

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1996

of 28 November 2019

imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) The Council, following an anti-dumping investigation ('the original investigation'), imposed, by means of Regulation (EC) No 682/2007 ⁽²⁾, a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels currently falling under CN codes ex 2001 90 30 and ex 2005 80 00 originating in Thailand ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty ranging between 3,1 % and 12,9 %.
- (2) Council Regulation (EC) No 954/2008 ⁽³⁾ amended Regulation (EC) No 682/2007 with regard to the rate of duty imposed on one company and on 'all other companies'. The amended duties range between 3,1 % and 14,3 %. Imports from two Thai exporting producers from whom undertakings had been accepted by Commission Decision 2007/424/EC ⁽⁴⁾ were exempted from the duty.
- (3) The Council, by Regulation (EC) No 847/2009 ⁽⁵⁾, considered that price undertakings with fixed minimum import prices were no longer appropriate to counteract the injurious effect of dumping. Consequently, the accepted undertakings were withdrawn and the undertaking offers by 10 other Thai exporting producers were rejected.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14).

⁽³⁾ Council Regulation (EC) No 954/2008 of 25 September 2008 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 260, 30.9.2008, p. 1).

⁽⁴⁾ Commission Decision of 18 June 2007 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain prepared or preserved sweet corn in kernels originating in Thailand (2007/424/EC) (OJ L 159, 20.6.2007, p. 42).

⁽⁵⁾ Council Regulation (EC) No 847/2009 of 15 September 2009 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 246, 18.9.2009, p. 1).

- (4) By Regulation (EU) No 875/2013 ⁽⁶⁾, the Council re-imposed the definitive anti-dumping measures on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review (the 'previous expiry review').
- (5) By Regulation (EU) No 307/2014 ⁽⁷⁾, following a partial interim review the Council amended the anti-dumping duty set by Regulation (EU) No 875/2013 for River Kwai International Food Industry Co., Ltd.
- (6) Following the European Court Justice, judgments of 14 December 2017 and 28 March 2019, in cases T-460/14 and C-144/18 P respectively, the Commission reopened ⁽⁸⁾ on 29 August 2019 the anti-dumping investigation concerning imports of certain prepared or preserved sweetcorn in kernels originating in Thailand that led to the adoption of Regulation (EU) No 307/2014. That investigation was reopened only in so far as it concerns River Kwai International Food Industry Co. Ltd. and resumed it at the point at which the irregularity occurred.

1.2. Request for an expiry review

- (7) Following the publication of a notice of impending expiry ⁽⁹⁾ of the anti-dumping measures in force, the Commission received a request for a review pursuant to Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation').
- (8) The request for review was lodged on 13 June 2018 by the Association Européenne des Transformateurs de Maïs Doux ('AETMD' or 'the applicant') on behalf of Union producers representing more than 50 % of the total Union production of certain prepared or preserved sweetcorn in kernels.
- (9) The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.

1.3. Initiation of an expiry review

- (10) Having determined that sufficient evidence existed for the initiation of an expiry review, and after consulting the Committee established by Article 15(1) of the basic Regulation, the Commission initiated an expiry review regarding imports into the Union of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand ('Thailand' or 'the country concerned'). On 12 September 2018, it published a Notice of Initiation in the *Official Journal of the European Union* ⁽¹⁰⁾ ('the Notice of Initiation').

1.4. Review investigation period and period considered

- (11) The investigation of continuation or recurrence of dumping covered the period from 1 July 2017 to 30 June 2018 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

⁽⁶⁾ Council Implementing Regulation (EU) No 875/2013 of 2 September 2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 244, 13.9.2013, p. 1).

⁽⁷⁾ Council Implementing Regulation (EU) No 307/2014 of 24 March 2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 91, 27.3.2014, p. 1).

⁽⁸⁾ Notice following the judgments of 14 December 2017 and 28 March 2019, in Cases T-460/14 and C-144/18 P respectively, with regard to Council Implementing Regulation (EU) No 307/2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ C 291/3, 29.8.2019, p. 3).

