbis Bureau van Dijk ([16]) ('Orbis') databases.

([15]) Notice available on the case file under number t20.007937.
([16]) Company financial database provided by Bureau van Dijk,www.bvdinfo.com

3.2. **Normal value**

(42) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.

(43) However, Article 2(6a)(a) of the basic Regulation stipulates that in case it is determined that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, and shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits.

(44) As further explained below, the Commission concluded in the present investigation that, based on the evidence available and in view of the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. *Existence of significant distortions*

3.2.1.1. Introduction

(45) Article 2(6a)(b) of the basic Regulation defines 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:

— 'the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country,

— state presence in firms allowing the state to interfere with respect to prices or costs,

— public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces,

— the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws,

— wage costs being distorted,

— access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.

(46) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product under review. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

(47) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.

(48) Pursuant to this provision, the Commission has issued a country report concerning China (hereinafter 'the Report' or 'the China report') ([17]), showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage.

(49) The review request submitted by the applicant, on top of reiterating the findings made in the Report, particularly in the chemical sector, contained additional information on the previous US anti-dumping proceedings concerning citric acid and in particular the findings in the most recent proceeding, as published in the Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts, 7 December 2015. In particular, the applicant referred to the findings concerning: policy lending (loans made available to the citric acid industry by state-owned banks with interest rates below he commercial rates); reduced income taxes (citric acid industry benefitting from reduced income taxes and claiming tax credits on the purchase of domestic equipment); cheaper access to auxiliary raw materials, especially chemicals, including sulphuric acid, caustic soda, steam coal, calcium carbonate or lime; land (findings on land use rights obtained for less than adequate remuneration); electricity (finding of the US Department of Commerce that the investigated company was provided with electricity for less than adequate remuneration) as well as subsidies in the form of direct transfer of funds and an environmental tax offset.

(50) As indicated in recitals (23) and (28) respectively, the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

(51) Comments in this regard were received in response to the initiation of the case from CCCMC on behalf CCCMC cooperating member producers.

(52) First, CCCMC argued that Article 2(6a) of the basic Regulation is inconsistent with WTO law. First, CCCMC claimed that the WTO Anti-Dumping Agreement ('ADA') does not recognise the concept of significant distortions in Article 2.2 ADA, which only allows the construction of the normal value if there are no sales in the ordinary course of trade. CCCMC observed that this Article does not mention significant distortions allowing for the construction of normal value. Second, CCCMC claimed that even if the concept of significant distortions were in accordance with WTO law, the constructed value would need to be calculated in accordance with Article 2.2.1.1 ADA and its interpretation by the WTO Appellate Body in *EU – Biodiesel* (DS478). Third, CCCMC submitted that even though the concept of 'ordinary course of trade' is not explicitly defined in the ADA, Article 2.2.1 provides that sales of a product can be treated as not being in the ordinary course of trade and disregarded 'only if […] such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs […]'. Fourth, the ADA requires that the normal value must be determined based on the sales prices or costs that reflect the price or cost level in the country of origin. Therefore, the constructed price based on the representative country cannot reflect the price and cost level in the exporting country. According to CCCMC, there is no provision in the WTO law allowing for the use of data from a third country.

(53) The Commission considered that the provision of Article 2(6a) is fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCMC. It is the Commission's view that, in accordance with the opinion of the WTO Panel and the Appellate Body in *EU – Biodiesel* (DS473), the provisions of the basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second subparagraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of

([17]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter 'Report').

normal value. In these circumstances, this provision envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Therefore, the Commission rejected this claim.

(54) Second, CCCMC submitted that in the case at hand there is no proof of significant distortions. First, CCCMC submitted that the applicants did not provide sufficient evidence of the existence of significant distortions warranting an initiation in accordance with Article 5(3) of the basic Regulation, in particular because the evidence was very general and not specific to the citric acid industry. Second, the Report was published in December 2017, while the RIP in this investigation covered 2019. Therefore, the evidence collected in the Report was outdated and did not reflect the situation of the citric acid industry in the case at hand. Third, in *US – Countervailing Measures (China) (Article 21.5)* (DS437), the Appellate Body found that 'the existence of price distortion resulting from government intervention has to be established and adequately explained' and that 'the determination […] must be made on a case-by-case basis'. Therefore, CCCMC submitted that the Report was an inadequate source to use as evidence in the citric acid industry, as it describes distortions in the broader chemical industry sector. Fourth, CCCMC argued that the US anti-dumping proceedings mentioned by the applicants are irrelevant in this case, as they concern findings made before the RIP.

(55) In response, the Commission recalled that point 4.1 of the Notice of Initiation referred to a number of elements in the Chinese citric acid market, to substantiate that the market was affected by the distortions in the Chinese raw materials, petrochemical and chemical sectors. The Commission considered that the evidence listed in the Notice of Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Furthermore, while the findings in the dumping investigations conducted by the authorities of other countries do not automatically constitute evidence of distortions in EU anti-dumping investigations, they may contain relevant probative elements to illustrate that there are certain abnormalities in the relevant market of the exporting country, as was the case in this instance with regard to the Chinese citric acid industry.

(56) Regarding the argument that the Report was outdated, the Commission recalled that so far no evidence was provided showing that the report is outdated. On the contrary, the Commission noted in particular that the main policy documents and evidence contained in the report, including the relevant five-year plans and legislation applicable to the product under review were still relevant during the RIP, and that neither CCCMC nor other parties have proven that this was no longer the case.

(57) The Commission further recalled that *US – Countervailing Measures (China)* (DS437) did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. That dispute concerned a different factual situation, and concerned the interpretation of the WTO Agreement on Subsidies and Countervailing Measures, not the ADA. In any event, as explained in recitals (49) and (55) above, the evidence put forward clearly related to the Chinese citric acid market and thus to the product under investigation in the case at hand. Therefore, this claim was rejected.

(58) Regarding the last argument of CCCMC that the findings in the US anti-dumping proceedings were irrelevant in this case, the Commission observes that the evidence listed in the Notice of Initiation by the applicant included also other findings apart from the results of US investigations, particularly a number of evidence based on the Report. This evidence was deemed sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Whereas the US investigation took place before the RIP, the comments provided by the applicants on initiation served as additional supporting indication of irregularities on the Chinese market.

(59) Furthermore, CCCMC submitted comments on the First Note on the Sources for Determination of Normal Value. In this submission, CCCMC first reiterated its comments made on initiation. Second, it asserted that according to Article 2(6a)(a) of the basic Regulation, only those costs of production and sales which were proven to be distorted should be replaced by undistorted prices or benchmarks. Specifically, CCCMC commented that the applicants failed to prove that the labour costs in China were distorted, hence the Commission should have used the effective labour costs as reported by the exporting producers. CCCMC stated that it was unreasonable to replace the labour costs

with those in a third country, because they were influenced by several factors, such as the supply and demand relationship in the market concerned, the degree of automation in the production and the commodity price level in the region where the producers were located. CCCMC added that the labour costs varied not only between different countries but also between different Chinese producers. Moreover, CCCMC commented that the energy costs varied according to several factors, including the type of energy and its availability in the area, the technology of energy generation, the relationship between supply and demand, etc. Therefore, the prices of energy in one country cannot reflect the price level of energy under normal market condition in another country.

(60) The Commission noted that once it is determined that due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b), it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct normal using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). Article 2(6a)(a) allows the use of domestic costs only if they are positively established not to be distorted. However, individual labour and energy costs and/or other input costs of production and sale of the product under review could not be established to be undistorted in light of the evidence available. As evidenced in Sections 3.2.1.1 to 3.2.1.9, the Commission has established the existence of significant distortions in the citric acid industry, and there was no positive evidence of the factors of production of individual exporting producers being undistorted.

(61) In any event, the calculation of the labour and energy costs were based on the respective amount of labour and energy used in the manufacturing process as declared by the exporting producers. Hence, the amount of labour and energy corresponded to the real use of these factors by Chinese producers, whereas only the cost of labour and energy were replaced by the undistorted value from the representative country. While it may be true that the labour and energy costs can vary to some degree between different geographical areas, the Commission uses only costs which are not subject to distortions in an appropriate representative country in accordance with Article 2(6a)(a). The Commission published two notes to the file on the factors of production allowing the parties ample opportunities to comment, including by pointing to any possible abnormalities or other considerations potentially affecting them in the representative country or countries. In this context, interested parties have not questioned the level of labour and/or energy costs in the appropriate representative country set out in the Note of 30 November 2020. Therefore these claims were dismissed.

(62) Third, CCCMC commented that according to Article 2(6a)(a) of the basic Regulation, the assessment concerning the existence of significant distortions should be done for each exporting producer separately. Therefore, the Commission had the obligation to analyse the situation of each sampled Chinese producer and decide whether any of the factors of costs of production and sales are distorted for each of them.

(63) The Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level, thus applying to all exporting producers in that country, as is the case here. In any event, as mentioned at recital (60), the same provision of the basic Regulation provides that domestic costs can be used if they are established not to be affected by significant distortions, in which cases they are used for the calculation of normal value. Therefore this claim was dismissed.

(64) In separate submissions, exporting producers Weifang Ensign Industry, RZBC and Jiangsu Guoxin Union Energy reiterated the claims made by CCCMC on the first note. Furthermore, in a submission by COFCO Bio-Chemical Energy (Yushu), this exporting producer commented that application of Article 2(6a) of the basic Regulation goes against the provision of Article 2.2 of the ADA.

(65) The Commission noted that the issue of the compatibility of Article 2(6a) with WTO law was already explained in recital (53) above.

(66) After disclosure, a set of comments on the existence of significant distortions was submitted by CCCMC and by Weifang Ensign Industry, RZBC and Jiangsu Guoxin Union Energy ('the three exporting producers').

(67) First, CCCMC and the three exporting producers reiterated the claim that Article 2(6a) of the basic Regulation is incompatible with Articles 2.2.1.1 and 2.2 ADA and with the findings made in the following WTO cases: EU – Biodiesel (Argentina) (Panel and AB findings), EU-Biodiesel (Indonesia) (Panel findings), Ukraine – Ammonium Nitrate (Panel and AB findings), Australia – Copy Paper (Panel findings) and EU – Cost Adjustment Methodologies (Panel findings). These parties specifically refer to the findings in the latter Panel report, namely that the alleged Russian government intervention/market distortion did not constitute an adequate basis to conclude that the records of the exporting producers did not reasonably reflect the costs associated with the production and sale of the product concerned.

(68) The Commission recalled that none of the above quoted WTO cases concerned the application of Article 2(6a) of the basic Regulation and the conditions for its application. Furthermore, the underlying factual situations in those cases are all different from the underlying situation and criteria giving rise to the application of the methodology under this provision of the basic Regulation. As for the WTO dispute EU – Cost Adjustment Methodologies, the Commission recalled that both the EU and Russia appealed the findings of the Panel, which are therefore not final and therefore, according to standing WTO case-law, have no legal status in the GATT or WTO system since they have not been endorsed through decisions by the Contracting Parties to GATT or WTO Members. In any event, the Panel Report specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute. The Panel found that these provisions are of a different essence and have different legal implications from the provisions under Article 2(5) of the basic Regulation, which were the object of that dispute and the Article 2(6a) provisions did not replace the latter when they were introduced ([18]). Therefore, the findings made in the above mentioned cases have no relevance for the application of Article 2(6a), which is a new provision and was never subject to any WTO proceedings, and does not replace Article 2(5) and/or Article 2(3). These findings therefore have no significance for assessing the compatibility of Article 2(6a) with the relevant WTO rules. For these reasons, this claim was rejected.

