

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**

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 ⁽¹⁾ ('the basic Regulation'), and in particular Articles 9(4), 11(2), (3) and (5) thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) The Council, following an anti-dumping investigation ('the original investigation'), by Regulation (EC) No 1193/2008 ⁽²⁾, imposed a definitive anti-dumping duty on imports of citric acid currently falling within CN codes 2918 14 00 and ex 2918 15 00 originating in the People's Republic of China ('PRC') ('the original measures'). The measures took the form of an *ad valorem* duty ranging between 6,6 % and 42,7 %.
- (2) The European Commission ('the Commission'), by Decision 2008/899/EC ⁽³⁾ 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.
- (3) The Commission, by Decision 2012/501/EU ⁽⁴⁾, withdrew the undertaking offered by one exporting producer, i.e. Laiwu Taihe Biochemistry Co. Ltd ('Laiwu').

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽⁵⁾ of the original measures, the Commission received on 2 August 2013 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by SA Citrique Belge and Jungbunzlauer Austria AG ('the applicants') on behalf of producers representing 100 % of the Union production of citric acid.
- (5) The request was based on the grounds that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury to the Union industry.

1.3. Request for partial interim review

- (6) The applicants also lodged a request for a partial interim review pursuant to Article 11(3) of the basic Regulation limited in scope to the examination of dumping as far as Laiwu is concerned. The applicants provided prima facie evidence showing that since the last investigation period Laiwu had increased production capacity and enlarged its product range.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽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 C 60, 1.3.2013, p. 9.

- (7) Given that Laiwu was granted market economy treatment in the original investigation, the applicants provided a dumping margin calculation based on a comparison between a constructed normal value (manufacturing costs, selling, general and administrative costs and profit) in the PRC in the alleged absence of representative domestic sales and Laiwu's export price to the Union. It indicated that the dumping margin appears to be higher than the current level of the measures. Therefore, the applicants alleged that the continued imposition of the measures at the existing level, which was based on the level of dumping previously established, would be insufficient to offset the effects of injurious dumping. The applicants also claimed that Laiwu may not be eligible for market economy treatment anymore.

1.4. Initiation of an expiry review and interim reviews

- (8) On 30 November 2013, the Commission initiated an anti-dumping investigation with regard to imports into the Union of citric acid originating in the PRC ('the country concerned') and published a notice of initiation in the *Official Journal of the European Union* ⁽¹⁾ ('the notice of initiation'). The initiation comprised of:
- an expiry review initiated on the basis of Article 11(2) of the basic Regulation,
 - partial interim review limited to the examination of dumping of Laiwu, initiated on the basis of Article 11(3) of the basic Regulation,
 - a partial interim review limited to the examination of the form of the measures, initiated on the initiative of the Commission on the basis of Article 11(3) of the basic Regulation, and
 - a partial interim review limited to injury, initiated on the initiative of the Commission on the basis of Article 11(3) of the basic Regulation.

1.5. Interested parties

- (9) 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 reviews and invited them to participate. In the notice of initiation, the Commission informed interested parties that it envisaged Canada as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation. Therefore, the Commission also informed producers in Canada about the initiation and invited them to participate.
- (10) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. Sampling

- (11) In the notice of initiation, the Commission stated that it might sample exporting producers and importers in accordance with Article 17 of the basic Regulation.

1.6.1. Sampling of importers

- (12) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the notice of initiation.
- (13) Six unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 17(2) of the basic Regulation, it consulted all known importers concerned on the selection of the sample. None of them submitted comments.

⁽¹⁾ OJ C 351, 30.11.2013, p. 27.

1.6.2. *Sampling of exporting producers in the PRC*

- (14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide all information specified in the notice of initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (15) Nine exporting producers in the country concerned, of which two are related to each other, provided the requested information and agreed to be included in the sample. In view of the complexity of the case and the structure of the industry concerned, the Commission decided that sampling was not necessary. None of the exporting producers commented on sampling. Seven out of the nine exporting producers submitted questionnaire replies and two withdrew their cooperation.

1.7. **Market economy treatment ('MET') claim form**

- (16) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent the MET claim form to Laiwu.

1.8. **Replies to the questionnaire**

- (17) The Commission sent questionnaires to the seven cooperating exporting producers to assess the likelihood of continuation or recurrence of dumping. The seven exporting producers replied. The Commission sent a separate questionnaire to Laiwu to assess the lasting nature of changed circumstances as far as dumping is concerned. The company replied.

1.9. **Verification visits**

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

(a) *Union producers*

- SA Citrique Belge NV, Tienen, Belgium,
- Jungbunzlauer Austria AG, Vienna, Austria,
- Jungbunzlauer Ladenburg GmbH, Ladenburg, Germany;

(b) *Importers*

- Azelis SA, Luxembourg, Luxembourg,
- RFI Food Ingredients Handelsgesellschaft mbH, Düsseldorf, Germany;

(c) *Users*

- Bristol-Myers Squibb France SARL, Rueil Malmaison, France,
- Procter & Gamble International Operations, Petit Lancy, Switzerland,
- Reckitt Benckiser (ENA) BV, Schiphol, the Netherlands;

(d) *Exporting producers in the PRC*

- COFCO Biochemical (Anhui) Co., Ltd, Bengbu,
- Laiwu Taihe Biochemistry Co., Ltd, Laiwu,

- RZBC Group, Rizhao,
- Weifang Ensign Industry Co., Ltd, Changle, Weifang;

(e) *Producers in the analogue country*

- Jungbunzlauer Canada Inc., Port Colborne, Canada.