⁽⁹⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 440, 21.12.2017, p. 21).

⁽¹⁰⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand (OJ C 322, 12.9.2018, p. 4).

1.5. Interested parties

- (12) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, known Union producers, the known producers in Thailand and the authorities of Thailand, known importers, users and traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (13) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. Sampling

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

1.6.1. Sampling of Union producers

- (15) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers.
- (16) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three Union producers on the basis of the largest production volumes in 2017 and invited the interested parties to comment.
- (17) Following the comments received, the Commission replaced one company from the provisional sample by the next largest Union producer. That company demonstrated it did not have the necessary resources to cooperate in this review. The final sample of Union producers accounted for more than 60 % of the total estimated Union production volume. No other comments were received. The Commission concluded that the sample was representative of the Union industry.

1.6.2. Sampling of importers

- (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. Only one unrelated importer provided the required information.
- (19) Sampling of importers was therefore not necessary.

1.6.3. Sampling of producers in Thailand

- (20) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in Thailand to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Kingdom of Thailand to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (21) Three producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary. All three producers exported the product under review to the Union during the review investigation period, and are therefore exporting producers. They account for about 80 % of all Thai exports to the Union.

1.7. Replies to the questionnaire

- (22) Copies of the questionnaires were made available on DG Trade's website when the case was initiated. The Commission sent letters to the three sampled Union producers, to the unrelated importer and to the three exporting producers which provided the required information, requesting them to complete the questionnaire intended for them.
- (23) Questionnaire replies were received from the three Union producers and the three cooperating producers in the country concerned.

- (24) No questionnaire reply was received from the unrelated importer.

1.8. Verification

- (25) The Commission sought and verified with cooperating parties all the information deemed necessary for the determination of a likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- Bonduelle SA, Renescure, France
- Conserve Italia SCA, San Lazzaro di Savena, Italy
- Groupe d'aucy, Theix, France

Exporting producers in Thailand

- Karn Corn Co. Ltd, Kanchanaburi, Thailand
- River Kwai International Food Industrial Company Limited ('RKI'), Kanchanaburi, Thailand
- Siam Del Monte Co. Limited, Bangkok, Thailand.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (26) The product under review is the same as in the original investigation and previous expiry review namely sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling under CN code ex 2001 90 30 (TARIC code 2001 90 30 10), and sweetcorn (*Zea mays var. saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling under CN code ex 2005 80 00 (TARIC code 2005 80 00 10) ('sweetcorn') originating in Thailand ('the product under review').
- (27) The investigation has shown that, despite differences in the preservations, the different types of the product under review all share the same basic biological and chemical characteristics and are used for the same purpose.

2.2. Like product

- (28) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic biological and chemical characteristics as well as the same basic uses:
- the product under review,
 - the product produced and sold on the domestic market of Thailand, and
 - the product produced and sold in the Union by the Union industry.
- (29) Those products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Thailand

3.1.1. Preliminary remarks

- (30) During the review investigation period, imports of certain prepared or preserved sweetcorn in kernels from Thailand continued albeit at lower levels than in the investigation period of the original investigation (that is from 1 January 2005 to 31 December 2005). According to Eurostat, imports of sweetcorn from Thailand accounted for about 3,9 % of the Union market in the review investigation period, compared to 12,7 % market share during the original investigation and 6 % during the previous expiry review. In absolute terms, imports from Thailand amounted to 13 643 tonnes in the review investigation period. This followed a decrease in imports from 41 973 tonnes in the original investigation to 21 856 tonnes during the previous expiry review.