(69) Second, CCCMC and the three exporting producers submitted that in spite of the WTO findings referenced at recital (67) constituting an integral part of the EU findings on normal value under Article 2(6a) of the basic Regulation, the disclosure did not indicate any reasoning of how this provision was in line with the provisions in Article 2.2.1.1 ADA and the corresponding provisions of Article 2(5) of the basic Regulation. Nor did it indicate any linkage between Article 2(6a) and a potential 'particular market situation' as referenced in Article 2.2 ADA and the corresponding provisions of Article 2(3) of basic Regulation. Furthermore, CCCMC and the three exporting producers claimed the Commission failed to provide an explanation on how the Commission's use of third country data would be justified by Article 2(5) second subparagraph of the basic Regulation. Therefore, CCCMC and the three exporting producers claimed that the Commission failed to explain the legal consistency of Article 2(6a) with the cited WTO jurisprudence.

(70) The Commission first recalled that the provisions of Article 2(5) and Article 2(3) of the basic Regulation apply to anti-dumping investigations provided the relevant conditions of these respective provisions are met. By contrast, the provisions of Article 2(6a) concern the specific case of investigations of products originating from countries in which the existence of significant distortions was confirmed, and where the existence of significant distortions renders the domestic costs and prices not appropriate for the purpose of the calculation of normal value. The procedure applied under Article 2(6a) of the basic Regulation and the substance of the assessment are therefore different from those under Articles 2(3) and 2(5) of the basic Regulation. In their claim, CCCMC and the three exporting producers assume that the provisions in Article 2(6a) are necessarily linked to the provisions in Article 2(5) and 2(3) of the basic Regulation, and claim as a result that the Commission should legally justify the application of the methodology under Article 2(6a) under Articles 2(5) and/or 2(3) of the basic Regulation. This assumption by the CCCMC and the three exporting producers was purely speculative, because Article 2(6a) of the basic Regulation provides that once the relevant conditions for its application are met, then the methodology under this article must be applied. There are no requirements in this provision to conduct any supplementary legal analysis under Articles 2(3) and/or 2(5) of the basic Regulation, let alone their underlying jurisprudence, as CCCME and the three exporting producers wrongly assert. These provisions are separate from each other. Therefore, this claim was rejected.

([18]) WTO DS 494, *EU – Cost Adjustment Methodologies,* paragraphs 7.76, 7.80 and 7.81.

(71) Third, CCCMC and the three exporting producers claimed that the findings of the Panel in EU – Cost Adjustment Methodologies concerning the application of Article 2(5) of the basic Regulation apply also to Article 2(6a). Furthermore, CCCMC and the three exporting producers submitted that the disclosure made no reference to adjustments made to Colombian data in order to reflect costs of production in China, which would be a required step under Article 2.2 ADA, which envisages an adjustment of any third country data used by the investigating authority necessary to reflect the costs of production in the country of origin.

(72) The Commission noted in response that, as already explained in recitals (68) and (70), the findings made in the WTO investigations to date, including the EU – Cost Adjustment Methodologies, did not specifically concern the application of Article 2(6a) of the basic Regulation but of Article 2(5) of the basic Regulation. Most importantly, the findings in that dispute are not final as both the EU and Russia have appealed them and therefore, according to standing WTO case-law, have no legal status in the GATT or WTO system since they have not been endorsed through decisions by the Contracting Parties to GATT or WTO Members. Moreover, that Panel report specifically stated that the respective provisions are not of the same essence and have different legal implications than Article 2(6a). Equally important, as explained in recital (53) and further discussed in recital (74) below, the relevant WTO jurisprudence does allow the use of data from a third country, where justified. With regard to the Colombian data, CCCMC and the three exporting producers are once again basing their claim on a mixing of the provisions in Article 2(6a) of the basic Regulation, with Article 2(3) of the basic Regulation. As explained in detail below at Sections 3.3 through 3.8 of this Regulation and in the specific disclosures, the Commission has used the relevant data in Colombia (or from other sources for certain factors of production) fully in line with the provisions of Article 2(6a) of the basic Regulation. Certain adjustments have been made to the relevant value to arrive at undistorted prices or benchmarks to construct normal value. Therefore this claim was rejected.

(73) Fourth, CCCMC and the three exporting producers submitted that the Commission's disclosed finding of likelihood of continuation of dumping in recitals 170-186 of the Disclosure and its intention to maintain the existing measures was not legitimate in light of the Panel's findings in EU – Cost Adjustment Methodologies concerning the application of Article 11(3) of the ADA. CCCMC and the three exporting producers urged the Commission to explain and justify in detail its legal claim in recital 53 of the Disclosure that the methodology based on Article 2(6a) of the basic Regulation is consistent with the applicable ADA provisions and jurisprudence.

(74) Once again, the Commission highlights that the findings of this WTO Panel report are not final as they have been appealed by both the EU and Russia, and therefore, according to standing WTO case-law, have no legal status in the GATT or WTO system since they have not been endorsed through decisions by the Contracting Parties to GATT or WTO Members. Furthermore, the Panel explicitly ruled that Article 2(6a) was outside its terms of reference given the provision's different essence and legal implications as compared to Article 2(5). Furthermore, as explained in recital (53), the Commission considered that according to the findings made in the WTO case *EU – Biodiesel* (DS473), the provisions of the basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second subparagraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Since there are no specific findings made by the WTO Dispute Settlement Body concerning the provisions under Article 2(6a), the Commission considered that if the findings made in the EU-Biodiesel (DS473) case are considered relevant in the different context and situation falling under Article 2(6a) of the basic anti-dumping Regulation, they would in any event be fully consistent with the possibility to use out-of-country data to source undistorted values in an appropriate representative country. Therefore this argument was rejected.

(75) Fifth, CCCMC and the three exporting producers submitted that since the expiry of the WTO Chinese Accession Protocol in December 2016, there is no legal basis in the WTO to apply a normal value calculation outside the framework of the WTO ADA. Therefore, the EU is bound by its international obligations to strictly adhere to the provisions of Article 2 ADA bearing on the determination of normal value.

(76) The Commission recalled at the outset that in anti-dumping proceedings concerning products from China, the parts of Section 15 of China's Accession Protocol to the WTO that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs. Furthermore, the Commission recalled that Article 2(6a) of the basic Regulation was introduced by Regulation (EU) 2017/2321 of the European Parliament and of the Council ([19]) referring to Article 207(2) of the Treaty on the Functioning of the European Union as its legal basis. As also clarified at recital (53), the provisions of Article 2(6a) are fully consistent with the EU's international obligations, including the relevant WTO rules. Since the Commission has concluded in Section 3.2.1 that it is appropriate to apply Article 2(6a) of the basic Regulation in this investigation and this provision is fully consistent with WTO rules, this claim was rejected.

(77) Sixth, CCCMC and the three exporting producers stated that the findings in the investigation were based broadly on the 2017 Commission Report which relates not to the citric acid sector specifically but rather more generally to the broader chemical sector, to upstream raw material markets and/or to elements of the Chinese economy and Chinese government policies which clearly are not specific to the citric acid sector. In this regard, CCCMC and the three exporting producers observed that according to the WTO Appellate Body findings in US – Countervailing Measures, the Commission is required to conduct a case-by-case determination of any distortions. CCCMC and the three exporting producers added that they did not agree with the Commission's statement that those findings are irrelevant to this case because they concern the WTO Agreement on Subsidies and Countervailing Measures ('ASCM'). The CCCMC and the three exporting producers emphasised that those findings are relevant also in the case at hand.

(78) The Commission recalled that under the ASCM, the context of the distortions are addressed from the specific point of view of the subsidisation they give rise to in favour of the exporting producers. The consequence of these proceedings is the application of a countervailing duty specifically calculated on the basis of the amount of injourious subsidisation found by an investigating authority. By contrast, in the anti-dumping context under Article 2(6a) of the basic Regulation, the analysis is not focused on whether these distortions amount to a countervailable subsidy and meet the relevant conditions, but whether they are significant within the meaning of Article 2(6a)(b) and thus justify the application of the methodology for the calculation of normal value foreseen by this provision. The underlying legal order, situations and context are different, serve different purposes, and give rise to different legal consequences. Hence, the Commission maintained its view that the findings in the above mentioned case are not relevant to the current investigation and thus rejected this claim.

(79) With regard to the argument that the 2017 Commission Report does not include a specific chapter on citric acid, the Commission noted that the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter covering the product under investigation. The Report describes different types of distortions present in the PRC which are cross-cutting and applicable throughout the Chinese economy and affect the prices and/or the raw materials and costs of production of the product under investigation. Furthermore, the Report is not the only source of evidence used by the Commission for its determination, as there are additional probationary elements used for this purpose. As explained in Sections 3.2.1.2 to 3.2.1.9 below, the citric acid industry is subject to a number of governmental interventions described in the Report (coverage by the Five-Year Plans and other documents, raw material distortions, financial distortions etc.), which are explicitly listed and referenced in this Regulation. In addition, recitals (94), (97), (100) and (101) of this Regulation have also detailed a number of distortions applicable to the citric acid sector and/or to its raw materials and its inputs beyond the significant distortions already contained in the Report. The market circumstances and the underlying policies and plans giving rise to the significant distortions are still applicable to the citric acid sector and that of its costs of production, despite the Report being released in December 2017. No party submitted any evidence to the contrary. Therefore, this argument was dismissed.

([19]) OJ L 338, 19.12.2017, p. 1.

(80) Seventh, CCCMC and the three exporting producers argued that while the Commission mentioned various guiding governmental concepts and implementing provisions which allow for and may even expressly mandate government interventions in the economy, the Commission failed to demonstrate the existence of actual distortions as a consequence thereof. CCCMC and the three exporting producers added that pursuant to the Appellate Body findings in US – Countervailing Measures 'the existence of price distortion resulting from government intervention has to be established and adequately explained' and that 'the determination must be made on a case-by-case basis.' CCCMC and the three exporting producers further argued that the Commission's price distortion analysis must be made on an individual producer by producer and cost by cost basis, because any actual exercise of governmental intervention may take place, for example, at different levels of government and with regard to different regions within the country, thus not affecting all producers of the product under investigation in all parts of the country in the same way.

(81) The Commission recalled that Article 2(6a)(b) states that, when assessing the existence of significant distortions, the Commission must consider the 'potential impact' of the elements listed in that Article. The findings in Sections 3.2.1.2 to 3.2.1.9 of this Regulation show that the Chinese citric acid producers do have preferential access to state financing and that there are countrywide distortions with regard to all six elements pointing to distortions, as listed in Article 2(6a)(b). Therefore, the presence of such distortions in the sector is relevant for the assessment of the existence of distortions under Article 2(6a)(b). The Commission further recalled that regardless of the exporting producers actually being affected by direct state intervention, such as the receipt of subsidies, their suppliers or other actors involved in the upstream or downstream markets of the production of the product concerned are likely to have been affected by state intervention, such as preferential access to finance, which is an additional indicator that prices or costs are not the result of free market forces. With regard to the reference to the WTO findings in US – Countervailing measures, as explained at recitals (57) and (78), the Commission reiterates that they are not relevant in the context of this investigation as they concern the anti-subsidy instrument, and in any event do not alter the findings of the existence of significant distortions under Article 2(6a) of the basic Regulation. Therefore, this claim was dismissed.