1.10. **Review investigation period and period considered**

- (19) The investigation of dumping and injury covered the period from 1 October 2012 to 30 September 2013 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the review investigation period ('the period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

- (20) The product concerned is 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').
- (21) Citric acid is used as an acidulant and pH regulator in a wide range of applications, for example beverages, food, detergents, 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**

- (22) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- (1) the product concerned;
 - (2) the product produced and sold on the domestic market of the PRC;
 - (3) the product produced and sold on the domestic market of Canada, which served as an analogue country; and
 - (4) the product produced and sold in the Union by the Union industry.
- (23) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

3.1. **Likelihood of continuation of dumping in the framework of the expiry review**

- (24) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether dumping was currently taking place and whether dumping was likely to continue or recur upon a possible expiry of the measures in force on imports from the PRC.

3.1.1. *Normal value*

- Analogue country

- (25) Since the PRC is considered to be a non-market economy country, normal value was determined on the basis of the price in a market economy third country, in accordance with Article 2(7)(a) of the basic Regulation. For this purpose the analogue country had to be selected (see recital 9 above).
- (26) In the notice of initiation, the Commission informed interested parties that it envisaged Canada as an appropriate analogue country and invited interested parties to comment. None of them submitted comments.

- (27) Canada served as analogue country in the original investigation. As the Canadian company willing to cooperate was the sole producer of citric acid in Canada and related to one of the complainant producers, the Commission explored possibilities for cooperation from other known producing countries like the USA, Brazil, Thailand and Ukraine. One Brazilian and one Thai company showed willingness to cooperate but in the end did not reply to the questionnaire. Only the sole Canadian producer of citric acid provided the requested information.
- (28) Unlike the USA, Brazil, Thailand and Ukraine, Canada does not have any anti-dumping duties in force on imports of citric acid. Further, the rate of the conventional customs duty is 0 % ⁽¹⁾.
- (29) Since there is free competition in the Canadian market, the Commission concluded that Canada is an appropriate analogue country under Article 2(7)(a) of the basic Regulation. The Commission established normal value on the basis of domestic sales to unrelated customers of the Canadian producer.
- (30) One product type was not produced and sold in the analogue country and could thus not be matched with that product type produced in the PRC and exported to the Union. Therefore, the normal value for this product type had to be constructed pursuant to Article 2(3) of the basic Regulation on the basis of the analogue country's producer's manufacturing costs of the like product plus a reasonable amount for selling, general and administrative costs ('SG&A') and for profit.

3.1.2. *Export price*

- (31) The Commission established the export price on the basis of export prices actually paid or payable by independent customers in the Union. All cooperating exporting producers except Laiwu exported to the Union directly to independent customers under the terms of the undertaking.

3.1.3. *Comparison*

- (32) The Commission compared the normal value and the export price of the cooperating exporting producers on an ex-works basis.
- (33) 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. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, credit and commissions.

3.1.4. *Dumping margin*

- (34) For the cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product in the analogue country with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (35) On this basis, dumping margins, expressed as a percentage of the CIF Union frontier price duty unpaid, of up to 38 % were found in the RIP.
- (36) The level of cooperation was high because the exports of the cooperating exporting producers constituted almost the total exports to the Union during the RIP.
- (37) This calculation showed dumping even for exporting producers subject to undertakings. It is recalled that the minimum import price ('MIP') in the undertakings was based on the non-injurious price (lesser duty rule) and thus the undertakings did not remove the dumping established in the original investigation completely.

3.2. **Development of imports should measures be repealed**

3.2.1. *Likelihood of continuation of dumping*

- (38) As regards the determination of export prices, the present investigation sought to establish whether there is likelihood of continuation of dumping. The determination of export prices cannot be limited to an examination

⁽¹⁾ <http://madb.trade.cec.eu.int:8080/madb/atDutyOverviewPubli.htm>

of exporters' past behaviour, but has to examine also the likely development of export prices in the future. In other words, it has to be determined whether past export prices are reliable as an indication of likely future export prices. In that context, it is recalled that five companies export to the Union under the terms of an undertaking. The Commission therefore examined whether the existence of such undertakings has influenced the past export prices, so as to make them unreliable for the establishment of future export behaviour.

- (39) In order to examine whether export prices to the Union were reliable and given the existence of undertakings, export prices to the Union were analysed in relation to the MIP of the undertakings. It was in fact necessary to ascertain whether export prices to the Union were set at a certain level mainly because of the MIP established by the undertakings and, therefore, whether they were sustainable or not. In this respect, the Commission considered whether, on a weighted average basis at the level of each company, the export prices to the Union were substantially higher than the MIP or not. The Commission also considered how these prices related to prices for exports to third countries.
- (40) For all undertaking companies, export prices to the Union were on average at the level of the MIP. In addition, their export prices to the Union were significantly higher than export prices to third countries. Consequently, it is very likely that in the absence of undertakings export prices to the Union would approach the level of export prices to other third countries.
- (41) The export prices to the Union during the RIP of the undertaking companies 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 the expiry review.
- (42) In the absence of a reliable export price for these Chinese exporting producers, due to the existence of the undertakings in this case, the Commission considered another possibility to establish the export price for the purpose of assessing whether dumping is likely to continue. Given that the cooperating exporting producers were selling citric acid on the world market, the Commission examined whether the export prices actually paid or payable by all third countries in the RIP were dumped.
- (43) The Commission compared these export prices to the normal value established in the analogue country (see recitals 26 et seq. above). The dumping margins so established range from 43 % to 85 %. These dumping margins are higher than those established on the basis of export prices to the Union during the RIP (see recital 36 above).