3.1.2. *Dumping during the review investigation period*

3.1.2.1. *Normal value*

- (31) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the review investigation period.
- (32) On this basis, the total domestic sales by only one exporting producer, of the like product, on the domestic market, were representative.
- (33) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales.
- (34) The Commission then examined whether the domestic sales by this cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the review investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (35) The Commission then established the product types for which the domestic sales were representative and the product types for which there were no domestic sales or the domestic sales were not representative.
- (36) For the product types, for which there were representative domestic sales, the Commission next defined the proportion of profitable sales to independent customers on the domestic market, for each product type, during the review investigation period, in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (37) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
 - (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (38) In that case, the normal value is the weighted average of the prices of all domestic sales of that product type during the review investigation period.
- (39) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the review investigation period, if:
 - (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (40) The analysis of domestic sales for the product types with representative domestic sales showed that the weighted average sales price was lower than the unit cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.
- (41) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

- (42) Normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producer during the review investigation period:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period; and
 - (b) the weighted average profit realised by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period.
- (43) The cost of production was adjusted, if necessary.
- (44) For the remaining two exporting producers which did not sell the like product for domestic consumption at all, the normal value had to be constructed pursuant to Article 2(3) of the basic Regulation.
- (45) The normal value was constructed by adding to the cost of manufacturing for each product type exported to the European Union a reasonable amount for SG&A and for profits.
- (46) For one of the two exporting producers which did not sell the like product for domestic consumption, in accordance with Article 2(6)(b) of the basic Regulation, the SG&A and profit were based on the actual amount applicable to production and sales in the ordinary course of trade of the same general category of products for the exporting producer in question in the domestic market.
- (47) For the other exporting producer, which neither sold the like product nor the same general category of products for domestic consumption, in accordance with Article 2(6)(c) of the basic Regulation, the SG&A and profit were established as the average of the SG&A and profit of the same general category of products calculated for the other two cooperating exporting producers. This methodology ensures that the amount for profit so established does not exceed the profit normally realised by other exporters on sales of products of the same general category in the domestic market, as required by Art 2(6)(c) of the basic Regulation.

3.1.2.2. *Export price*

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

3.1.2.3. *Comparison*

- (49) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (50) 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.
- (51) Adjustments were made to the export price for differences in transport costs, handling and loading costs, credit costs, bank charges and commissions, when applicable and duly justified.
- (52) The downward adjustments to the export price were within the range of 1 % to 2 % for transport costs, 0,5 % to 1,5 % for handling and loading costs, 0 % to 0,5 % for credit costs, 0 % to 0,5 % for bank charges and 0,5 % to 1,5 % for commissions.
- (53) Two exporting producers claimed a negative allowance (positive adjustment) on the export price for an alleged duty compensation, under 'Other factors', as provided for in Article 2(10)(k) of the basic Regulation. The exporting producers claimed that they receive this duty compensation from the Thai government when the product under review concerned is sold for export, including to the Union market.

- (54) The exporting producers could demonstrate that an amount equivalent to less than 0,5 % of the invoice value is paid to them. However, the exporting producers failed to demonstrate any link between the duty compensation received and import charges paid for any materials incorporated in the product under review exported. Therefore, the claims for a negative allowance under Article 2(10)(k) were rejected.
- (55) The downward adjustments to the normal value were within the range of 1 % to 2 % for transport costs and 0,5 % to 1 % for credit costs.
- (56) One exporting producer, claimed an adjustment to the normal value for differences in the cost of credit granted for domestic sales, calculated using a short term interest rate for commercial loans provided by a commercial bank in Thailand. The Commission noted that the rate claimed was the maximum theoretical rate chargeable and was applicable at a date before the start of the review investigation period. This was considerably higher than the actual interest rate payable under a comparable short-term loan agreement found in the financial statements applicable during the review investigation period. The Commission therefore adjusted the allowance claimed to base it on the actually applied interest rate for comparable transactions.
- (57) Two exporting producers claimed the use of a reduced profit margin, should the Commission construct normal value, to reflect the fact that branded sales (own brand) on the domestic market carry a higher profit margin than non-branded sales (i.e. not own brand, typically customer's brand) on the Union market.
- (58) In accordance with the original investigation, the Commission accepted these claims to the extent applicable and made an adjustment under Article 2(10)(d) of the basic Regulation. The details have been disclosed to the companies concerned.

