

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/32****of 14 January 2016****extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/82 on imports of citric acid originating in the People's Republic of China to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, ('the basic Regulation') and in particular Article 13 thereof,

Whereas:

**1. PROCEDURE****1.1. Existing measures**

- (1) The Council, following an anti-dumping investigation ('the original investigation'), imposed a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China ('PRC') by Regulation (EC) No 1193/2008 <sup>(2)</sup>. The measures took the form of an *ad valorem* duty ranging between 6,6 % and 42,7 % ('the original measures').
- (2) The European Commission ('the Commission'), by Decision 2008/899/EC <sup>(3)</sup> accepted the price undertakings offered by seven Chinese exporting producers or group of exporting producers together with the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters.
- (3) The Commission, by Decision 2012/501/EU <sup>(4)</sup>, subsequently withdrew the undertaking offered by one exporting producer, i.e. Laiwu Taihe Biochemistry Co. Ltd ('Laiwu').
- (4) By Implementing Regulation (EU) 2015/82 <sup>(5)</sup> the Commission, following an expiry review and a partial interim review ('previous investigations') pursuant to Article 11(2) and (3) of the basic Regulation respectively, maintained the definitive measures and amended their level. The definitive anti-dumping duties in force on imports of citric acid originating in the PRC range between 15,3 % and 42,7 % ('the measures in force').

**1.2. Product concerned and product under investigation**

- (5) The product concerned is as defined in the original investigation, citric acid (including trisodium citrate dihydrate), originating in the PRC, currently falling within CN codes 2918 14 00 and ex 2918 15 00 ('the product concerned').

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

<sup>(2)</sup> Council Regulation (EC) No 1193/2008 of 1 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 1).

<sup>(3)</sup> Commission Decision 2008/899/EC of 2 December 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 62).

<sup>(4)</sup> Commission Decision 2012/501/EU of 7 September 2012 amending Decision 2008/899/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ L 244, 8.9.2012, p. 27).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 15, 22.1.2015, p. 8).

- (6) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether declared as originating in Malaysia or not, currently falling within the same CN codes as the product concerned ('the product under investigation'). The TARIC codes for the product under investigation are 2918 14 00 10 and 2918 15 00 11.
- (7) The investigation showed that citric acid exported from the PRC to the Union and citric acid consigned from Malaysia to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

### 1.3. Grounds for the initiation

- (8) The Commission had at its disposal sufficient prima facie evidence that the measures in force are being circumvented by imports of the product under investigation from Malaysia.
- (9) The information at the Commission's disposal showed that a significant change in the pattern of trade involving exports from the People's Republic of China and Malaysia to the Union has taken place following the imposition of measures on the product concerned, as outlined in recitals 1 to 4 above, without sufficient due cause or economic justification for such a change other than the imposition of the duty.
- (10) Furthermore, the Commission had at its disposal sufficient prima facie evidence that the remedial effects of the measures in force are being undermined both in terms of quantity and price.
- (11) Finally, the Commission had sufficient prima facie evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned.

### 1.4. *Ex-officio* initiation

- (12) Having determined, after having informed the Member States, that sufficient prima facie evidence existed for the initiation of an investigation, on 1 May 2015 the Commission initiated, on its own initiative, an investigation by Commission Implementing Regulation (EU) 2015/706 <sup>(1)</sup> (the 'initiating Regulation') pursuant to Articles 13(3) and 14(5) of the basic Regulation. The Commission, by the initiating Regulation, also directed the customs authorities to register imports of citric acid consigned from Malaysia.

### 1.5. Investigation

- (13) The Commission officially advised the authorities of the PRC, Malaysia, the known exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. The Mission of the Republic of Malaysia to the European Union provided contact details of exporting producers in Malaysia. Exemption forms were sent to these exporting producers in Malaysia. Questionnaires were also sent to the known exporting producers in the PRC and unrelated importers in the Union.
- (14) Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing Officer within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (15) One Malaysian company came forward claiming that it was not a producer but merely a user of citric acid and therefore it did not request an exemption. This company was informed that, should it have any related producing companies in Malaysia, they were also invited to reply to the exemption form. The Commission did not receive any reply to the exemption form from any Malaysian exporting producer. Six exporting producers in the PRC and four unrelated importers in the Union submitted replies to the questionnaire.

<sup>(1)</sup> Commission Implementing Regulation (EU) 2015/706 of 30 April 2015 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Commission Implementing Regulation (EU) 2015/82 on imports of citric acid originating in the People's Republic of China by imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ L 113, 1.5.2015, p. 38).

### 1.6. Reporting period and investigation period

- (16) The investigation period covered the period from 1 January 2011 to 31 March 2015. Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 January 2014 to 31 March 2015 in order to examine the possible undermining of the remedial effect of the measures in force in terms of prices and/or quantities and existence of dumping.

## 2. RESULTS OF THE INVESTIGATION

### 2.1. General considerations

- (17) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between the PRC, Malaysia and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of prices and/or quantities of the product under investigation; and whether there was evidence of dumping in relation to the normal values previously established in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

### 2.2. Degree of cooperation and determination of the trade volumes

#### *Malaysia*

- (18) None of the exporters located in Malaysia cooperated in the present investigation. Given the lack of cooperation, findings concerning exports of citric acid from Malaysia to the Union were made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. In this case, Comext data was used to determine overall import volumes from Malaysia to the Union.