3.2.2. *Production capacity and consumption in the country concerned*

- (44) In the review request, the applicants estimated the spare production capacity of citric acid in the PRC to be higher than the total annual EU demand for citric acid. Total capacity for citric acid was estimated at 1 800 000 tonnes. The Commission considers that the applicants overestimated the spare capacity.
- (45) Nevertheless, the investigation showed that the Chinese exporting producers do have significant spare capacity. The spare capacity of the cooperating exporting producers in the PRC amounts to around 192 000 tonnes corresponding to some 41 % of the EU consumption.
- (46) Furthermore, an industry-specific study — IHS Chemical Economics Handbook ⁽¹⁾ — referred to during the investigation by various parties — estimated the total annual capacity in the PRC in 2012 at a level exceeding the total consumption in the Union market by multiple times. The PRC accounted for '59 % of world production in 2012; it also accounted for 69 %, 74 % and 12 % of world capacity, exports and consumption, respectively, in 2012' ⁽²⁾. These data suggest that the PRC has an overall significant production capacity.
- (47) While consumption is expected to grow in the PRC, the IHS Chemical Economics Handbook estimated the Chinese total annual consumption to be far below that of the Union market. The growth until 2018 will not exceed the current consumption in the Union.
- (48) These data confirm that the Chinese production and capacity is mainly destined for export.

⁽¹⁾ <http://www.ihs.com/products/chemical/planning/ceh/citric-acid.aspx>

⁽²⁾ <http://www.ihs.com/products/chemical/planning/ceh/citric-acid.aspx> The quotation is based on a publicly available extract from the report.

3.2.3. Relationship between prices in the Union and in the country concerned

- (49) According to data on prices for citric acid obtained during the investigation, the Chinese domestic prices were around 48 % lower than those on the Union market as a whole.
- (50) The Union market therefore remains attractive for Chinese exporting producers' exports.

3.2.4. Relationship between prices to third countries and on the Union market

- (51) During the RIP the prices to third country markets were on average 40 % lower than those to the Union.
- (52) The Chinese exporters have a strong price incentive to redirect their exports to the Union, should measures be repealed.
- (53) This conclusion is further reinforced by the price level of exports to the Union by Laiwu as well as the price differential between Laiwu's prices to the Union and third countries.
- (54) The low prices of exports to the Union made in limited quantities by the exporting producers who did not cooperate in this investigation also support the above conclusion.

3.2.5. Conclusion on the likelihood of continuation of dumping

- (55) The total production capacity (including the spare capacity) in the PRC in comparison with the size of the Union market suggests that the exports to the Union would likely increase if the measures were repealed. Those exports would likely continue to occur at significantly dumped prices.
- (56) Following disclosure, interested parties questioned the findings that prices to the EU market under the MIP over the past years are unsustainable and hence would drop substantially, even approaching the level of third country export prices. They also questioned that Chinese exports, which are stable, would likely increase in volume and continue to occur at dumped prices in the absence of renewed measures. The investigation however clearly established that dumping continues even on the basis of export prices that are considered unreliable because they are inflated by the MIP of the undertakings. These prices were found significantly higher than export prices to other markets for all exporting producers subject to undertakings. Such exporting producers are used to export at prices lower than those to the EU. Furthermore, it is recalled that the original investigation established that dumped low priced imports from the PRC into the Union increased by 37 % between 2004 and the 12 months ending in June 2007 (the original investigation period) ⁽¹⁾. All these elements, together with the significant spare capacity in the PRC which has not been questioned, clearly support the finding that exports to the Union would likely continue to occur at dumped prices and at increased volumes if the measures were repealed.

3.3. Partial interim review limited to dumping for Laiwu

3.3.1. Normal value

3.3.1.1. Market economy treatment ("MET")

- (57) Pursuant to Article 2(7)(b) of the basic Regulation the Commission determined whether normal value could be established in accordance with Article 2(1) to (6) of the basic Regulation if Laiwu complied with the criteria in Article 2(7)(c) of the basic Regulation and could therefore be granted MET.
- (58) For ease of reference only, these criteria are set out in a summarised form as follows:
- business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values,
 - firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,

⁽¹⁾ See recital 61 of Commission Regulation (EC) No 488/2008 (OJ L 143, 3.6.2008, p. 13).