3.1.2.4. *Dumping margins*

- (59) For the cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product under review, in accordance with Article 2(11) and (12) of the basic Regulation.
- (60) Following final disclosure, one cooperating exporting producer commented on the calculation of their dumping margin pointing to a possible clerical error. Considering those comments, the Commission revised its calculation to correct the clerical error and determined the revised dumping margin for that cooperating exporting producer. The Commission found that that exporting producer was not dumping during the review investigation period.
- (61) Following the additional final disclosure, with regard to correction of the clerical error, another cooperating exporting producer submitted comments, with regard to the impact of the revised calculation on its own dumping margin. Those comments were submitted late, four days after the deadline for comments, and no non-confidential version of the submission was provided. As such, the Commission could not formally consider the comments. In any event, the Commission found that the comments would not have had any impact on that exporting producer's previously disclosed dumping margin.
- (62) Indeed, despite the correction of the calculation error, for one exporting producer, the Commission's conclusion in relation to dumping for the country as a whole remains unchanged. That is because the other two cooperating exporting producers, which accounted for over 90 % of total imports of the product concerned to the Union from cooperating exporting producers, were found to be dumping during the review investigation period at significant levels.
- (63) The countrywide dumping margin, based on the weighted average dumping margin of all three cooperating exporting producers, expressed as a percentage of the CIF Union frontier price, duty unpaid, was above *de minimis* (4,3 %). The Commission therefore concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

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

4.1. Production capacity and spare capacity in Thailand

- (65) The information available to the Commission on production and spare capacity consists of the data submitted by the three cooperating Thai exporting producers, data submitted by the applicant in the request for review and additional information submitted by the applicant in the course of the proceeding.
- (66) One of the Thai producers, RKI, provided production and capacity figures separately for 'Semi-finished Goods' and 'Finished Goods'. The only difference between these categories of goods was that 'Finished Goods' had a label applied to the tins, whilst the 'Semi-finished Goods' had no label applied. The Commission considered the 'Semi-finished Goods' capacity as the most relevant figure to use for the product under review, since the Finished Goods capacity was calculated based on the current labelling machine usage time, which could be increased.
- (67) In addition, based on information obtained during the verification, the Commission considered that the yield percentage used in the calculation of the Semi-finished goods production capacity for RKI was too low and revised it upwards.
- (68) As a result, the Commission estimated the spare capacity available for the three cooperating exporting producers to be around 70 000 tonnes of the product under review for the review investigation period. As the three cooperating producers accounted for around 45 % of the estimated total processing capacity for all Thai producers mentioned in the request for review (300 000 tonnes), by extrapolation, the Commission estimated that the total spare capacity for all Thai producers would be about 150 000 tonnes. This represents over 40 % of the total Union consumption for the review investigation period and about 11 times the total Thai exports of the product under review to the Union in the review investigation period.
- (69) In addition, evidence provided by the applicant showed that volumes of raw sweet corn available for processing in 2018 were expected to be between 12,5 % and 25 % higher than in 2017. ⁽¹¹⁾ Furthermore, one non-cooperating Thai sweet corn producer, Sunsweet Public Company Limited, invested THB 170,6 million (around EUR 4,5 million) in 2018 on machines and equipment to increase production capacity and production efficiency. ⁽¹²⁾
- (70) The Commission therefore concluded that the Thai producers of sweet corn have extensive spare capacity available to increase exports to the Union market should the current anti-dumping measures lapse.

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

- (71) In order to establish the possible development of imports should the current anti-dumping measures lapse, the Commission considered the attractiveness of the Union market with regard to prices. Since over 85 % of the sales of the cooperating Thai exporting producers to the Union market were of large classic-opening cans, and around 42 % of Thai exports to third countries were also of large classic-opening cans the analysis focused on these product types.
- (72) A comparison of such sales on an ex-works basis, showed that prices to the Union market were around 20 % higher than prices of the same product type to third countries. Considering the significantly higher prices on the Union market, it is clear that it remains an attractive market for the Thai exporting producers. This finding is representative for all Thai exporters since, as mentioned in recital (21), the cooperating producers accounted for about 80 % of all Thai exports to the Union during the review investigation period.

⁽¹¹⁾ IEG Vu article dated 24.10.2018 in AETMD submission dated 29.3.2019, Annex 8.