(82) Lastly, CCCMC and the three exporting producers submitted that the Disclosure consistently failed, both with regard to its references to general government policies or plans and with regard to alleged government intervention in the citric acid sector specifically, to cite instances of actual government intervention in the operations of the Chinese citric acid producers with the result of distorting these producers' prices. As an example, CCCMC and the three exporting producers quoted the governmental plan mentioned in recital (76) of the Disclosure encouraging the citric acid producers to create larger enterprises by means of mergers and reorganisations. CCCMC and the three exporting producers claimed that the mentioned plan relates only to certain provinces, regions or areas of production, meaning that even the encouragement is not comprehensively extended to all producers across China, which again would justify a producer-by-producer analysis and disclosure. Furthermore, CCCMC and the three exporting producers added that simple 'encouragement' does not in fact equate to actual intervention to require mergers/reorganisations and the Commission failed to provide examples of actual intervention. Finally, CCCMC and the three exporting producers submitted that the same document included other measures, such as, the application of environmental protection standards, clean production verification efforts and comprehensive improvements of energy conservation and emissions reduction, reduction of energy and water consumption, and promotion of clean production and recycling. All of these measures would reasonably be more efficient to apply if production units are larger, as encouraged.

(83) The Commission recalled that the governmental 'encouragement' of certain actions, such as mergers and reorganisations to create larger conglomerates, are not just empty declarations and recommendations, but that there are actual financial incentives supporting the recommendations made by the government in the official plans (see Section 3.2.1.8 and recital (110) in particular). Even if, based on its plan, the Chinese government would not force or oblige the companies to group into larger entities, *quod non*, there are in any event certain financial benefits or favourable lending conditions available to the enterprises deciding to follow the plan's recommendations, hence the free market forces which would steer the companies in the absence of such plans are distorted. In any event, the analysis and findings in Sections 3.2.1.2 to 3.2.1.9 of this Regulation clearly show the existence of significant distortions in the citric acid sector, and the fact that they are likely to affect the suppliers of raw materials to the producers of the product concerned.

(84) The Commission thus proceeded to examine whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the Chinese economy in general, but also the specific market situation in the relevant sector including the product under review. On this basis these claims were rejected.

3.2.1.2. Significant distortions affecting the domestic prices and costs in China

(85) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'. The State-owned economy is the 'leading force of the national economy' and the State has the mandate 'to ensure its consolidation and growth' ([20]). Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to China being in the primary stage of socialism and entrusts the State with upholding the basic economic system under which public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with State ownership ([21]).

(86) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.' ([22]) This illustrates the unquestioned and ever growing control of the CCP over the economic system of China. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the government exercises general macroeconomic control within the boundaries of which free market forces are at play.

(87) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ([23]). The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.

(88) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and State-owned alike, must effectively

([20]) Report – Chapter 2, p. 6-7.
([21]) Report – Chapter 2, p. 10.
([22]) Available athttp://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 15 July 2019).
([23]) Report – Chapter 2, p. 20-21.

adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.2.1.5 below) ([24]).

(89) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.2.1.8 below) ([25]). The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ([26]).

(90) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designated by State policies. However, the nature of these goals remains undefined, thereby leaving a broad margin of appreciation to the decision-making bodies ([27]). Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ([28]).

(91) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ([29]).

3.2.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country.

(92) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.

(93) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through the presence of party members on SOEs executive bodies and of party cells in companies (see also Section 3.2.1.4), as well as through the shaping of the corporate structure of the SOE sector ([30]). In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of

([24]) Report – Chapter 3, p. 41, 73-74.
([25]) Report – Chapter 6, p. 120-121.
([26]) Report – Chapter 6. p. 122-135.
([27]) Report – Chapter 7, p. 167-168.
([28]) Report – Chapter 8, p. 169-170, 200-201.
([29]) Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.
([30]) Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ([31]). The elements that point to the existence of government control over enterprises in the citric acid sector is further developed in Section 3.2.1.4 below.

(94) Specifically in the citric acid sector, a certain degree of ownership by the GOC is evident. The investigation showed that at least three of the exporting producers, COFCO, Jiangsu Guoxin Union Energy and Laiwu Taihe, are SOEs. Furthermore, according to the Grain and Oil Processing 13th Five-Year Plan, the citric acid industry is encouraged to create larger enterprises by the means of mergers and reorganisations ([32]). This encouragement is evidence of involvement by the government in industry affairs.

(95) With the high level of government intervention in the citric acid industry and the prevalence of SOEs this sector, even privately owned producers are prevented from operating under market conditions. Indeed, both publicly and privately owned enterprises in the citric acid sector are subject to policy supervision and guidance as further set out in Section 3.2.1.5 below.

3.2.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

(96) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ([33]), CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to Chinese company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ([34])) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to always have been followed or to have been strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to have exercised pressure on private companies to put 'patriotism' first and to follow party discipline ([35]). In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for CCP organisations to have a final say over the business decisions within their respective companies ([36]). These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of citric acid and the suppliers of their inputs.

(97) Specifically in the citric acid sector, as already pointed out, some producers are owned by the State. Furthermore, the investigation revealed that five of the citric acid producers, including Cofco, Weifang Ensign, RZBC, Jiangsu Guoxin and Laiwu Taihe Biochemistry have CCP links among the senior management as well as party building activities.

(98) The State's presence and intervention in the financial markets (see also Section 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ([37]). Thus, the State presence in firms, including SOEs, in the citric acid and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

([31]) Report – Chapter 5, p. 104-9.
([32]) See Grain and Oil Processing 13th Five-Year Plan, Section IV.2.1, available online athttp://www.gov.cn/xinwen/2017-01/03/content_5155835.htm (last accessed 21 December 2020).
([33]) Report – Chapter 5, p. 100-1.
([34]) Report – Chapter 2, p. 26.
([35]) Report – Chapter 2, p. 31-2.
([36]) Available athttps://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU (last viewed 15 July 2019).
([37]) Report – Chapters 14.1 to 14.3.

3.2.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

(99) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ([38]).

(100) While the citric acid industry in itself is not a key industry in China, the raw materials used in the production of citric acid are heavily regulated in China. The main raw material, corn, is subject to intensive regulation.

(101) China holds large amounts of corn stockpiles allowing the government to artificially lower or raise the prices of this commodity by purchasing or selling large amounts of corn on the market. Even though China started tackling the problem of excessive corn reserves in 2016, it still holds very large stockpiles, which have a distortive effect on prices ([39]). Furthermore, the government is controlling the various aspects of the entire corn value chain, including subsidies on the production of corn ([40]) and supervision of the processing: '[a]ll local authorities shall expand the monitoring and analysis of the corn supply and demand in the relevant areas, strengthen the supervision of the building phase and post-building phase of corn deep processing projects, foster the balance of corn supply and demand and ensure national food security' ([41]). There are also investment control measures in place in the PRC: '[t]he filing for building corn deep processing projects shall be subject to harmonized management in accordance with the State Council Order No 673' ([42]). This involvement of the government in the entire value chain has, at least potentially, a distortive effect on prices.

(102) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives to support encouraged industries, including the production of corn; corn being the main raw material used in the manufacturing of citric acid. Such measures impede market forces from operating freely.

3.2.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

(103) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives, such as the fair settlement of claims and debts and the safeguarding of the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having a direct influence on the outcome of the proceedings ([43]).

(104) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China ([44]). All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at

([38]) Report – Chapter 4, p. 41-42, 83.
([39]) Report – Chapter 12, p. 319.
([40]) Information on subsidies available on the Ministry of Agriculture website:http://www.moa.gov.cn/gk/zcfg/qnhnzc/201904/t20190416_6179338.htm
([41]) See NDRC Notice 2017/627 repealing the 'NDRC Notice on Matters Concerning the Management of Corn Deep Processing Projects', available at:https://www.ndrc.gov.cn/fggz/cyfz/zcyfz/201704/t20170417_1149901.html
([42]) Ibid.
([43]) Report – Chapter 6, p. 138-149.
([44]) Report – Chapter 9, p. 216.

allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ([45]). Moreover, authorities often pursue specific political goals, including the implementation of the economic plans, when allocating land ([46]).

(105) The Commission preliminarily concluded that the Chinese bankruptcy, corporate and property laws do not work properly, thus generating distortions by maintaining insolvent firms afloat and through the allocation of land use rights in China. Like other sectors in the Chinese economy, the producers of citric acid are subject to these laws, and are thus subject to the top-down distortions arising from their discriminatory application or inadequate enforcement. The present investigation revealed nothing that would call those findings into question.

(106) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the citric acid sector, including with respect to the product under review.

3.2.1.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

(107) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collectively organise. China has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ([47]). Under national law, only one trade union organisation is active. However, this organisation lacks independence from State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ([48]). Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ([49]). Those findings lead to the distortion of wage costs in China.

(108) No evidence was submitted to the effect that the citric acid sector is not subject to the Chinese labour law system described above. The citric acid sector is thus affected by the distortions of wage costs both directly (when producing the product under review or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

3.2.1.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or are otherwise not acting independently of the State

(109) Access to capital for corporate actors in China is subject to various distortions.

(110) First, the Chinese financial system is characterised by the strong position of State-owned banks ([50]), which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ([51]) and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs

([45]) Report – Chapter 9, p. 213-215.
([46]) Report – Chapter 9, p. 209-211.
([47]) Report – Chapter 13, p. 332-337.
([48]) Report – Chapter 13, p. 336.
([49]) Report – Chapter 13, p. 337-341.
([50]) Report – Chapter 6, p. 114-117.
([51]) Report – Chapter 6, p. 119.

of the national economic and social development and under the guidance of the industrial policies of the State ([52]). This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([53]).

(111) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

(112) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ([54]).

(113) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([55]). This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.

(114) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.

(115) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

(116) Overall credit growth in China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.

(117) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

(118) No evidence was submitted to the effect that the citric acid sector, and/or the suppliers of this sector, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

([52]) Report – Chapter 6, p. 120.
([53]) Report – Chapter 6, p. 121-122, 126-128, 133-135.
([54]) See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.
([55]) Report – Chapter 6, p. 121-122, 126-128, 133-135.

3.2.1.9. Systemic nature of the distortions described

(119) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.1 to 3.2.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.1.6 to 3.2.1.8 above and in Part B of the Report.

(120) The Commission recalled that in order to produce citric acid, a broad range of inputs is needed, including corn, dried sweet potatoes, sulphuric acid, hydrochloric acid, coal etc. According to evidence on the file, most of the sampled exporting producers sourced all their inputs in China, and the imported inputs constitute a negligible proportion of the raw materials of those exporting producers who source some inputs abroad. When the producers of citric acid purchase or contract for these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned above. For instance, suppliers of inputs employ labour that is subject to distortions. They may have borrowed funds that are subject to the distortions in the financial sector. In addition, they are subject to the planning system that applies across all levels of government and sectors.

(121) As a consequence, not only are the domestic sales prices of citric acid not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, all the input costs (including raw materials, energy, land, financing, labour, etc.) are affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that any input produced in China, even if it combines several factors of production, is exposed to significant distortions. The same applies to the input of the input, and so on. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

(122) The analysis set out in Sections 3.2.1.2 to 3.2.1.9, which includes an examination of all the available evidence relating to Chinese intervention in its economy in general as well as in the citric acid sector (including the product under review) showed that prices and costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(123) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3. **Representative country**

(124) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission chose an appropriate representative country to determine undistorted prices or benchmarks for the costs of production and sale of the product under review on the basis of the following criteria:

— A level of economic development similar to China. For this purpose, the Commission considered countries with a gross national income similar to China on the basis of the database of the World Bank,

— Production of the product under review in that country,

— Availability of relevant public data in that country, and

— Where there is more than one possible representative country, preference would be given, where appropriate, to a country with an adequate level of social and environmental protection.