- there are no significant distortions carried over from the former non-market economy system,
 - bankruptcy and property laws guarantee legal certainty and stability, and
 - exchange rate conversions are carried out at market rates.
- (59) For the determination whether the criteria in Article 2(7)(c) of the basic Regulation are met, the Commission asked Laiwu to fill in a MET claim form. Laiwu replied within the deadline. The Commission verified the submitted information at Laiwu's premises.
- (60) The Commission found that Laiwu did not comply with MET criteria 2 and 3 under Article 2(7)(c) of the basic Regulation.
- (61) With regard to criterion 2, the company failed to demonstrate that it keeps a complete set of accounts in accordance with international accounting standards. In addition, its records lack substantiating documentary evidence underpinning the accuracy and completeness of its accounts. The company lacked documentary evidence substantiating certain bookings in its accounts. Furthermore, its financial statements did not contain a statement of changes in equity for certain periods. These shortcomings infringed the principle of faithful representation of the accounting information and the financial statements and, more importantly, remained unnoticed by the auditor. Consequently, neither the record keeping nor the auditing was performed in line with international accounting standards.
- (62) Laiwu claimed its accounting records to be sufficiently clear to satisfy the Chinese Generally Accepted Accounting Principles. The company further argued that the inconsistencies mentioned in the MET disclosure document did not affect the reliability of its accounts. The company considered that accounting requirements should be seen in light of their purpose (e.g. to protect investors).
- (63) The Commission notes that Article 2(7)(c) second indent of the basic Regulation states that firms should have one clear set of basic accounting records which are independently audited in line with international accounting standards. This is indeed a formal requirement. Contrary to the company's claim, the accounts must be in line with international accounting standards regardless of the status of the company determined by national accounting law.
- (64) The Commission further considers that Laiwu's accounts were not kept in line with the Chinese Accounting Law because the auditor did not comment on the infringement of the Chinese Accounting Law set out in recital 61.
- (65) In view of the above, the claims had to be rejected.
- (66) With regard to criterion 3, the company failed to demonstrate that it was not subject to significant distortions carried over from the non-market economy system. More specifically, the company as a 'High and New Technology Enterprise' benefits from a preferential corporate income tax regime which significantly affects its financial situation.
- (67) Laiwu argued that the preferential tax regime may not be dealt with under MET criterion 3 as it is a form of subsidy.
- (68) The Commission notes that the assessment under MET criterion 3 aims at establishing whether producers are subject to significant distortions carried over from the former non-market economy system.
- (69) The State benefit received by Laiwu in the form of a preferential tax rate is a benefit of a permanent character provided for by Article 28 of the Enterprise Income Tax Law adopted in 2007. This benefit was established pursuant to the Preamble to the Constitution of the PRC, whereby '*The Party must uphold and improve the basic economic system, with public ownership playing a dominant role and different economic sectors developing side by side ...*'.
- (70) One of the aims of the benefit is to attract capital at discounted rates. This causes a distortion in the capital markets. Indeed, an income tax system that treats favourably certain companies deemed strategic by the Government indicates that the tax system is not one of a market economy, but still heavily influenced by State planning, a characteristic of a non-market economy system. The Commission considers that the distortions of such a tax reduction are also significant, as they change the amount of pre-tax profits the company has to achieve in order to be attractive to investors.

- (71) In view of the above, the claims had to be rejected.
- (72) The Commission disclosed the results of the MET investigation to Laiwu, the authorities of the PRC and the applicants. The Commission invited them to comment and to request a hearing. The comments received were not such as to alter the Commission's preliminary findings.
- (73) Laiwu argued that the Commission proposed to refuse MET on grounds different to those which led to the initiation of the investigation. In the company's view the Commission should have limited the MET assessment to MET criterion 1.
- (74) First, it should be noted that Article 2(7)(c) lists five cumulative criteria which must all be fulfilled in order for MET to be granted. Besides, the burden of proof is on the company requesting MET.
- (75) In addition, point 5.2 of the notice of initiation ⁽¹⁾ specifies the grounds for initiation which relate to an increase in production capacity of Laiwu and an enlarged product scope of its sales. The notice of initiation in no way restricts the investigation to the assessment of MET criterion 1. Further, the *prima facie* evidence is judged on its own merits to justify the initiation of an investigation. The MET assessment under Article 2(7) of the basic Regulation is a full examination of whether a specific producer operates under market economy conditions as set out in point 6.1.1.2 of the notice of initiation.
- (76) Finally, the Commission notes that Laiwu submitted a MET claim form claiming that it fulfilled all five MET criteria. Under the relevant provisions of the basic Regulation, a company applying for MET is requested to successfully prove that it operates under market economy conditions, i.e. the burden of proof to duly substantiate the MET claim with sufficient evidence rests with the company. Therefore, Laiwu's claim was rejected.
- (77) After providing information about its analysis of the MET claim to the Member States in accordance with Article 2(7)(c), the Commission informed the interested parties of the final MET determination.

3.3.1.2. Analogue country

- (78) According to Article 2(7)(a) of the basic Regulation normal value for Laiwu was determined on the basis of the price in a market economy third country. For this purpose, the Commission selected a market economy third country — Canada (see recitals 26 et seq. above).
- (79) The Commission established normal value on the basis of domestic sales to unrelated customers of the Canadian producer.

3.3.2. Export price

- (80) The Commission established the export price on the basis of export prices actually paid or payable by independent customers in the Union, in accordance with Article 2(8) of the basic Regulation.

3.3.3. Comparison

- (81) The Commission compared the normal value and the export price on an ex-works basis.
- (82) 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. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, credit and commissions.

⁽¹⁾ OJ C 351, 30.11.2013, p. 27.

3.3.4. Dumping margin

- (83) The Commission compared the weighted average normal value of each type of the like product in the analogue country with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (84) On this basis, the weighted average dumping margin for Laiwu, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 37,8 %.

3.3.5. Lasting nature of changed circumstances

- (85) In accordance with Article 11(3) of the basic Regulation, the Commission analysed whether the change in circumstances with regard to dumping could reasonably be said to be of a lasting nature.
- (86) The fact that Laiwu expanded from the smallest to the biggest exporting producer to the EU is considered to be a change of a lasting nature. Indeed, the company confirmed in its questionnaire reply that it will maintain its volume of exports and that it will not change its pattern of exports.

4. INJURY

4.1. Definition of the Union industry and Union production

- (87) The like product was manufactured by two producers in the Union during the RIP. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (88) As the Union industry is constituted of only two producers, all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality.

4.2. Union consumption

- (89) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from the PRC and other third countries, based on data from Eurostat and questionnaire replies.
- (90) Union consumption developed as follows:

Table 1

Union consumption

	2010	2011	2012	RIP
Consumption in tonnes (ranges)	450 000- 500 000	430 000- 480 000	470 000- 520 000	450 000- 500 000
Index	100	95	105	101

Source: Questionnaire replies and Eurostat

- (91) Union consumption fluctuated by +/- 5 % during the period considered. However, the development shows no clear trend throughout the period considered.