⁽¹²⁾ AETMD submission dated 29.3.2019.

- (73) The Commission also noted that the exporting Thai producers, which are not cooperating in the investigation, were subject to higher anti-dumping duties on average than the companies which are cooperating in the investigation. There is therefore, a greater likelihood that those companies would increase exports to the Union market should the current anti-dumping measures be allowed to lapse.
- (74) The significant export volumes and market shares from Thailand during the original investigation period (41 973 tonnes, 12,7 %) and the continuing export of the product under review from Thailand to the Union market during the review investigation period (13 643 tonnes, 3,9 %), allow the Commission to conclude that the Union market is attractive for producers of the product under review in Thailand.
- (75) Following final disclosure, the Government of Thailand argued that export volumes from Thailand dropped significantly (-67 %) compared to the original investigation period. They also argued that given that, during the period considered, the Union industry's market share increased by 1 % while that of Thai exports to the Union remained stable at 3,9 %, there was no likelihood of continuation of dumping.
- (76) However, the Government of Thailand neither disputes the fact that the product under review was overwhelmingly sold at dumped prices to the Union, nor does it dispute that the exports of the product under review continued in significant quantities despite the measures in force. The Commission therefore maintains its finding of a likelihood of continuation of dumping.
- (77) Furthermore, the Government of Thailand alleged that the adjustment to the Thai production capacity, and consequently the spare production capacity referred to in recitals (66) to (70) was unjustified, without substantiating this claim. The Thai exporting producer whose production capacity was adjusted did not dispute the adjustment. The claim is therefore rejected.
- (78) The Government of Thailand further argued that since Thai export volumes only accounted for 0,9 % of the total spare capacity of cooperating Thai exporting producers, the Union market is allegedly no longer attractive to Thai exporting producers.
- (79) However, Thai export volumes were in fact around 9 % ⁽¹³⁾ of total Thai spare capacity. This confirms that the Thai exporting producers continue to export significant volumes to the Union despite the measures in force, and have substantial spare capacities to increase their exports of the product under review should measures lapse.
- (80) Consequently, should the current anti-dumping measures lapse, the imports from Thailand to the Union are likely to increase significantly and at dumped prices.

4.3. Conclusion

- (81) Accordingly, given in particular, the dumping margin established in the review investigation period, the significant spare capacity available in Thailand and the attractiveness of the Union market, the Commission concluded that a repeal of the measures would likely result in a continuation of dumping, and that dumped exports would enter the Union market in significant quantities. It is therefore, considered that there is a likelihood of continuation of dumping should the current anti-dumping measures be allowed to lapse.

5. INJURY

5.1. Definition of the Union industry and Union production

- (82) The like product was manufactured by approximately 20 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (83) The total Union production during the review investigation period was established at around 376 000 tonnes, based on the information provided by the Union Industry. As indicated in recital (15), three Union producers were selected in the sample representing more than 60 % of the total Union production of the like product.

⁽¹³⁾ Exports of 13 643 tonnes of the product under review (see Table 2) compared to a total spare capacity of 150 000 tonnes.

5.2. Union consumption

- (84) The Commission established the Union consumption as a sum of Union industry's sales volume on the Union market and total imports into the Union obtained from the Comext database (Eurostat).
- (85) Throughout the period considered, the consumption in the Union slightly increased by 2 %.

Table 1

Union Consumption (tonnes)

	2015	2016	2017	RIP
Total consumption	343 325	347 950	354 821	348 682
Index (2015 = 100)	100	101	103	102

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies

5.3. Imports from the country concerned

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

- (86) The Commission established the volume of imports from Thailand into the Union on the basis of data from the Comext database (Eurostat) and the market share of the imports by comparing these import volumes with the Union consumption as shown in Table 1.
- (87) Imports of the product under review into the Union from Thailand increased by 3 %, from 13 307 tonnes in 2015 to around 13 643 tonnes in the review investigation period, following the 12 % decrease in 2016.