(125) The Commission published two notes to the file on the sources for the determination of the normal value and on the representative country on this basis.

(126) In the Note of 5 March 2020, the Commission provided detailed information concerning the criteria above and identified Brazil, Colombia and Thailand as potential appropriate representative countries. The Commission also identified the producers of the product under review in the potential appropriate representative countries for which it found publically available financial data.

(127) The Commission invited interested parties to submit comments in this regard. The Commission received comments concerning various aspects of the selection of the representative country from CCCMC, the four cooperating exporting producers and from the Union industry.

(128) In their submissions of 23 March 2020, CCCMC and the four Chinese exporting producers indicated that Brazil would be the best representative country. First, based on the database of the World Bank, Brazil's gross national income ('GNI') is the closest to that of China, whilst the GNI of Colombia and Thailand is much lower. Also, the two companies in Brazil identified as producers of citric acid were profitable in recent years. In addition, Brazil has an adequate level of social and environmental protection. At the same time, CCCMC and the cooperating exporting producers expressed their opposition to the choice of Colombia as the appropriate representative country. They claimed that some of the import data of Colombia concerning certain factors of production was not available or representative. They also argued that Colombia's import prices of some of the key raw materials (i.e. sulphuric acid, hydrochloric acid and raw coal) were substantially and unreasonably higher than those of the other potential representative countries and thus should not be regarded as undistorted prices that could be used to construct the normal value of citric acid.

(129) CCCMC and the cooperating exporting producers also submitted that Thailand was not an appropriate representative country as two of the three identified producers of citric acid were unprofitable in 2018 and the third one was mainly focused on export markets.

(130) In their submission, the Union industry considered that Colombia was the most appropriate choice for determining undistorted costs. They stressed that the financial data of the companies in Thailand was not audited, which greatly reduced their value in terms of reliability. In addition, they claimed that two of the three identified producers in Thailand were majority-owned by Chinese companies or by the Chinese State and that they were export-oriented. As regards Brazil, the Union industry argued that the two Brazilian companies belonged to groups and the influence of group on the financial data appeared to be difficult to assess, and these companies also sold a diverse range of products.

(131) The Commission, after analysing in detail the above arguments, published a second Note on 30 November 2020 addressing all these comments on the basis of the criteria listed above and informing interested parties of its preliminary conclusions. The Commission stated in this Note that it intended to use Colombia as appropriate representative country if the existence of significant distortions would be confirmed. The Commission further indicated that for the calculation of normal value it may also use appropriate undistorted international prices, costs or benchmarks, and for undistorted selling, general and administrative costs ('SG&A') and profits it may consider all the suitable alternatives available in accordance with Article 2(6a)(a) of the basic Regulation. In particular, as the only Colombian company producing the product under review had low profitability in 2018 and was loss-making in 2017 – similar to the situation for the producers in Thailand and Brazil, the Commission would consider more recent data if available and if they would show a reasonable level of SG&A and profitability. The Commission invited interested parties to comment.

(132) The Commission received comments from CCCMC and the Union producers regarding the Note of 30 November 2020.

(133) In its submission of 9 December 2020, CCCMC maintained that Colombia was not an appropriate representative country and Brazil should be selected as the appropriate country instead. It argued that lower corn import prices in Brazil were due to the advantages of transportation distances and quantity rather than any distortion. They further argued that if Brazilian import prices could not be used, international prices should be used instead of excluding Brazil altogether from the choice of representative country. CCCMC also maintained that Colombia was not an appropriate representative country as the identified producer had unreasonable operating expenses.

(134) The Union industry maintained that Colombia was the most appropriate representative country. Given that the Colombian company producing the product under review was loss-making or had low profitability in 2018 and also in 2019, for which data became available in the meantime, one of the Union producers identified a number of companies producing a product similar to the product under review. In particular, the Union producer focused on companies manufacturing ingredients for the beverage, cleaning, food, health and pharmaceutical industry in Colombia whose financial data showed a reasonable level of SG&A and profits in line with the provisions of the basic Regulation.

(135) The Commission considered carefully all the arguments raised by all the parties. With regard to Thailand, the Commission agreed with CCCMC and the Union producer that it is not an appropriate representative country as producers of the product under review are loss-making and/or are subsidiaries of Chinese companies plus export restrictions exist for certain factors of production. In addition, the companies manufacturing the product under review did not show a reasonable level of SG&A and profits. Therefore, Thailand was dismissed.

(136) The Commission thus focused its analysis on Brazil and Colombia. The Commission first analysed whether there were export restrictions or other distortions concerning the main factors of production. The main factor of production of the product under review is corn, accounting for more than 70 % of the total cost of input materials for the exporting producers. The Commission noted that the quantity of imports of corn into Brazil accounted for only 1,5 million tonnes, compared to Brazilian domestic corn production of over 100 million tonnes ([56]). CCCMC contested the fact that these import quantities of corn into Brazil are low. However, when compared to the size of the Brazilian production, these import quantities only account for 1,5 % of production. Given this very limited import quantity relative to the large domestic production, the Commission also checked the import prices into Brazil and noted that they differed significantly from the international corn prices. In its comments to the Note of 30 November, CCCMC contested that prices differed significantly and asked for additional information on the price comparison. The 2019 average international corn price referenced by the Commission in the Note of 30 November amounted to EUR 151/tonne on a FOB basis according to IndexMundi ([57]), while the average GTA import price of corn into Brazil amounted to only EUR 116/tonne on a FOB basis. This figure clearly shows that the import prices into Brazil were significantly lower than the international price index.

(137) In addition, CCCMC argued that corn import prices were lower in Brazil than in Colombia due to lower transport costs as imports into Brazil were mainly made from neighbouring countries like Argentina and Paraguay, whereas Colombia imports corn predominantly from the US and Argentina. This allegation was not substantiated, as CCCMC did not show the actual origin and port of entry in the respective countries, nor did it show the incidence of transport costs of corn into the respective countries. Therefore, this argument was dismissed.

(138) CCCMC also submitted that Chinese producers purchase a large quantity of their corn domestically. Therefore, it claimed that the import price of Brazil would better reflect the situation of the Chinese producers' purchases of corn. The Commission noted that this argument does not have any bearing on the fact that the import quantities into Brazil are objectively low as compared to the size of the domestic production, thus undermining the representa-

([56]) https://www.indexmundi.com/agriculture/?commodity=corn
([57]) https://www.indexmundi.com/commodities/?commodity=corn&months=60&currency=eur

tiveness of the corn import price into Brazil. This argument also does not detract from the conclusion that import prices into Brazil differ significantly from international corn prices, which is probably due to the low level of imports and the significant size of domestic production. Therefore, this argument was dismissed.

(139) CCCMC further argued that, even if the import prices of corn into Brazil could not be used because they were unrepresentative, *quod non*, Brazil should still be selected as the representative country, and an appropriate undistorted international price for corn should be applied instead of the import prices into Brazil.

(140) In response, the Commission noted that, as explained further in this section, it considered Colombia as an appropriate representative country in this investigation on the basis of the relevant elements listed in the basic Regulation, including the availability of more appropriate financial data for producers of products similar to citric acid as compared to Brazil. As concerns the Colombian import quantities and prices of corn, according to IndexMundi the total domestic corn production in Colombia amounts to 1,5 million tonnes whereas, according to GTA data, corn imports are around 5,5 million tonnes, thus accounting for 365 % of production. This comparison shows that the import quantities into Colombia seem to be representative taking into account the size of the domestic production, unlike Brazil. As for corn prices, the average GTA corn import price into Colombia for 2019 was 174 EUR/tonne on a CIF basis, much closer to and in line with the average international corn price of 151 EUR/tonne on a FOB basis, taking into account that the international import price on a CIF basis would be higher. Since Colombia is considered an appropriate representative country in other respects, as further detailed below; the corn import prices into Colombia are largely in line with the international corn prices; and there is no evidence of any distortion affecting corn prices in Colombia; there is no reason to select Brazil as an appropriate representative country and use an international benchmark instead of the import prices into the appropriate representative county as prescribed by Article 2(6a)(a), 2nd subparagraph, first dash.

(141) With regard to the remaining factors of production, export restrictions for certain factors of production exist in Brazil (export licensing requirement for lime) and Thailand (export licensing requirement for gypsum), while none exist in Colombia, as confirmed by the relevant OECD List ([58]). While these factors have a much more limited weight in the cost of production of certain exporting producers and did not apply to all exporting producers, this was another relevant element in the choice of the appropriate representative country.

(142) For the choice of the appropriate representative country, the Commission also looked at the availability of public financial data for producers of the product under review in Thailand, Brazil, and Colombia in line with the basic Regulation.

(143) Because Thailand was not considered a suitable representative country, as explained in recital (117), the Commission focused its comparative analysis on Brazil and Colombia.

(144) With regard to Brazil and Colombia, the Commission indicated in the Note of 5 March the companies producing citric acid in those countries. At that time, there were no producers with reasonable profits in either Brazil or Colombia for 2018.

(145) In the Note of 30 November 2020, the Commission stated that the Colombian company Sucroal SA, for which SG&A and profit data were publicly available, was an appropriate representative company as it produces the product under review and a product range closer to citric acid. At the same time, Sucroal SA showed a low level of profitability in 2018 and was loss making in 2017.

(146) The situation was similar in Brazil, where the Brazilian company for which financial data was publicly available, a large conglomerate producing a wider range of products including citric acid, showed a low profitability for 2018. The Commission flagged in the Note of 30 November 2020 that if more recent data for the year 2019 would

([58]) https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

become available, the Commission may use this data if they showed a reasonable level of SG&A and profitability, or, if this were not the case, the Commission would consider all the suitable alternatives available.

(147) Following the publication of this Note of 30 November 2020, the 2019 data for Sucroal SA became available in Orbis. As Sucroal SA incurred a loss in 2019, the financial data for this company could not be considered appropriate for establishing an undistorted level of SG&A and profits.

(148) The Commission therefore considered suitable alternatives. In particular, in situations where no producer of the product under review in a potential representative country shows a reasonable level of SG&A and profits, the Commission may consider producers of a product in the same general category and/or sector of the product under review with publically available financial data showing a reasonable level of SG&A and profits.

(149) CCCMC submitted that since Sucroal SA showed losses for the year 2019, Colombia should not be considered as an appropriate representative country and Brazil should be used instead. CCCMC noted that the identified producer Cargill Agricola was again profitable in 2019 and hence its SG&A and profit were appropriate for the needs of the investigation. However, the Commission noted that Cargill Agricola's profit amounted to less than one percent of its turnover in 2019, and was therefore even lower than its profit in 2018. This low level of profit was at a similar level as for Sucroal SA in the same year and not considered reasonable. Therefore, this argument was dismissed.

(150) In its two sets of comments, the Union industry suggested to use the data from companies in the same country, manufacturing the same category of goods or being in the same manufacturing sector as the product under review. The category of manufacturers of ingredients for the beverage, cleaning, food, health and pharmaceutical industry in Colombia was suggested together with a list of eleven companies in the same sector.