4.3. Imports from the country concerned

4.3.1. Volume and market share of the imports from the country concerned

- (92) The Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established on the basis of the Union consumption as set out in recitals 88 et seq. above.

- (93) Imports into the Union from the country concerned developed as follows:

Table 2

Import volume and market share

	2010	2011	2012	RIP
Volume of imports from the country concerned in tonnes	202 391	176 451	206 222	183 026
Index	100	87	102	90
Market Share (range)	40 %-45 %	36 %-41 %	38 %-43 %	35 %-40 %
Market Share — Index	100	92	97	90

Source: Eurostat

- (94) Import volumes fluctuated during the period considered. The fluctuation appears to follow to a certain extent the trend of Union consumption. In 2011 when consumption was low, Chinese imports were at their lowest level. In 2012 when the consumption peaked, Chinese imports also reached their highest level.
- (95) Chinese imports only did not follow this trend during the RIP when they were around 10 % lower than in 2010 despite a comparable Union consumption. Despite this decrease, Chinese imports maintained a substantial market share of 35 %-45 % on the Union market throughout the period considered.

4.3.2. Prices of the imports from the country concerned and price undercutting

- (96) The Commission established the prices of imports on the basis of Eurostat data. The average price of imports into the Union from the country concerned developed as follows:

Table 3

Import prices

(EUR/ton)

	2010	2011	2012	RIP
PRC	806	938	1 000	933
Index	100	116	124	116

Source: Eurostat

- (97) Import prices of Chinese citric acid increased by 24 % between 2010 and 2012, subsequently decreasing by 8 percentage points between 2012 and the RIP. Throughout the period considered, these prices followed the development of raw material prices such as corn.
- (98) Following disclosure, one interested party questioned the accuracy of the Eurostat data without providing any substantial evidence to substantiate its claim. The argument therefore could not be accepted.
- (99) The Commission determined the price undercutting during the RIP by comparing:
- (1) 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
 - (2) the corresponding weighted average prices per product type of the imports from the cooperating Chinese exporting producers to the first independent customer, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for conventional duty and importation costs.

- (100) For exporting producers not party to the undertaking mentioned in recital 2 above, the price to the first independent customer in the Union was used for the comparison. For exporting producers parties to the undertaking, prices to the first independent customer in the Union could not be taken, as they were influenced by the terms of the undertaking. For these exporters, undercutting was established on the basis of the price charged to the first independent customer in third countries.
- (101) Following disclosure, interested parties argued that also for parties not subject to the undertaking the price charged to the first independent customer in third countries should have been taken to establish undercutting. The investigation however showed that the parties not subject to the undertaking charged significantly lower prices than the prices charged by the parties subject to the undertaking. This indicates that their prices are not affected by the undertaking, and therefore can be used to establish undercutting.
- (102) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted for commissions and de-caking where necessary.
- (103) Following disclosure, interested parties claimed that an adjustment for de-caking is no longer warranted, as there is no longer a need to de-cake Chinese citric acid. The investigation however established that while de-caking is not always necessary, there are still instances where this is the case, thereby justifying this adjustment.
- (104) 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.
- (105) The result of the comparison was expressed as a percentage of the Union producers' turnover during the RIP. It showed an overall weighted average undercutting margin of between 20 % and 45 %.

4.4. Economic situation of the Union industry

4.4.1. General remark

- (106) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

4.4.2. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2010	2011	2012	RIP
Production volume in tonnes (ranges)	270 000-300 000	290 000-320 000	300 000-330 000	300 000-330 000
Index	100	106	108	107
Production capacity in tonnes (ranges)	300 000-350 000	300 000-350 000	300 000-350 000	300 000-350 000
Index	100	101	101	101
Capacity utilisation — Index	100	105	106	106

Source: Questionnaire replies

- (108) The production volume developed positively during the period considered. It increased by 6 % between 2010 and 2011, with minor changes in the subsequent periods.
- (109) Since the production capacity remained almost unchanged, the capacity utilisation mirrored the development of the production volume. Capacity utilisation significantly increased by 5 % between 2010 and 2011, remaining almost unchanged in the following periods.

4.4.3. Sales volume and market share

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

Table 5

Sales volume and market share

	2010	2011	2012	RIP
Total sales volume on the Union market — Index	100	108	108	108
Market share — Index	100	111	102	107

Source: Questionnaire replies

- (111) The Union industry managed to increase their sales volume by 8 % between 2010 and 2011. Subsequently, the sales volume remained at the same level until the RIP.
- (112) The market share developed in a similar fashion increasing by 7 % during the period considered. In 2011 and 2012 the market share was also affected by the fluctuations in Union consumption described in recital 91 above.

4.4.4. Growth

- (113) The Union industry managed to increase both their sales volume by 8 % and their market share by 7 %. At the same time, production volumes increased in a similar manner. The Union industry therefore was able to take advantage of the growth opportunities by increasing their market share in a rather stable market.

4.4.5. Employment and productivity

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

Table 6

Employment and productivity

	2010	2011	2012	RIP
Number of employees — Index	100	101	105	106
Productivity (tonne/employee) — Index	100	105	102	101

Source: Questionnaire replies

- (115) Employment developed favourably during the period considered, increasing by 6 %. At the same time, productivity per employee remained rather stable throughout the period considered.

4.4.6. Magnitude of the dumping margin and recovery from past dumping

- (116) Dumping margins found were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was however mitigated, since the price level of many Chinese exporting producers was influenced by the undertaking. For the other exporting producers, the injurious effect was counterbalanced by the effect of the duties. It can therefore be concluded that the Union industry has recovered from the injury caused by the past dumping of Chinese exporting producers.