Table 2

Union import volume from Thailand (tonnes)

	2015	2016	2017	RIP
Volume of import from Thailand	13 307	11 674	12 341	13 643
Index (2015 = 100)	100	88	93	103

Source: Eurostat

- (88) The corresponding market share held by Thai exporters on the Union market developed in a similar manner as the import volumes and amounted to 3,9 % in the review investigation period.

Table 3

Market share of import from Thailand (%)

	2015	2016	2017	RIP
Share of import from Thailand	3,9	3,4	3,5	3,9
Index (2015 = 100)	100	87	90	100

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies

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

- (89) The Commission established the prices of imports on the basis of data from the Comext database (Eurostat).
- (90) The average import prices of the product under review from Thailand decreased by 15 % in the period considered.

Table 4

Average import price from Thailand (EUR/tonne)

	2015	2016	2017	RIP
Import price from Thailand	929	913	869	786
<i>Index (2015 = 100)</i>	100	98	94	85

Source: Eurostat

- (91) The Commission determined the price undercutting during the review investigation period by comparing:
- the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the sampled cooperating Thai producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for conventional customs duties and importation costs including unloading and customs clearance.
- (92) The price comparison was made on a product type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period. It showed a weighted average undercutting margin of between -0,7 % and 4,25 % by the imports from the country concerned on the Union market. Around 79 % of import volumes from sampled exporting producers in Thailand were undercutting Union industry prices.

5.4. Imports from third countries other than Thailand

- (93) The imports of sweetcorn from third countries other than Thailand were mainly from the United States of America and the People's Republic of China ('China').
- (94) The market share of imports from other third countries decreased from 2,2 % to 1,2 % over the period considered. Individual market share of the two biggest exporting countries other than Thailand remained under 1 %.

Table 5

Imports market share

	2015	2016	2017	RIP
USA	0,9 %	0,8 %	0,6 %	0,6 %
China	0,6 %	0,4 %	0,3 %	0,4 %
Other countries	0,7 %	0,5 %	0,2 %	0,2 %
Total	2,2 %	1,7 %	1,1 %	1,2 %
<i>Index (2015 = 100)</i>	100	79	52	55

Source: Eurostat

5.5. Economic situation of the Union industry**5.5.1. General remarks**

- (95) 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.

- (96) This market is, inter alia, characterised by two sales channels, i.e. sales under the producer's own brand and sales under retailers' brand. Sale under the first channel, as compared to the second channel, will usually trigger higher selling costs, in particular to cover marketing and advertising, and will also command higher selling price.
- (97) The investigation evidenced that all competing imports from the sampled Thai exporting producers pertained to the second channel, i.e. the retailers' brand channel. Therefore, it was considered appropriate to distinguish, in the injury analysis, between the Union industry's sales under its own brand and under the retailers' brand wherever relevant, as dumped imports compete with the Union industry's like products sold under the retailers' brand. This distinction was made in particular for the determination of sales volumes, sales prices and profitability. However, for the sake of completeness, totals (including both own brand and retailers' brand) are also shown and analysed in Tables 9, 13 and 16. During the review investigation period, the Union industry's sales under the retailers' brand accounted for around 67 % of the total Union industry's sales volume and around 57 % of their sales value.
- (98) Given that in the Union sweetcorn is only processed during the summer months, a number of injury indicators are virtually identical for 2017 and the review investigation period (1 July 2017 to 30 June 2018). This applies in particular to production and production capacity.
- (99) As mentioned in recital (14), sampling was used for the assessment of the economic situation of the Union industry.
- (100) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data submitted by the Union industry and the verified questionnaire replies from the sampled Union producers.
- (101) The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.
- (102) Both sets of data were found to be representative of the economic situation of the Union industry.
- (103) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.
- (104) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.5.2. Macroeconomic indicators

5.5.2.1. Production, production capacity and capacity utilisation

- (105) From a level of around 359 000 tonnes in 2015, the Union industry's production increased by 5 % during the period considered.