(151) Considering all the facts of the investigation and the comments received, the Commission searched the Orbis database for the NAICS code 325998 (All Other Miscellaneous Chemical Product and Preparation Manufacturing). This is the same code used by both Cargill Agricola SA and Sucroal SA. As a result of this search, there was a far higher number of companies showing a reasonable level of profits in Colombia as compared to Brazil, showing that the availability of public financial data was also representative and reliable in Colombia. Furthermore, in order to narrow down the result of this search to those companies producing a product similar to citric acid, the Commission analysed in detail the activity and production of all the profitable Colombian companies. Using the description of their business activity available in Orbis, the Commission finally identified seven companies in Colombia producing products in a close category of products to citric acid. The SG&A and profit of those companies was considered reliable. By comparison, the Commission noted that in Brazil there were no companies in the same field of activity with publicly available 2019 financial data in Orbis.

(152) The Colombian companies identified by the Commission in this way matched the companies identified by the Union industry as suitable companies in the same general category and/or sector of the product under review. The Union industry suggested in addition to those seven companies four other companies in Colombia, for which, however, the financial data or activity description was not readily available in Orbis. Therefore those companies were not taken into account for establishing the SG&A and profit.

(153) Based on all the above elements, and in particular the available financial data and the representativeness of the import price for corn representing the major factor of production, the Commission therefore concluded that Colombia was the appropriate representative country for the calculation of the normal value in this investigation.

(154) Following disclosure, CCCMC and three cooperating exporting producers questioned the Commission's choice of Colombia as an appropriate representative country. They repeated the aforementioned claim that the choice of Colombia was not reasonable given the fact that the sole Colombian citric acid producer was not profitable during

the review investigation period whereas a Brazilian producer was. They also repeated the aforementioned claim that corn prices in Brazil were not distorted. Given that these claims had already been addressed at recitals (136) and (149) of this Regulation and that no new evidence was provided in this regard, the claims were dismissed.

(155) The aforementiond parties further claimed that the Commission used SG&A and profitability data from Colombian companies in other product sectors without proving that these companies have the same level of SG&A and profit as the producers of citric acid.

(156) In line with Article 2(6a) of the basic Regulation, the normal value shall be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks when the presence of significant distortions is confirmed. The constructed normal value shall include an undistorted and reasonable amount for SG&A and for profits. Given that the SG&A and profit of the Colombian company Sucroal SA could not be used for the reasons explained in recitals (145) and (147), the Commission used data for the closest sector including the product under investigation, where the aforementioned cost elements were considered undistorted and reasonable. No evidence has been provided to dispute this conclusion, and in particular that the level of SG&A and profits of the Colombian companies in the closest sector to citric acid were not reasonable according to Article 2(6a)(a) of the basic Regulation.

(157) The Commission noted further that, contrary to the Union Industry, CCCMC and the cooperating exporting producers did not provide or suggest a list of manufacturers in the same potential representative country, manufacturing the same or similar category of goods or being in the same or similar manufacturing sector as the product under review, whose financial data the Commission could use.

(158) Therefore, and for the reasons set out in recital (151), the Commission considered the financial data from the seven companies that it identified in Colombia producing products in a close category of products to citric acid to be a reasonable proxy for undistorted SG&A and profit to be used in the construction of the normal value in the investigation. The claim from CCCMC and three cooperating exporting producers was therefore dismissed.

3.4. **Sources used to establish undistorted costs**

(159) On the basis of the information submitted by the interested parties and other relevant information available in the file, the Commission established a list of factors of production and sources such as materials, energy and labour used in the production of the product under review by the exporting producers.

(160) The Commission also identified the sources to be used in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation (GTA, national statistics, etc.). In the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, based on information provided by the interested parties, were initially considered to be used for the GTA analysis.

(161) In the Note of 30 November 2020, the Commission confirmed that it would use GTA data to establish the undistorted cost of the factors of production, including raw materials.

3.5. **Sources used for electricity, water and labour costs**

3.5.1. *Electricity*

(162) For electricity, the Commission used the readily available price form Enel, the major electricity supplier in Colombia. This source provides a single average price of electricity per month.

3.5.2. *Water*

(163) The water tariff was readily available from the company Acueducto, which is responsible for water supply, sewage collection and treatment in Bogota. The information enabled the identification of tariffs applicable to industrial users in the review investigation period.

3.5.3. *Labour*

(164) The Commission used ILO statistics to determine the wages in Colombia ([59]). These provide information on monthly wages of employees in the manufacturing sector and average weekly hours worked in Colombia in 2019.

(165) The Commission received no comments on the sources used for establishing the undistorted cost of electricity, water and labour and therefore used those sources to establish the normal value.

3.6. **Sources used for SG&A and profit**

(166) According to Article 2(6a)(a) of the basic Regulation, the constructed normal value should include an undistorted and reasonable amount for SG&A and for profits. In addition, a value for manufacturing overhead costs had to be established to cover costs not included in the factors of production.

(167) In order to establish an undistorted value of SG&A and profits, the Commission used the proportion of the cost of manufacturing that SG&A and profits represent in the representative companies in Colombia as explained in Section 3.3.

(168) The resulting values expressed as a percentage of revenues amounted to 14,2 % for profit and 17 % for SG&A.

3.7. **Raw materials**

(169) For all raw materials and auxiliary materials, the Commission relied on import prices into the representative country. The import price into the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China. The Commission decided to exclude imports from China into the representative country due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected these prices. Similarly, imports into the representative country from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and of the Council ([60]) were also excluded.

(170) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country. At a later stage, during the individual dumping margin calculations, the Commission added company specific domestic transport costs to the import price. The domestic transport costs for all raw materials were based on the verified data provided by the cooperating exporting producers.

(171) For raw materials with negligible impact in terms of costs, which the companies did not report in Annex III of the Notice of Initiation, such costs were included in the manufacturing overheads as explained in Section 3.8. The factors of production expressed as overheads are listed in the company-specific disclosures.

([59]) https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx?_afrLoop=2007202804813928&_afrWindowMode=0&_afrWindowId=ejmgka3iz_63#!%40%40%3F_afrWindowId%3Dejmgka3iz_63%26_afrLoop%3D2007202804813928%26_afrWindowMode%3D0%26_adf.ctrl-state%3Dejmgka3iz_119

([60]) OJ L 123, 19.5.2015, p. 33. Article 2(7) of the basic Regulation considered that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

(172) The Union industry noted in its comments of 16 March 2020 that for some raw materials, either no average import values existed or that the average values concerned small quantities and were therefore unreliable or that other reasons existed which led to doubts about their reliability. They suggested that the values from statistics for the region or as published by market surveys from providers such as ArgusMedia, AgroChart or IntraTec should be used in these cases.

(173) The Union industry reiterated in its comments of 11 December 2020 that in the case of Colombia, the costs for the production figures could be determined with the data for imports and available public data for the prices of electricity, water and the public data on labour costs. They stressed that some of the average import values for less important cost factors appeared to be high and suggested that these be replaced with data from specialised data service providers.

(174) In its submission of 23 March 2020, CCCMC commented that some of the import prices for certain key materials like coal, sulphuric acid and hydrochloric acid in Colombia were abnormally high and therefore not representative. They also claimed that there were major differences between the disclosed import prices of Colombia, Thailand and Brazil and that import prices varied significantly even for the same material imported by the same country, which might be due to quality differences within the same HS code. CCCMC called on the Commission to identify the reason for these differences and to address them. The Commission considered this argument and, wherever justified, replaced unrepresentative import prices by reliable sources as detailed in Table A below.

(175) CCCMC also argued that since certain of the raw materials used for the production of the product under review are purchased domestically in China, it is unreasonable to simply use the import prices of a specific third country, as these latter prices are likely to include higher shipping/delivery costs than those of domestically purchased raw materials. This is especially the case for dangerous chemicals like sulphuric acid and hydrochloric acid for which special vehicles are used for delivery. Therefore CCCMC considered that due adjustments must be made to ensure a fair comparison.

(176) Concerning this argument, the Commission noted that, for the reasons set out in Section 3.2.1 above, it applies Article 2(6a) of the basic Regulation in the present expiry review. Therefore, the Commission is looking for undistorted costs in an appropriate representative country to ensure that the applied cost is not affected by distortions and is based on readily available data. In the absence of any information of possible distortions on the market of the representative country with respect to those dangerous chemicals and in the absence of data provided by CCCMC to substantiate its claim concerning high transport costs, the import values of the representative country are considered to fulfil the criterions of Article 2(6a) of the basic Regulation and to provide a reasonable estimate of the price in the representative country, including the transport costs. Additionally, because the imported inputs compete on the domestic market of the representative country in terms of prices, the Commission considered them a reliable proxy.

(177) The Commission consequently used the GTA import prices into Colombia. Where those prices were not representative or otherwise unreliable, international benchmarks were sought. Where those were not available, reliable prices from other sources were used, as detailed in table A below.

(178) Considering all the information submitted by interested parties and collected during the remote cross-checks, the following factors of production and tariff codes used in Brazil, Colombia or Thailand, where applicable, have been identified:

Table A

Factor of production	Tariff Code	Source of import data that the Commission intends to use	Unit of measurement
Raw materials/Consumables			
Corn	1005 90 11 00	GTA Colombia ([61])	KG
Dried sweet potatoes	0714 20 90 00	GTA Colombia	KG

([61]) Available at:http://www.gtis.com/gta/

Factor of production	Tariff Code	Source of import data that the Commission intends to use	Unit of measurement
Sodium chloride/edible salt	2501 00 91 00/ 2501 00 10 00, 2501 00 20 00, 2501 00 92 00, 2501 00 99 00	GTA Colombia	KG
Sulphuric acid	2807 00 10	GTA Brazil	KG
Sulphur/liquid sulphur	2503 00 00 00	GTA Colombia	KG
Hydrochloric acid	2806 10 20	GTA Brazil	KG
Activated carbon	3802 10 00 00	GTA Colombia	KG
Limestone powder/flour	2521 00 00	GTA Brazil	KG
Defoamer	3402 20 00 00/ 3402 90 90 00	GTA Colombia	KG
Diatomite	2512 00 00 00/ 3802 90 10 00	GTA Colombia	KG
Perlite	2530 10 00 00	GTA Colombia	KG
Amylase (Glucoamylase)/Saccharifying enzyme	3507 90 90 00	GTA Colombia	KG
Calcium	2805 12 00	GTA Brazil	KG
Caustic soda (Sodium hydroxide)	2815 11 00 00/ 2815 12 00 00	GTA Colombia	KG
Liquid alkali	2815 12 00 00	GTA Colombia	KG
Hydrogen peroxide	2847 00 00 00	GTA Colombia	KG
Flour (wheat or meslin)	1101 00 00 00	GTA Colombia	KG
Wood flour	4405 00 00 00	GTA Colombia	M^3
Calcium oxide	2825 90 40 00	GTA Colombia	KG
Quicklime	2522 10 00 00	GTA Colombia	KG
Bran from corn	2302 10 00 00	GTA Colombia	KG
Corn steep liquor	1901 90 10 00	GTA Colombia	KG
Calcium carbonate/Calcite	2836 50 00 00	GTA Colombia	KG
Activated clay	3802 90 10 00	GTA Colombia	KG
Filter aid (perlite)	2530 10 00 00	GTA Colombia	KG
Sodium diacetate	2915 29 20 00	GTA Colombia	KG
Citric acid	2918 14 00 00	GTA Colombia	KG
Sodium citrate	2918 15 30 00	GTA Colombia	KG
Corrosion and scale inhibitor	2921 59	GTA Brazil	KG
Raw coal/Slime	2701 19 00	GTA Brazil	KG
Diesel	2710 19 21 00	GTA Colombia	M^3
Packing – Film bag	3923 29 90 00	GTA Colombia	Piece
Packing – Soft tray	3923 90 00 00	GTA Colombia	Piece
Packing – Pallet	4421 99 90 00	GTA Colombia	Piece