4.4.7. Prices and factors affecting prices

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

Table 7

Sales prices in the Union

	2010	2011	2012	RIP
Unit sales price in the Union (EUR/tonne) — ranges	1 000-1 150	1 050-1 200	1 150-1 300	1 150-1 300
Index	100	103	113	115
Unit cost of production (EUR/tonne) — ranges	750-900	850-1 000	850-1 000	850-1 000
Index	100	113	111	115

Source: Questionnaire replies

- (118) The weighted average unit cost of production increased by 13 % between 2010 and 2011, and subsequently increased by another 2 percentage points until the RIP.
- (119) Sales prices developed in a similar fashion, but with a delay of around 1 year. Union industry was only able to fully pass on their cost increases incurred in 2011 to their customers in 2012. This resulted in a lower profitability in 2011, as shown in recitals 120 et seq. below.

4.4.8. Labour costs

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

Table 8

Average labour costs per employee

	2010	2011	2012	RIP
Average wages per employee — Index	100	103	114	118

Source: Questionnaire replies

- (121) Average labour costs per employee increased by a total of 18 %, mainly due to a significant increase of 11 percentage points between 2011 and 2012.

4.4.9. *Inventories*

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

Table 9

Inventories

	2010	2011	2012	RIP
Closing stocks in tonnes (ranges)	14 000-16 000	14 000-16 000	17 000-19 000	22 000-24 000
Index	100	101	121	155

Source: Questionnaire replies

(123) The closing stocks of the Union producers significantly increased during the period considered. The higher level of inventories at the end of the RIP is affected by seasonal factors. While for the other periods the closing stock is taken at the end of December, for the end of the RIP it is taken at the end of June just before a period of rather high demand due to increased consumption of beverages and rather low production due to the upcoming summer holidays. It is therefore normal to have a somewhat higher level of stocks at that time of the year.

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

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

Table 10

Profitability, cash flow, investments and return on investments

	2010	2011	2012	RIP
Profitability of sales in the Union to unrelated customers (range)	12 %-17 %	7 %-12 %	12 %-17 %	12 %-17 %
Index	100	69	103	103
Cash flow — Index	100	50	86	80
Investments — Index	100	162	123	106
Return on investments (range)	30 %-40 %	15 %-25 %	25 %-35 %	25 %-35 %
Index	100	59	93	90

Source: Questionnaire replies

(125) 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. It was at stable levels almost throughout the period considered. The profitability achieved by the Union industry exceeded the target profit established in the original investigation throughout the period considered.

(126) The net cash flow is the ability of the Union producers to self-finance their activities. Its development remained at satisfactory levels throughout the period considered.

(127) The return on investments is the profit in percentage of the net book value of investments. Its development largely mirrored the development of profitability, and remained at satisfactory levels almost throughout the period considered.

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

4.4.11. Conclusion on injury

- (129) Most injury indicators such as production, capacity utilisation, sales volume, employment, labour costs and sales prices developed positively. While the trend of the financial indicators such as profitability, cash flow and return of investments show a mixed trend, the absolute levels are satisfactory and do not show a sign of injury.
- (130) On the basis of the above, the Commission concluded that the Union industry recovered from the injury caused by past dumping and does not suffer material injury within the meaning of Article 3(5) of the basic Regulation.

4.5. Likelihood of recurrence of injury

- (131) The above trends concerning prices and volumes of imports of the product concerned 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 increase in prices and a decrease in volumes. The Union industry was the main beneficiary of this development, as the market presence of other third countries remained rather limited. This indicates that the removal of injury is mainly due to the existence of the measures in force.
- (132) As mentioned in recital 45 above, exporting producers in the PRC have the spare capacity to increase their exports very rapidly. In addition, given the more lucrative prices on the EU market compared to most third country markets, it is likely that significant quantities currently exported to these countries could also be redirected to the EU market should the anti-dumping measures be allowed to lapse.
- (133) In addition, major international markets such as the USA, Brazil, Thailand and Ukraine have imposed anti-dumping duties against Chinese citric acid. It will therefore be more difficult for the Chinese exporting producers to sell in those markets than into an unprotected EU market should the anti-dumping measures be allowed to lapse.
- (134) In addition, the price levels of the Chinese exporting producers not subject to undertakings significantly undercut EU industry's prices by 20 %-45 %. Similarly, prices charged by the exporting producers subject to the undertakings to third country markets undercut EU industry's prices by 20 %-39 %. This shows the price levels at which Chinese exporting producers would likely enter the Union market in the absence of measures.
- (135) The likelihood of low-priced Chinese exports in the absence of measures is confirmed by the numerous anti-dumping investigations on Chinese citric acid in other countries mentioned in recital 133 above.
- (136) The Chinese exporting producers have the ability to significantly increase their already substantial market share at prices which significantly undercut the Union industry prices to the detriment of the Union industry.
- (137) Following disclosure, interested parties argued that Chinese exporting producers would not likely lower their prices to the price levels prevailing in other third country markets. However, this argument is not supported by the facts established by the investigation. As indicated in recital 134 above, the undercutting margins established for Chinese exporting producers not subject to the undertakings on the Union market (20 %-45 %) are very similar to those established for Chinese exporting producers subject to the undertakings to third country markets (20 %-39 %). It is therefore likely that in the absence of measures, Chinese prices on the Union market would approach the prices charged by Chinese exporting producers elsewhere.
- (138) Therefore, it can be concluded that there is a likelihood of recurrence of injury should the measures be allowed to lapse.