Table 6

Union production

	2015	2016	2017	RIP
Production (tonnes)	359 250	343 539	376 337	376 437
Index (2015 = 100)	100	96	105	105

Source: Data submitted by the Union industry and verified questionnaire replies

- (106) Production capacity remained stable over the period considered.

Table 7

Union production capacity

	2015	2016	2017	RIP
Capacity (tonnes)	465 311	465 370	465 876	465 876
<i>Index (2015 = 100)</i>	100	100	100	100

Source: Data submitted by the Union industry and verified questionnaire replies

- (107) Capacity utilisation followed the same trend as the production, it increased by 5 % during the period considered to 81 %.

Table 8

Union capacity utilisation

	2015	2016	2017	RIP
Capacity utilisation (%)	77	74	81	81
<i>Index (2015 = 100)</i>	100	96	105	105

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.2.2. Sales volume and market share

- (108) The sales of the Union industry of its production intended for the retailers' brand on the Union market to unrelated customers increased by 3 % in the review investigation period.

Table 9

Union sales volume

	2015	2016	2017	RIP
Union sales volume (retailers' brand) to unrelated customers tonnes	214 495	219 646	225 522	220 839
<i>Index (2015 = 100)</i>	100	102	105	103
Union sales volume (own and retailers' brand) to unrelated customers tonnes	322 501	330 246	338 455	330 875
<i>Index (2015 = 100)</i>	100	102	105	103

Source: Data submitted by the Union industry and verified questionnaire replies

- (109) The total (both own and retailers' brands) Union industry's sales of its production on the Union market to unrelated customers followed the same pattern as the retailers' brand sales, i.e. it increased by 3 % in during the period considered.
- (110) The market share held by the Union industry was 94 % in 2015 and it increased by one percentage point to 95 % in the review investigation period.

Table 10

Union market share

	2015	2016	2017	RIP
Market share of the Union industry (own and retailers' brand) (%)	94	95	95	95
<i>Index (2015 = 100)</i>	100	101	101	101

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.2.3. *Growth*

- (111) Between 2015 and the review investigation period, the Union consumption slightly increased by 2 % but the Union industry managed to increase their market share by 1 % through higher sales.

5.5.2.4. *Employment and productivity*

- (112) The employment level of the Union industry first decreased by 11 % between 2015 and 2017 and then increased by 6 percentage points in the review investigation period. Overall, employment of the Union industry decreased by 5 % over the period considered, from around 2 200 to around 2 100 full time equivalents (FTE).

Table 11

Employment

	2015	2016	2017	RIP
Employment in FTE	2 203	1 993	1 964	2 092
<i>Index (2015 = 100)</i>	100	90	89	95

Source: Data submitted by the Union industry and verified questionnaire replies

- (113) Productivity of the Union industry's workforce, measured as output (tonnes) per FTE per year, started from a level of 163 tonnes per FTE first increased by 17 % between 2015 and 2017, then decreased by 7 percentage points in the review investigation period. Overall, productivity increased by 10 % to 180 tonnes per FTE per year. This reflects the increased usage of advanced machinery at the expense of manual labour.

Table 12

Union productivity

	2015	2016	2017	RIP
Productivity (tonnes/FTE)	163	172	192	180
<i>Index (2015 = 100)</i>	100	106	117	110

Source: Data submitted by the Union industry and verified questionnaire replies

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

- (114) The investigation has established the continuation of dumping, and that the magnitude of the countrywide margin of dumping as shown in recital (63) is above the *de minimis* level.

- (115) At the same time, the level of imports of the product under review during the review investigation period, while being relatively limited, remained significant at 3,9 %.
- (116) The macro- and micro-indicators examined show that, although the anti-dumping measures have partially achieved their intended result of removing the injury suffered by the Union producers, the industry is still under continuous pressure due to the low prices charged by the Thai exporting producers.
- (117) Indeed the performance on the retailers' segment, which is in direct competition with the Thai imports, is poor in terms of profitability. Sales prices of the Union industry in this market segment decreased by 8 % over the period considered, whereas production costs increased by about 1 % over the same period. Clearly, the Union industry has not been in a position to recover its costs, which resulted in significant losses. Given the importance of the retailers' brand in the Union industry's sweetcorn business (around 67 % of the total Union industry's sales volume and around 57 % of sales value) this has weighted on the overall profitability. Thus, no actual recovery from the past dumping in the retailers' segment could be established and it is considered that the Union industry remains vulnerable.