Factor of production	Tariff Code	Source of import data that the Commission intends to use	Unit of measurement
Packing – Paper box	4819 20 00 00	GTA Colombia	Piece
Packing – Paper bag	4819 30 10 00	GTA Colombia	Piece
Packing – Paper bag	4819 40 00 00	GTA Colombia	Piece
Packing – Woven bag	6305 33 10 00	GTA Colombia	Piece
Packing – Heavy film bag	3920 10 00 00	GTA Colombia	Piece
By-product/waste			
Gas	2705 00 00 00	GTA Colombia	KG
High protein scrap/Corn starch residue	2303 10 00 00	GTA Colombia	KG
Corn feed	2303 30 00 00	GTA Colombia	KG
Calcium sulphate	2833 29 90 00	GTA Colombia	KG
Other residual products of the chemical industries (Granular sludge)	3825 90 00	GTA Brazil	KG
Corn germ oil/Corn oil	1518 00 90 00/ 1515 29 00 00	GTA Colombia	KG
Corn grits/Corn starch residue	2303 10 00 00	GTA Colombia	KG
Wheat gluten flour	1109 00 00 00	GTA Colombia	KG
Mycelium (animal feed preparation)	2309 90 90 00	GTA Colombia	KG
Germ of cereals	1104 30 00 00	GTA Colombia	KG
Calcite stone powder	2836 50 00 00	GTA Colombia	KG
Gypsum	2520 10 00 00	GTA Colombia	KG
Ash, slag	2621 90 00 00	GTA Colombia	KG
Corn germ oil extraction residue	2306 90 10/90	GTA Thailand	KG
Corn gluten meal/powder	2302 10 00 00	GTA Brazil	KG
Protein powder granules (corn residue)	2302 10 00 00	GTA Brazil	KG
Protein filter cake (corn residue)	2302 10 00 00	GTA Brazil	KG
Sprayed corn husk	2302 10 00 00	GTA Brazil	KG

3.8. **Calculation of the Normal Value**

(179) In order to establish the normal value, the Commission took the following steps.

(180) First, the Commission established the undistorted costs of manufacturing (covering the consumption of raw materials, labour and energy). It applied the undistorted unit costs based on the sources listed above to the actual consumption of the individual factors of production of the sampled exporting producers.

(181) Second, to arrive at the undistorted costs of production, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and auxiliary materials referred to in recital (171) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

(182) Finally, the Commission applied the SG&A and the weighted average profit of seven representative Colombian producers of ingredients for the beverage, cleaning, food, health and pharmaceutical industry to the above calculation.

(183) When expressed as a percentage of the costs of manufacturing, these amount to 24,82 % for SG&A and 20,72 % for profit. When expressed as a percentage of revenues, the same amounts to 17 % for SG&A and 14,2 % for profit.

(184) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. The Commission constructed the normal value per product type for each of the four cooperating exporting producers.

3.9. **Export price**

(185) The cooperating exporting producers exported to the Union directly to independent customers. Therefore, the export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.10. **Comparison**

(186) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.

(187) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. On this basis, allowances for transport, insurance, handling, loading and ancillary costs, packing, credit costs, bank charges and commissions have been made where applicable and justified.

3.11. **Dumping margins for the cooperating exporting producers**

(188) For the cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product under review, in accordance with Article 2(11) and (12) of the basic Regulation.

(189) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are 42 % for Weifang Ensign Industry Co., Ltd and 144 % for COFCO Bio-Chemical Energy (Yushu) Co. Ltd. No dumping was calculated for RZBC Group (RZBC (Juxian) Co., Ltd. and related trader RZBC Imp. & Exp. Co., Ltd.), nor for Jiangsu Guoxin Union Energy Co. Ltd, which are subject to price undertakings as explained in recital (191).

3.12. **Dumping margins for the non-cooperating exporting producers**

(190) The Commission also established the average dumping margin for the non-cooperating exporting producers. On the basis of the facts available, in accordance with Article 18 of the basic Regulation, the highest dumping margin of the cooperating producers was used, not least given the significantly lower level of export prices by non-cooperating companies.

3.13. **Conclusion on continuation of dumping**

(191) Altogether, a majority of Chinese exports to the EU (between 70 to 90 %) were made at significantly dumped prices during the review investigation period. The remaining Chinese exports were made by the two cooperating exporting producers for which no dumping was established. These two exporting producers are subject to price undertakings and their exports to the Union were made at the minimum import price. Their export prices to the Union were thus considered to be influenced by the undertakings and therefore not reliable enough to be used for the determination whether dumping will continue in the context of this expiry review.

(192) In sum, dumping has continued for the vast majority of Chinese exports to the Union. The Commission therefore concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

(193) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated the likelihood of continuation of dumping should the measures be repealed in accordance with Article 11(2) of the basic Regulation. The following additional elements were analysed: the production capacity and spare capacity in the country concerned, the attractiveness of the Union market; the relation between export prices to third countries and the price level in the Union; and circumvention practices.

(194) As mentioned above, only four Chinese exporting producers came forward. Therefore, the information available to the Commission on production and spare capacity from Chinese exporting producers was limited.

(195) For this reason, most of the findings set out below concerning the continuation or the recurrence of dumping had to be based on other sources, namely Eurostat and GTA databases and the information submitted by the Union industry in the review request. The analysis of that information revealed the following.

4.1. Production capacity and spare capacity in the country concerned

(196) Based solely on the questionnaire replies of the cooperating exporting producers, the investigation revealed spare production capacities of around 129 000 tonnes, which accounts for 20 to 40 % of EU demand. In the RIP, total Chinese production capacity is estimated to be three to four times higher than the total EU consumption.

(197) Domestic Chinese demand was estimated to be around 465 000 tonnes – less than 24 % of the country's production capacity. In addition, planned further increases in capacity indicate that the latter will reach the level of total world consumption in 2021 ([62]) – further exacerbating existing Chinese overcapacity. These new capacities will in all likelihood translate into even higher pressure to export, not least in view of the gap between capacity and the aforementioned levels of domestic demand. It is highly unlikely that Chinese domestic consumption would increase to the extent to be able to absorb existing capacity, let alone the increased one. In addition, the presence of measures already in place in a number of other markets makes it highly likely that there would be significant increase of dumped imports if the measures in the Union are repealed.

4.2. Attractiveness of the Union market

(198) The attractiveness of the Union market for Chinese exports was apparent given the continuing and massive presence even with measures – reaching 30 % to 50 % of the Union market share.

(199) The attractiveness of the Union market was further underlined by the fact that a Chinese investor is building a new plant with a capacity of up to 60 000 tonnes in the Union ([63]).

(200) In addition, Chinese exports to other important markets such as the US, Brazil, Colombia, India or Thailand were constrained by the existence of trade defence measures.

(201) The attractiveness of the Union market was further confirmed by the price elements hereunder.

4.3. Relation between export prices to third countries and the price level in the Union

(202) Export prices to third countries by the four cooperating companies were 20 to 40 % lower than the export prices to the Union, again underlining its attractiveness.

([62]) The Commission made the information concerning level of capacities in China, together with source materials, available in the file for inspection by interested parties on 7 June 2020, save No t20.004035.

([63]) China-CEE Institute: '*China and Hungary: 70 years of bilateral relations in a changing world*', December 2019, p. 75.

4.4. **Circumvention practices**

(203) Circumvention practices via Malaysia, which led to the imposition of anti-circumvention duties in January 2016 referred to in recital (5), further underlined the attractiveness of the Union market for Chinese exports.

4.5. **Likely prices and dumping margins should measures be repealed**

(204) As explained above, dumping has continued for a large majority of Chinese exports.

(205) In addition, all indications were that sales would take place at dumped levels should measures expire.

(206) First, the fact that all companies with undertakings sold precisely at the undertaking's minimum import price, indicated that the undertaking was acting as a price floor. In the absence of such a floor, and faced with competition by other Chinese exports priced in the range of 30 to 40 % lower than those in the undertaking, firms would have to sell at that lower price range to stay in the market. This would in all likelihood lead to higher dumping margins for all companies subject to the undertaking.

(207) Second, circumvention could be considered as an additional factor indicating the exporters' interest in entering the Union market and their inability to compete on the Union market at non-dumped levels. There was also a pattern of unfair pricing behaviour by Chinese firms when they export to other markets, as shown by high number of trade defence measures against citric acid in third countries mentioned in recital (200).

(208) Third, export prices to third countries by the four cooperating companies were much lower than those to the Union, indicating the likelihood of a further drop in export prices and thus of a further increase in dumping margins should measures expire.

4.6. **Conclusion**

(209) Should measures expire, the above analysis revealed the continuation of dumping and the strong likelihood of an increase in the dumping margins, with an even more prominent presence of imports into the attractive Union market.

(210) Following disclosure, CCCMC and three cooperating exporting producers questioned the findings on spare capacity. They claimed that based on the Commission's own calculations spare capacities went down from 192 000 tonnes in 2015 (the previous review) to 129 000 tonnes in the RIP, thus contradicting the finding of ever-larger spare production capacity translating into higher pressure to export. The Commission noted that it assessed the spare capacities based on data from the cooperating exporting producers. These cooperating exporting producers are different from the cooperating exporting producers in the previous review. For this reason, the comparison by CCCMC and the three cooperating exporting producers is flawed. In any event, 129 000 tonnes still represent a massive overcapacity. The claim was therefore dismissed.

(211) Following disclosure, CCCMC and three cooperating exporting producers contended that the Commission had not verified the reliability and accuracy of claimed evidence on planned capacity increases submitted by the Union industry. The Commission noted that it has carefully reviewed the submissions of both the Union industry and CCCMC in this respect and its review has not brought to light any elements that might alter its findings as established in recital (197).

(212) Following disclosure, CCCMC and three cooperating exporting producers claimed that the conclusion of the Commission that export prices to the Union would drop to third country levels in the absence of new measures, is total speculation. They also claimed that the Commission had provided no quantification or analysis with regard to its conclusion that exports from the PRC would likely increase and occur at higher dumping margins in the absence of measures. Finally, they claimed that the Commission did not present a sound economic reasoning of why Chinese exporting producers would drop substantially their prices to the Union in the absence of renewed measures.

(213) In response, the Commission noted that the investigation clearly established that dumping continues even based on export prices that are propped up by the MIP of the undertakings. Prices of exporting producers not subject to undertakings were significantly lower, clearly indicating that prices would be likely to drop in the absence of undertakings. In addition, the Commission found export prices to the Union to be significantly higher than export prices to other markets for all exporting producers subject to undertakings, indicating that the Union market would attract an increase in imports. These elements, together with the significant spare capacity in the PRC, clearly supported the finding that exports to the Union would likely continue to occur at dumped prices and at increased volumes if the measures were repealed.

5. **INJURY**

5.1. **Definition of the Union industry and Union production**

(214) The like product was manufactured by two producers in the Union during the RIP. The two producers constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(215) With regard to the fact that only two producers constitute the Union industry, the Commission, presented some of the figures in this Regulation using ranges and/or indexes in accordance with Article 19 of the basic Regulation in order to protect confidential information.

(216) The total Union production during the review investigation period was established within the range of 300 000 to 350 000 tonnes. The Commission established the figure on the basis of questionnaire replies of the two Union producers.

5.2. **Union consumption**

(217) The Commission established the free market Union consumption on the basis of the free market sales of the Union industry on the Union market and imports from the PRC and other third countries, as indicated in the questionnaire replies and import statistics based on 14(6) database.