5. UNION INTEREST

- (139) In accordance with Article 21 of the basic Regulation, the Commission examined whether the imposition of anti-dumping measures on imports of citric acid originating in the PRC following the findings of the present expiry review would not be in the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all interests involved, including those of the Union industry, importers and users. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

5.1. Interest of the Union industry

- (140) Both Union producers accounting together for 100 % of Union production cooperated in this investigation. As stated in recital 130 above, Union industry has recovered from the injury caused by past dumping.
- (141) The measures in force have allowed the Union industry to recover from the past injury. At the same time, Union industry has shown that their operations are viable when not subject to unfair competition by dumped imports.
- (142) 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.
- (143) It is therefore concluded that it is in the interest of the Union industry to maintain the measures in force.

5.2. Interest of unrelated importers

- (144) As stated in recital 13 above, six unrelated importers submitted a sampling reply. The three largest importers were sampled, but one importer finally did not provide a meaningful questionnaire reply. The final sample consisted of the remaining two importers.
- (145) Both importers trade a wide range of products. The significance of citric acid in their total turnover varies widely. For one importer citric acid accounts for an insignificant part of the total turnover, while for the other importer it is one of the most important products.
- (146) Both sampled importers do not strictly oppose the measures in force, but pointed to the fact that the current level of the MIP is too high leading to substantial profits for the Union industry. These importers therefore requested a reduction of the level of the MIP.

5.3. Interest of users

- (147) The Commission has received six full replies from users, mainly from the chemical and pharmaceutical industries. Although the food and beverage (F&B) industry is by far the biggest user of citric acid accounting for at least 50 % of total consumption, no user from this industry fully cooperated.
- (148) Users were concerned about the security of supply. One concern was the inability of the Union industry to fully supply the Union market. However, the measures in force did not stop Chinese imports from entering the Union market in significant quantities, allowing them to supply the part of the market which cannot be supplied by the Union industry.
- (149) For a large group of users such as the F&B and pharmaceutical industries, citric acid is only marginally needed for their products. In their opinion it is not easy to substitute citric acid, therefore the security of supply is often of a higher importance than the price. The financial effect of the measures on these users is insignificant, due to the very low importance of citric acid in their cost structure.
- (150) For users producing chemical products accounting for around 25 % of total EU consumption, citric acid is of moderate importance accounting for around 5 % of raw materials costs. In their opinion the anti-dumping measures should not be maintained. Some users also pointed to the good financial situation of the EU producers. The effect of the measures on these users is more significant than in the F&B and pharmaceutical industries. Nevertheless, the information supplied by the cooperating users producing chemical products shows that they managed to achieve a healthy profit despite the measures in force. The effect of the measures on these users is therefore considered to be limited.
- (151) Following disclosure, interested parties in the detergents industry claimed that for certain products, citric acid accounts for a higher share of costs than the average figure of 5 % mentioned above. At the same time, these parties provided no evidence that the average for the detergent industry in particular is different from the 5 % given for the chemical industry in general. It is therefore considered that the conclusions for the chemical industry in general are also applicable to the detergents industry in particular.

- (152) Following disclosure, interested parties further argued that the future ban on phosphates in automatic dishwasher detergents will lead to an increased consumption of citric acid in the Union as of 2017. While it is clear that phosphates will have to be replaced by that time with other substances, it is not yet clear whether the phosphates will be replaced by citric acid or other substances. Also, the parties did not provide any factual evidence concerning the overall impact of this change.
- (153) On balance, the positive effect of the measures on the Union industry by far outweighs the limited or insignificant negative impact of the measures in force on the users.

5.4. Sources of supply on the Union market

- (154) Interested parties complained about an alleged lack of competition on the Union market. Indeed, the EU has only two Union producers. In order to meet the demands of EU users, the Union market needs imports which predominantly come from the PRC.
- (155) The fact that only two producers remained in the Union is however the result of the dumping practices of Chinese exporting producers which led to the measures under review. In 2004, at the beginning of the period considered of the original investigation, there were still five producers in the Union competing with significant quantities of dumped Chinese imports. In the subsequent years (2004-2007), when the Union was exposed to large quantities of highly dumped exports from the PRC, three Union producers had to leave the market, leading to the current duopolistic situation.
- (156) Since the imposition of the measures in force, the downward trend in the number of Union producers could be stopped. Should Chinese exporting producers be allowed to restart dumping in unrestricted quantities, the Union industry would start suffering injury again, including losing market share to Chinese imports.
- (157) The Union producers lack the capacity to fully meet the demand of the Union market (see recital 107 above). Despite the existence of the measures in force, Chinese imports kept entering the Union market in significant quantities, holding a market share between 35 % and 45 % throughout the period considered, as explained in recital 93 above.
- (158) In the absence of measures, the only two existing EU producers might be forced to leave the EU market as well. In such scenario, the EU users would become even more dependent on a single source of imports — the PRC — which, given the importance of security of supply mentioned above, would not be in the Union interest.

5.5. Conclusion on Union interest

- (159) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain the measures on imports of citric acid originating in the PRC.

6. ANTI-DUMPING MEASURES

6.1. Interim review limited to injury

- (160) Most cooperating Chinese exporting producers are party to the undertakings referred to in recital 2 above. The expiry review investigation has shown in recital 41 above that their export prices to the EU were determined by those price undertakings which set minimum import prices ('MIP'). Therefore, their export prices were considered not sufficiently reliable to be used for the analysis of the likelihood of continuation or recurrence of dumping in the specific circumstances of this investigation. Likewise, as explained in recital 100 above such export prices cannot be considered as a reliable indicator in order to carry out a reliable and meaningful undercutting calculation. For the same reason, these prices are equally not reliable enough to calculate a new injury elimination level.
- (161) For the cooperating Chinese exporting producer not party to the undertakings, Laiwu, the export prices were not affected by the undertaking and could therefore be used to establish a new injury elimination level.