#### *PRC*

- (19) Six producers/exporters in the PRC, which were also subject to undertakings, submitted a questionnaire reply. The exports of the cooperating companies covered around 54 % of the total Chinese exports to the Union and around 69 % of the Chinese exports to Malaysia during the reporting period.
- (20) Due to lack of cooperation from Malaysia and only partial cooperation from the PRC, Comext data was used to determine total export volumes from the PRC to the Union. They were crosschecked with Chinese national statistics. Chinese national statistics were also used for the determination of the total export volumes from the PRC to Malaysia.
- (21) The statistical data were counter-checked with the data submitted by the six cooperating exporting producers. The data submitted by the cooperating companies showed similar trends than the trends established in Comext on the one hand and in the Chinese national statistics on the other hand.

### 2.3. Change in the pattern of trade

#### *Imports of citric acid into the Union*

- (22) During the investigation period, imports of the product concerned from the PRC to the Union first increased from 2011 to 2012 by 14 %. Subsequently in 2013, they dropped below the level of 2011 and then increased again in 2014 till the end of the reporting period. Overall, there was an increase of 5 % during the investigation period, from 201 345 tonnes in 2011, to 210 516 tonnes during the reporting period.

- (23) This has to be seen in relation to the relative increase of imports from Malaysia during the same period, i.e. from 792 tonnes in 2011 to 6 837 tonnes during the reporting period, by more than eight times. The total increase in volume of imports from Malaysia between 2011 and the end of the reporting period corresponded to more than 6 000 tonnes.
- (24) Table 1 shows the import quantities of citric acid from the PRC <sup>(1)</sup> and Malaysia into the Union from 1 January 2011 to the end of the reporting period.

Table 1

**Import volumes from the PRC and Malaysia to the Union**

	2011	2012	2013	2014	RP <sup>(1)</sup>
China (tonnes)	201 345	230 454	193 383	205 791	210 516
<i>Index</i>	100	114	96	102	105
Malaysia (tonnes)	792	1 972	4 403	6 559	6 837
<i>Index</i>	100	249	556	828	863

<sup>(1)</sup> Data during the reporting period was adjusted to the 12-month period.

Source: Comext statistics.

*Exports from the PRC to Malaysia*

- (25) Likewise, as shown in table 2 below, there was a substantial relative increase of exports of citric acid from the PRC to Malaysia during the investigation period, i.e. from of 7 990 tonnes in 2011 to 13 763 tonnes in the reporting period, which is an increase of more than 70 %. This increase corresponded to roughly 6 000 tons and thus corresponded almost exactly to the increase of import volumes from Malaysia to the Union as shown in table 1. This increasing trend was also observed with regard to the six cooperating Chinese exporting producers.

Table 2

**Export volumes from the PRC to Malaysia**

	2011	2012	2013	2014	RP
Total exports to Malaysia in quantity (tonnes)	7 990	7 333	11 693	15 172	13 763
Total exports to Malaysia					
<i>Index</i>	100	92	146	190	172
Exports to Malaysia by cooperating Chinese exporting producers					
<i>Index</i>	100	123	209	197	216

Source: Goodwill China Business Information Ltd, questionnaire replies.

<sup>(1)</sup> Periods of this investigation, namely 2011, 2012 and, partially, the reporting period, coincided with the periods published in the expiry review Regulation (EU) 2015/82 referred to in recital 4. Import volumes for this investigation were updated with the latest data available in Comext statistics; therefore figures may not exactly correspond to the ones published in the expiry review Regulation (EU) 2015/82.

*Conclusion on the change in the pattern of trade*

- (26) The increase in volumes, of both exports from Malaysia to the Union and of exports from the PRC to Malaysia has taken place after imposition of the original measures. This constitutes a change in the pattern of trade between the PRC and Malaysia on the one hand, and Malaysia and the Union, on the other hand.
- (27) While it is noted that in absolute terms the volume of imports from Malaysia to the Union was still relatively low during the IP, the trend is sharply increasing.

**2.4. Nature of the circumvention practise**

- (28) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries.

*Production volume in Malaysia*

- (29) As there was no cooperation from any company in Malaysia, no information could be obtained on the possible levels of the genuine production of the product under investigation in Malaysia.

*Transshipment*

- (30) At the initiation of this investigation the Commission had evidence that some Chinese exporting producers had business contacts with importers in the Union suggesting the possibility for avoidance of duties through transshipment. In addition, as mentioned in recital 29 above, there was no evidence of the existence of any genuine production in Malaysia and none of the companies in Malaysia cooperated. Moreover, as established in recitals 22 to 26 above, there was a clear change in the pattern of trade, manifested by a simultaneous surge in exports from the PRC to Malaysia and imports from Malaysia to the Union, in almost identical quantities.
- (31) It is therefore concluded that there is transshipment of Chinese-origin citric acid to the Union via Malaysia.