(218) Free market union consumption developed as follows:

Table 1

Union consumption (tonnes)

	2016	2017	2018	Review investigation period
Total union consumption	500 000 - 550 000	535 000 – 585 000	535 000 – 585 000	515 000 - 565 000
Index	*100*	*107*	*107*	*103*

Source: Questionnaire replies and the 14(6) database

(219) The Union consumption initially increased by 7 %, with a peak of consumption in 2017 and 2018. Between 2018 and the review investigation period, the consumption somewhat decreased, but remained 3 % higher than at the beginning of the period considered.

(220) The reason for the increase of consumption of citric acid was the increase in consumption of products using the product under review in various industries such as food, household detergents, pharmaceutical and cosmetics. In addition, the legislation requiring substitution of phosphates in household cleaning detergents added to the increase of consumption of the product under review, as citric acid is one of the more suitable substitute of phosphates in these applications.

5.3. **Imports from the country concerned**

5.3.1. *Volume and market share of the imports from the country concerned*

(221) The Commission established the volume of imports on the basis of the 14(6) database. The market share of the imports was established on the basis of the 14(6) database and questionnaire replies of the Union industry.

(222) Imports from the country concerned developed as follows:

Table 2

Import volume (tonnes) and market share

	2016	2017	2018	Review investigation period
Volume of imports from China	207 295	190 750	223 185	205 595
Index	*100*	*92*	*108*	*99*
Market share (%)	40 – 45	34 – 39	40 – 45	38 – 43
Index	*100*	*86*	*100*	96

Source: Questionnaire replies and the 14(6) database

(223) The volume of imports from China was significant throughout the period considered, remaining almost at the same level in the review investigation period compared to 2016. The lower imports in 2017 and higher imports of 2018 are linked to the fact that citric acid is a product transported in large quantities, and such a large quantity entered the Union market in January 2018 and was hence attributed to the 2018 imports (imports of January 2018 are around 50 % higher than December 2017). Overall, the import volumes from China were stable.

(224) The market share of imports of citric acid from China was significant and remained largely in the 40 % range, with a small decline of 1,4 percentage points over the period considered. As imports from other countries also declined, as described in recital (234) to (235), the Commission observed that the increased demand during the period considered was satisfied by the increase of production of the Union industry.

5.3.2. *Prices of the imports from the country concerned and price undercutting*

(225) The Commission established the prices of imports on the basis of the 14(6) database. The average price of imports from the country concerned developed as follows:

Table 3

Import prices (EUR/tonne)

	2016	2017	2018	Review investigation period
China	736,7	773,8	738,2	701,9
Index	*100*	*105*	*100*	*95*

Source: 14(6) database

(226) The price of citric acid imported from China was stable during the period considered. Overall, the price of Chinese citric acid decreased by 5 % compared to 2016. Import prices from China remained substantially lower compared to Union prices, as reflected in Table 8.

(227) The increase of import prices in 2017 can be linked with the increase of consumption, which, as explained in recital (219), was particularly high in 2017, due to the legislative change described in recital (220) concerning phosphates. This increase of demand triggered an increase in import prices. Prices then fell back in 2018 and 2019 as demand adjusted.

(228) The Commission determined the price undercutting during the review investigation period by comparing:

(a) the weighted average sales prices per product type of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(b) the corresponding weighted average prices per product type of the imports from the cooperating Chinese producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, including the anti-dumping duty, with appropriate adjustments for customs duties and post-importation costs.

(229) Two levels of undercutting margins are shown below, the first covers the cooperating exporting producers not subject to the undertaking mentioned in recital (189). The second level also includes the three cooperators which were subject to the undertaking. A distinction is made because the prices of the companies subject to the undertaking were influenced by the terms of the undertaking.

(230) For non-cooperating exporting producers, price undercutting could not be established using prices per product type, as this information was not available. Therefore, price undercutting was established by comparing overall weighted average sales prices both for the Union producers and for the non-cooperating Chinese exporting producers.

(231) The price comparisons were made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The results of the comparisons were expressed as a percentage of the Union producers' turnover during the review investigation period. They showed a weighted average undercutting margin for exporting producers not subject to the undertakings of more than 19 %, and for exporting producers subject to the undertaking of more than 10 %.

5.4. **Imports from third countries other than China**

(232) The imports of citric acid from third countries other than China came mainly from Cambodia, Colombia and Thailand.

(233) The (aggregated) volume of imports as well as the market share and price trends for imports of citric acid from other third countries developed as follows:

Table 4

Imports from third countries

Country		2016	2017	2018	Review investigation period
Thailand	Volume (tonnes)	19 410	20 163	13 203	13 305
	Index	*100*	*104*	*68*	*69*
	Market share (%)	< 5	< 5	< 5	< 5
	Average price (EUR)	817	887	847	784
	Index	*100*	*109*	*104*	*96*

Other third countries	Volume (tonnes)	10 331	18 612	7 909	7 194
	Index	*100*	*180*	*77*	*70*
	Market share (%)	< 5	< 5	< 5	< 5
	Average price (EUR)	1 094	1 001	1 251	1 265
	Index	*100*	*92*	*114*	*116*
Total of all third countries	Volume (tonnes)	29 741	38 775	21 112	20 500
	Index	*100*	*130*	*71*	*69*
	Market share (%)	5-10	5-10	< 5	< 5
	Average price (EUR)	913	942	998	952
	Index	*100*	*103*	*109*	*104*

Source: The 14(6) database

(234) The largest volumes of imports of citric acid from third countries other than China throughout the period considered came from Thailand. Imports from Thailand decreased by 31 % during the period considered. In every year of the period considered, the prices followed the trend of price evolution of Chinese imports, but were 11 % to 15 % higher.

(235) Imports of citric acid from all third countries fell by 30 % over the period considered. Their prices were also higher compared to prices of imports from China.

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

5.5.1. *General remarks*

(236) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

5.5.2. *Production, production capacity and capacity utilisation*

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

Table 5

Union production volume, production capacity and capacity utilisation

	2016	2017	2018	Review investigation period
Production volume (tonnes)	300 000 – 350 000	342 000 – 392 000	339 000 – 389 000	327 000 – 377 000
Index	*100*	*114*	*113*	*109*
Production capacity (tonnes)	350 000 – 400 000	381 000 – 431 000	395 000 – 445 000	395 000 – 445 000
Index	*100*	*109*	*113*	*113*

Capacity utilisation (%)	90 – 100	90 – 100	90 – 100	87 – 97
Index	*100*	*105*	*100*	*97*

Source: Questionnaire replies

(238) The production volume increased by 9 % during the period considered and the peak of the production was reached in 2017 (when it was by 14 % higher than in 2016). The trend of production volume of the Union industry largely follows the trend of the Union consumption.

(239) Production capacity has increased steadily during the period considered and compared with 2016 it was by 13 % higher in the review investigation period.

(240) Capacity utilisation fluctuated during the period considered, reaching the lowest level during the review investigation period, at 3 % below the level of 2016.

5.5.3. *Sales volume and market share*

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

Table 6

Union sales volume and market share

	2016	2017	2018	Review investigation period
Total sales volume on the Union market (tonnes)	250 000 – 300 000	292 000 – 342 000	280 000 – 330 000	275 000 – 325 000
Index	*100*	*117*	*112*	*110*
Captive market sales	0 – 5 000	0 – 5 000	0 – 5 000	0 – 5 000
Free market sales	245 000 – 300 000	287 000 – 342 000	275 000 – 330 000	270 000 – 325 000
Index	*100*	*116*	*112*	*110*
Market share of free market sales (%)	50 – 60	54 – 64	52 – 62	54 – 64
Index	*100*	*109*	*104*	*107*

Source: Questionnaire replies

(242) Captive market sales, linked mainly to the production of specialties and special salts which use citric acid as an input material, were at a small level of below 5 000 tonnes in each year of the period considered and therefore had no noticeable influence on the Union industry's situation, including its market shares.

(243) The sales developed similarly to the trend of production and increased by 10 % during the period considered, being at the highest level in 2017.

(244) The market share of the Union industry was between 50 % and 64 % in each year of the period considered. It increased in the review investigation period by around 4 percentage points.

5.5.4. *Employment and productivity*

(245) Employment and productivity developed in the Union over the period considered as follows:

Table 7

Employment and productivity in the Union

	2016	2017	2018	Review investigation period
Number of employees	600 – 650	624 – 674	642 – 692	642 – 792
Index	*100*	*104*	*107*	*107*
Productivity (unit/employee)	500 – 550	550 – 600	530 – 580	510 – 560
Index	*100*	*110*	*106*	*102*

Source: Questionnaire responses

(246) The number of employees expressed in full time equivalent increased by around 7 % during the period considered to reach a level of over 640 employees in the review investigation period.

(247) Productivity increased only slightly during the period considered by around 2 %. In this respect, the productivity is expressed as number of tonnes per number of employees (full time equivalents) during the year.

5.5.5. *Magnitude of the dumping margin and recovery from past dumping*

(248) The impact of the actual dumping margins on the Union industry was mitigated by the undertaking applicable to the price level of large Chinese exporting producers, which acted as a floor for the relevant Chinese export prices.

(249) It can therefore be concluded that the Union industry has recovered from the injury caused by the past dumping of Chinese exporting producers. During the period considered, the recovery process of the Union industry continued as demonstrated by a favourable trend of the main injury indicators.

5.5.6. *Prices and factors affecting prices*

(250) The weighted average unit sales prices of the Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2016	2017	2018	Review investigation period
Average unit sales price on the free market (EUR/tonne)	1 000 – 1 100	980 – 1 080	1 010 – 1 110	1 010 – 1 110
Index	*100*	*98*	*101*	*101*
Unit cost of production (EUR/tonne)	800 – 900	760 – 860	824 – 924	840 – 940
Index	*100*	*95*	*103*	*105*

Source: Questionnaire responses

(251) The weighted average unit sales prices of the Union producers to unrelated customers in the Union was very stable and increased only by 1 % during the period considered.

(252) The unit cost of production fluctuated during the period considered to reach a 5 % higher level in the review investigation period compared to 2016. The increase of costs combined with only a small increase in sales prices resulted in a decrease of profitability, as described in recital (257).

5.5.7. *Labour costs*

(253) The average labour costs of the Union producers developed as follows over the period considered:

Table 9

Average labour costs per employee

	2016	2017	2018	Review investigation period
Average labour costs per employee (EUR)	70 000 – 80 000	70 000 – 80 000	71 400 – 81 400	72 800 – 82 800
Index	*100*	*100*	*102*	*104*

Source: Questionnaire responses

(254) The average labour costs of the Union producers increased by 4 % during the period considered, lower than the inflation in the Union during this period.

5.5.8. Inventories

(255) Stock levels of the Union producers developed over the period considered as follows:

Table 10

Inventories

	2016	2017	2018	Review investigation period
Closing stocks (tonnes)	20 000 – 25 000	16 200 – 21 200	24 400 – 39 400	24 000 – 28 000
Index	*100*	*81*	*122*	*120*
Closing stocks as a percentage of production (%)	5 – 10	3 – 8	5 – 10	5 – 11
Index	*100*	*71*	*107*	*110*

Source: Questionnaire responses

(256) The closing stocks of the Union producers increased during the period considered. The level of inventories is at a stable level following the increased sales and production. The much lower level of stock was the exception for the year-end 2017. The exception is linked with the increased demand for citric acid due to the replacement of phosphates in the chemical composition of certain products, as explained in recital (220).