6.2. Injury elimination level

- (162) To determine the level of the measures, the Commission first established the amount of duty necessary to avoid recurrence of injury to the Union industry.
- (163) The injury would not recur if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports. The profit margin determined for this purpose in the original investigation was 6 %.
- (164) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by subtracting from the Union sales prices the actual profit margin achieved during the RIP and replacing it by the above-mentioned profit margin of 6 %.
- (165) One interested party argued that the pre-tax profit margin of 6 % is too low, as due to the significant tax rate the resulting after-tax profit does not provide the necessary resources.
- (166) In this respect, the profit margin used for establishing the injury elimination level reflects the profit margin in the absence of dumped imports. The interested party did not provide any arguments demonstrating that the profit margin of 6 %, which is the actual profit margin achieved by the Union industry in the absence of dumped imports established in the original investigation, is not appropriate for this purpose.
- (167) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of Laiwu, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union producers on the Union market during the RIP. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

6.3. Definitive anti-dumping measures

- (168) For the company Laiwu Taihe Biochemistry Co., Ltd, definitive anti-dumping measures should be imposed on imports of the product concerned in accordance with the lesser duty rule in Article 9(4) of the basic Regulation. The Commission compared the injury margin and the dumping margin. The rate of the duty should be set at the level of the lower of the dumping and the injury elimination level.
- (169) On the basis of the above, the definitive anti-dumping duty rate, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury elimination level	Definitive anti-dumping duty
Laiwu Taihe Biochemistry Co., Ltd	37,8 %	15,3 %	15,3 %

- (170) In the framework of the expiry review, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of citric acid originating in the PRC should be maintained. It is recalled that those measures consist of an *ad valorem* duty at different rates and undertakings for certain companies.
- (171) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, it reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

- (172) A company may request the application of these individual anti-dumping duty rates if it changes the name or the address of its entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name or address of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name or address will be published in the *Official Journal of the European Union*.
- (173) Two exporting producers notified the Commission of a change in their address. One of these notified the Commission also of a change in its name. These changes do not affect their operations as far as the product concerned is concerned.
- (174) Another exporting producer should no longer be entitled to an individual duty rate as it ceased to exist.
- (175) The findings in recitals 173 and 174 above were disclosed and no comment was received.

7. FORM OF MEASURES

- (176) In the framework of the form of measures' review the Commission considered the set-up of the MIP of the undertakings. In particular, the Commission examined the indexation mechanism.
- (177) The MIP has been originally indexed on the basis of fluctuations in the US corn prices. When the original measures were imposed, the exporting producers offering undertakings could not find a public reference source for EU corn prices. Such a source is available now and it is considered more appropriate in view of the fact that the MIP is based on the non-injurious price of the Union industry.
- (178) The Commission examined also the indexation variable for consumption of raw materials per tonne of citric acid and considered that it is correct.
- (179) Following disclosure, interested parties argued that instead of carrying out the indexation of the MIP described above, a fixed floor price or an indexation based on prices of other raw materials in addition to corn should be used instead since not all Union producers use corn as a raw material for the production of citric acid. However, given the significant fluctuations of both costs of production and prices for citric acid, a fixed floor price can be quickly outdated and become unreasonably high or low. Also, an indexation for a raw material with rather stable prices when the citric acid price fluctuates significantly and for which no reliable public source exists is not considered appropriate.
- (180) It is therefore considered that a fixed floor price or an indexation based on different raw materials is not more reasonable than an indexation on the basis of corn prices. However, since corn is not the basic raw material for all Union producers, it was considered appropriate to revise the indexation variable for consumption of raw material in order to better reflect the weighted average consumption of corn of the Union industry and the evolution of the non-injurious price of the Union industry as a whole.
- (181) In the framework of the interim partial review limited to injury, the Commission established a new non-injurious price for the Union industry. On that basis the MIP should be revised and updated in order for the undertakings to remain in force.
- (182) Following final disclosure, the five cooperating exporting producers, including a group of exporting producers, for which undertakings are currently in force, together with the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (see recitals 2 and 3 above), offered new acceptable price undertakings.
- (183) The Commission, by Implementing Decision (EU) 2015/87 ⁽²⁾, accepted these new undertaking offers replacing the undertakings in force. The new undertaking offers eliminate the injurious effects of dumping and limit to a sufficient degree the risk of circumvention.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, CHAR 04/39, 1049 Brussels, BELGIUM.

⁽²⁾ See page 75 of this Official Journal.

(184) To further enable the Commission and the customs authorities to effectively monitor the compliance of the companies with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional upon:

- (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex;
- (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Union; and
- (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

Where the above conditions are not met the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

(185) Whenever the Commission withdraws, pursuant to Article 8(9) of the basic Regulation, its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices as invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.

(186) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 184 and 185 above even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(187) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

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 within CN codes 2918 14 00 and ex 2918 15 00 (TARIC code 2918 15 00 10) 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 Biochemical (Anhui) Co., Ltd — No 1 COFCO Avenue, Bengbu City 233010, Anhui Province, PRC	35,7	A874
Laiwu Taihe Biochemistry Co., Ltd — No 106 Luzhong Large East 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 (West Side of North Chengyang 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

Company	Definitive anti-dumping duty (%)	TARIC additional code
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. Notwithstanding paragraph 1, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.

4. Unless otherwise specified, the relevant 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 Implementing Decision (EU) 2015/87 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 Regulation (EC) No 1225/2009 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, 21 January 2015.

For the Commission
The President
Jean-Claude JUNCKER

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 frontier.
 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.'
-