**2.5. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty**

- (32) The investigation did not bring to light any due cause or economic justification for the transshipment other than the avoidance of the measures in force on the product concerned. No elements were found, other than the duty, which could be considered as a compensation for the costs of transshipment, in particular regarding transport and reloading, of citric acid originating in the PRC via Malaysia.

**2.6. Undermining the remedial effect of the anti-dumping duty**

- (33) To assess whether the imported citric acid had, in terms of quantities and prices, undermined the remedial effects of the measures in force, Comext data was used as the best data available concerning quantities and prices of imports from Malaysia. The prices so determined were compared to the injury elimination level established for Union producers in the previous investigations <sup>(1)</sup>.
- (34) While it is noted that in absolute terms the volume of imports from Malaysia to the Union was still relatively low during the IP, their trend is sharply increasing. Therefore, the upsurge of imports from Malaysia to the Union from 792 tonnes in 2011 to 6 837 tonnes in the RP was considered to be significant in terms of relative volume.
- (35) The comparison was made between the injury elimination level as established in the previous investigations and the average export price determined on the basis of Comext data in this investigation for Malaysia and adjusted

<sup>(1)</sup> Implementing Regulation (EU) 2015/82, recital 167.

for post-importation costs. Given the lack of sufficient cooperation the post-importation costs were also established on the basis of the data in the previous investigations. The comparison showed significant underselling for Malaysia of 30-40 %. It was therefore concluded that the remedial effects of the measures in force are being undermined in terms of both quantities and prices.

## 2.7. Evidence of dumping

- (36) Finally, in accordance with Article 13(1) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value established in the previous investigations.
- (37) In the previous investigations, the normal value for the PRC was established on the basis of prices in Canada, which in those investigations was found to be an appropriate market economy analogue country.
- (38) The export prices from Malaysia to the Union were based on facts available, i.e. on the average export price of citric acid during the reporting period as reported in Comext and adjusted as described below.
- (39) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport and insurance cost. Given that there was no cooperation from the producers in Malaysia, the adjustments had to be established on the basis of facts available, i.e. on price quotation issued by an independent provider of world freight quotations <sup>(1)</sup> during the reporting period, for transport and insurance between a given port in Malaysia and a given port in the Union with CIF delivery terms estimated to 65-75 EUR/mt.
- (40) In accordance with Article 2(11) and (12) of the basic Regulation, a dumping margin was calculated by comparing the weighted average normal value as established in the previous investigations and the corresponding weighted average export prices from Malaysia to the Union as established in recitals 38 and 39 above during the reporting period, expressed as a percentage of the CIF price at the Union frontier duty unpaid. The comparison showed dumping amounting to 50-60 %.

## 3. MEASURES

- (41) Given the above, the Commission concluded that the definitive anti-dumping duty imposed on imports into the Union of citric acid originating in the PRC was being circumvented by means of transshipment via Malaysia pursuant to Article 13(1) of the basic Regulation.
- (42) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned, should therefore be extended to imports of the product under investigation, i.e. the same product but consigned from Malaysia, whether declared as originating in Malaysia or not.
- (43) The measures to be extended are the measures established in Article 1(2) of Commission Implementing Regulation (EU) 2015/82 for 'all other companies', which is presently a definitive anti-dumping duty of 42,7 % applicable to the net, free-at-Union-frontier price, before duty.
- (44) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of citric acid consigned from Malaysia.

## 4. REQUESTS FOR EXEMPTION

- (45) As stated in recital 15 none of the producers in the country concerned came forward following initiation. Accordingly, no requests for exemption from the possible extension of the measures in accordance with Article 13(4) of the basic Regulation were made.

<sup>(1)</sup> [www.worldfreightrates.com](http://www.worldfreightrates.com)

## 5. NEW EXPORTERS

- (46) Without prejudice to Article 11(3) of the basic Regulation, the producers in Malaysia which did not come forward in this proceeding and did not export the product under investigation to the Union in the reporting period and which consider lodging a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete an exemption form in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-the-spot verification visit. The request should be addressed to the Commission, with all relevant information, in particular any modification in the company's activities linked to the production and sales.
- (47) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of the extended measures in force accordingly. Subsequently, any exemption granted will be monitored to ensure compliance.

## 6. DISCLOSURE

All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. No comments were submitted.

- (48) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009.

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Regulation (EC) No 1193/2008 on imports of citric acid originating in the People's Republic of China, is hereby extended to imports of citric acid, consigned from Malaysia, whether declared as originating in Malaysia or not, currently falling within CN codes 2918 14 00 (TARIC code 2918 14 00 10) and ex 2918 15 00 (TARIC code 2918 15 00 11).
2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Malaysia, whether declared as originating in Malaysia or not, registered in accordance with Article 2 of Implementing Regulation (EU) 2015/706 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

### *Article 2*

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission  
Directorate-General for Trade  
Directorate H  
Office: CHAR 04/039  
1040 Brussels  
BELGIUM

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EU) No 791/2011, from the duty extended by Article 1.

*Article 3*

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) 2015/706.

*Article 4*

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 January 2016.

*For the Commission*

*The President*

Jean-Claude JUNKER

---