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2016	2017	2018	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	15 – 20	18 – 23	14 – 19	11 – 16
Index	*100*	*120*	*94*	*79*
Cash flow Index	100	140	100	102
Investments (EUR)	40 000 000 – 50 000 000	35 600 000 – 45 600 000	31 200 000 – 41 200 000	39 600 000 – 49 600 000
Index	*100*	*89*	*78*	*99*
Return on investments (%)	30 – 40	37 – 48	27 – 38	26 – 36
Index	*100*	*125*	*92*	*86*

Source: Questionnaire responses

(258) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(259) The profitability during the period considered was at the highest level in 2017. The exceptional circumstances were linked to the replacement of phosphates, as described in recital (220) and higher profitability in that year should be linked with increased demand in that specific year. Overall profitability of the industry in the review investigation period was above 10 %.

(260) The net cash flow is the ability of the Union producers to self-finance their activities. Its development remained at similar levels throughout the period considered, except in the year 2017.

(261) The return on investments is the profit as a percentage of the net book value of investments. Its development was similar to the development of profitability, and remained at satisfactory levels throughout the period considered.

(262) None of the Union producers reported difficulties in raising capital during the period considered.

5.6. **Conclusion on injury**

(263) Most injury indicators such as production, sales volume, employment, capacity, productivity and cash flow developed positively. While the trend of the financial indicators such as profitability and return of investments is negative, their absolute levels are satisfactory and do not indicate a sign of material injury.

(264) Therefore, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

6. LIKELIHOOD OF RECURRENCE OF INJURY

6.1. General remarks

(265) The Commission concluded in recital (262) that the Union industry did not suffer material injury during the period considered, and assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from China if the measures against Chinese imports were allowed to lapse ([64]).

(266) The above trends concerning prices and volumes of imports of the product under review from China show that while the Chinese exporters maintained a sizeable presence on the Union market, the measures in force (duty and undertakings) have led to an improvement in market conditions. The Union industry was the main beneficiary of this development, as the market presence of other third countries remained limited. This indicates that the removal of injury is mainly due to the existence of the measures in force.

(267) As mentioned in recitals (196) to (197), exporting producers in the PRC have massive and increasing spare capacity enabling them to increase their exports very rapidly. In addition, given the more lucrative prices on the Union market compared to most third country markets, it is likely that significant quantities currently exported to these countries could also be redirected to the Union market should the anti-dumping measures be allowed to lapse.

(268) In addition, major international markets have trade defence measures against Chinese citric acid. It will therefore be more difficult for the Chinese exporting producers to sell in those markets than into an unprotected Union market should the anti-dumping measures be allowed to lapse.

(269) In addition, the price levels of the Chinese exporters undercut Union industry's prices significantly even with measures in place. Without duties, undercutting by exporting producers without undertakings would be in excess of 29 %. The foregoing shows the price levels at which Chinese exporting producers would likely enter the Union market in the absence of measures. Without the measures in place, the Union industry would not be able to maintain its prices, likely incurring into losses like in the original investigation.

(270) The likelihood of low-priced Chinese exports in the absence of measures is also confirmed by the numerous anti-dumping investigations on Chinese citric acid in other countries mentioned in recital (200).

(271) The combination of the high export capacity of Chinese producers and injurious prices would directly lead to a rapid loss of Union industry sales and/or drop in its prices, whose effect would lead to a deep financial deterioration, jeopardising the Union industry's survival – as shown by the shutdown of other Union producers, mentioned in recital (276).

(272) Following disclosure, CCCMC and three cooperating exporting producers commented with regard to likelihood of recurrence of injury that increased imports at lower prices would not make commercial or market sense, should the measures expire. In addition, CCCMC also claimed that trade defence measures in other countries would not have significant impact on decision-making of exporting producers from China. These claims were neither substantiated nor did they demonstrate in any way that the wide array of substantive elements and reasoning mentioned above were incorrect. Moreover, the Commission observed that import prices without duties, as shown in Table 3 are already well below the Union industry's costs of production (as shown in Table 11). Consequently, even maintaining such low import prices would put pressure on the Union industry which would likely materialise in injury again. Therefore, these claims cannot be accepted.

([64]) See Appellate Body Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico* (WT/DS282/AB/R), paras. 108 and 122 – 123.

(273) Therefore, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from China at injurious prices and material injury would be likely to recur.

7. **UNION INTEREST**

(274) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

7.1. **Interest of the Union industry**

(275) Both Union producers accounting together for 100 % of Union production cooperated in this investigation. As stated in recital (263), Union industry has recovered from the injury caused by past dumping and their operations are viable when not subject to unfair competition by dumped imports.

(276) The Union industry was following the increased demand for citric acid, including investments needed to increase their production capacity and plans to expand it further.

(277) At the same time, removal of the measures would very likely lead to increased unfair competition by dumped Chinese imports, threatening the continued operation of the remaining producers in an otherwise viable industry. It is recalled that three producers in the Union had closed down before the imposition of measures against the Chinese imports.

(278) The Commission therefore concluded that it is in the interest of the Union industry to maintain the measures in force.

7.2. **Interest of unrelated importers**

(279) As stated in recital (18), only one unrelated importer submitted a questionnaire reply. Therefore there was not much interest among importers in the current investigation.

(280) Importers of citric acid are often traders of a wider range of chemical products and are thus not limited to citric acid. Furthermore, the traders import chemical products from other third countries apart from China, and also trade in products produced by the Union industry. Therefore, the potential impact of maintaining the duties on importers is expected to be very limited.

7.3. **Interest of users**

(281) As set out in recital (23), the Commission received questionnaire replies from four users from the health, beauty and home hygiene industry. In spite of the food and beverage industry constituting the biggest user of citric acid, no user from that industry cooperated in the investigation.

(282) For most users, citric acid accounts for a small or even negligible part of their costs structure. In some specific type of products, in particular in the area of home hygiene products such as dishwasher tablets, the content of citric acid is much higher.

(283) In their comments, the cooperating users claimed that the Union industry is fully recovered, and indicated that it is not able to fully meet the demand in the Union. The comments also mentioned that, especially for products with exceptionally high content of citric acid, the production of these products in the Union is less competitive compared with countries where citric acid is not subject to duties. Users also pointed to the good financial situation of the Union producers.

(284) The existing measures have not affected the availability of citric acid from non-Union sources, as the continuing sizeable presence of Chinese exports confirms. Increases in production capacity are planned in the Union, both by the Union producers and by the Chinese investment in the Union referred to in recital (199).

(285) The profitability of cooperating users was high, and for the vast majority of users the financial impact of cost of citric acid as a raw material was negligible. For the users involved in production of the type of products containing higher content of citric acid, those products were only a part of a much wider portfolio. During the previous expiry review, when more users cooperated in the investigation, the Commission established that citric acid accounts for no more than 5 % of raw material costs of users producing chemical products. Therefore, the effect of the measures on these users was considered to be limited.

(286) On balance, the positive effect of the measures on the Union industry by far outweighed the limited negative impact of the measures in force on the users.

7.4. **Other factors – security of sources of supply**

(287) Security of supply is an important element of the market of citric acid. For the majority of applications of citric acid, the price factor was negligible, whereas availability of the product under review as a raw material was crucial. In the absence of measures, the survival of the Union industry would be in jeopardy, with effects beyond industry itself, e. g., reduction in available sources of supply or reduction of competitors in the market.

7.5. **Conclusion on Union interest**

(288) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of citric acid originating in China.

8. **ANTI-DUMPING MEASURES**

(289) On the basis of the conclusions reached by the Commission on recurrence of dumping, recurrence of injury and Union interest, the anti-dumping measures on citric acid from China should be maintained.

(290) In light of the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('UK') from the European Union, effective from 1 January 2021, the Commission also analysed the impact of such a withdrawal on the conclusions of this expiry review.

(291) In this respect, the Commission noted that the share of the total imports of citric acid into the UK out of the total imports on an EU-28 basis was less than 10 % throughout the period considered (source: 14.6 Database). Neither the attractiveness of the Union market nor the price level of imports of the product concerned in the Union would be affected by the reduction of the internal market to EU-27.

(292) Sales by the two sole Union producers to the UK were in the same order of magnitude.

(293) For the two Chinese exporting producers where the dumping margin was calculated as explained in recital (189), removing export sales to the UK for the purposes of calculating a dumping margin would not have an impact of more than 1 percentage point. As a corollary dumping margins for non-cooperating producers would also not change.

(294) Therefore, the Commission concluded that the results of this investigation leading to the maintenance of the anti-dumping measures would not vary, regardless of whether UK is considered for the analysis or not. No comments were made on this point by any interested party.

(295) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.

(296) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([65]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

([65]) OJ L 193, 30.7.2018, p. 1.

(297) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of citric acid and trisodium citrate dihydrate, currently falling under CN codes 2918 14 00 and ex 2918 15 00 (TARIC code 2918 15 00 11 and 2918 15 00 19) and originating in the People's Republic of China.

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 (%)	TARIC additional code
COFCO Bio-Chemical Energy (Yushu) Co. Ltd – No 1 Dongfeng Avenue, Wukeshu Economic Development Zone, Changchun City 130401, PRC	35,7	A874
Laiwu Taihe Biochemistry Co., Ltd. – No 89, Changjiang Street, Laiwu City, Shandong Province, PRC	15,3	A880
RZBC Co., Ltd. – No 9 Xinghai West Road, Rizhao City, Shandong Province, PRC	36,8	A876
RZBC (Juxian) Co., Ltd. – No 209 Laiyang Road, Juxian Economic Development Zone, Rizhao City, Shandong Province, PRC	36,8	A877
TTCA Co., Ltd. – West, Wenhe Bridge North, Anqiu City, Shandong Province, PRC	42,7	A878
Weifang Ensign Industry Co., Ltd. – No 1567 Changsheng Street, Changle, Weifang, Shandong Province, PRC	33,8	A882
Jiangsu Guoxin Union Energy Co., Ltd. – No 1 Redian Road, Yixing Economic Development Zone, Jiangsu Province, PRC	32,6	A879
All other companies	42,7	A999

3. The definitive anti-dumping duty applicable to imports originating in the People's Republic of China, as set out in paragraph 2, is hereby extended to imports of the same citric acid and trisodium citrate dihydrate consigned from Malaysia, whether declared as originating in Malaysia or not (CN codes ex 2918 14 00 (TARIC code 2918 14 00 10) and ex 2918 15 00 (TARIC code 2918 15 00 11).

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

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

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2008/899/EC, further amended by Decision 2012/501/EU and Regulation (EU) 2016/704, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

(a) they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Union; and

(b) such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex to this Regulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

(a) whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled; or

(b) when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of Council Regulation (EC) No 1225/2009 ([66]) in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

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

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

Done at Brussels, 14 April 2021.

For the Commission
The President
Ursula VON DER LEYEN

([66]) OJ L 343, 22.12.2009, p. 51..

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the companies' sales to the European Union of goods, which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the European Union border.
6. The exact description of the goods, including:
   - — the product code number (PCN) used for the purpose of the undertaking,
   - — plain language description of the goods corresponding to the PCN concerned,
   - — the company product code number (CPC),
   - — TARIC code,
   - — quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
   - — price per tonne,
   - — the applicable payment terms,
   - — the applicable delivery terms,
   - — total discounts and rebates.
8. Name of the company acting as an importer in the European Union to which the commercial invoice accompanying the goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by (COMPANY), and accepted by the European Commission through Implementing Decision (EU) 2015/87. I declare that the information provided in this invoice is complete and correct.'