5.5.3. Microeconomic indicators

5.5.3.1. Prices and factors affecting prices

- (118) Unit prices for Union industry's sales of retailers' brand products to unrelated customers decreased over the period considered by 8 % to EUR 1 114/tonne.
- (119) The Union industry's sales prices on the Union market for both own and retailers' brand to unrelated customers decreased by 4 % over the period considered to EUR 1 311/tonne.

Table 13

Unit price in the Union market

	2015	2016	2017	RIP
Union unit price (retailers' brand) to unrelated customers (EUR/tonne)	1 204	1 106	1 095	1 114
<i>Index (2015 = 100)</i>	100	92	91	92
Union unit price (own and retailers' brand) to unrelated customers (EUR/tonne)	1 365	1 291	1 289	1 311
<i>Index (2015 = 100)</i>	100	95	94	96

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.3.2. Labour costs

- (120) Between 2015 and the review investigation period, average labour costs per employee increased by 8 %, due to higher total labour costs by 2 % and lower employment in FTE by 5 % in the same period.

Table 14

Average labour costs per employee

	2015	2016	2017	RIP
Labour costs (EUR/FTE)	30 529	32 581	35 537	32 903
Index (2015 = 100)	100	107	116	108

Source: Data submitted by the Union industry and verified questionnaire replies.
FTE is a full time equivalent.

5.5.3.3. *Inventories*

- (121) The level of closing stocks of the Union industry has been decreasing over the period considered. It decreased by 6 % in 2016 and 2017 and by 59 % in the review investigation period. However, it should be noted that the high level of inventories at the end of a calendar years is linked to the fact that the harvest and the canning typically end in September each year. Stocks are therefore replenished only during the summer harvest and then used up throughout the year, therefore the stock levels in the review investigation period need to be assessed separately.

Table 15

Inventories

	2015	2016	2017	RIP
Closing stock (tonnes)	198 629	186 248	186 136	80 885
Index (2015 = 100)	100	94	94	41

Source: Data submitted by the Union industry and verified questionnaire replies

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

- (122) During the period considered, the profitability of the Union industry's sales of products intended for retailers' brand, expressed as a percentage of net sales, declined from a profit of 5,2 % in 2015 to a loss of 0,7 % in the review investigation period.
- (123) The profitability of the Union industry's sales of the products intended for both own and retailers' brands also declined from 10 % in 2015 to 6,7 % in the review investigation period. The decline is thus less steep than for sales under retailers' brand alone. The decrease in profitability is explained by the fact that sales prices over the period considered decreased by 4 %, whereas production costs (predominantly unprocessed sweetcorn and cans) increased by 1 % over the same period. Clearly, the Union industry has not been in a position to pass on the increased production costs to its customers.
- (124) The return on investments ('ROI'), expressed as the profit (for both own and retailers' brand) as a percentage of the net book value of investments, broadly followed the profitability trend. It declined from a level of around 49 % in 2015 to 31,7 % in the review investigation period, thus decreasing by 35 % over the period considered.
- (125) The net cash flow from operating activities stood at around EUR 17 million in 2015. It increased to around EUR 24 million in the review investigation period (i.e. increase by 42 %). None of the sampled Union producers indicated that they experienced difficulties to raise capital.

Table 16

Profitability and return on investment

	2015	2016	2017	RIP
Union profitability (retailers' brand) (% of net sales)	5,2	-1,4	-2,6	-0,7
<i>Index (2015 = 100)</i>	100	-27	-50	-13
Union profitability (own and retailers' brand) (% of net sales)	10,0	6,1	4,8	6,7
<i>Index (2015 = 100)</i>	100	61	48	67
ROI (own and retailers' brand)(profit in % of the net book value of investment)	49,0	27,3	23,7	31,7
<i>Index (2015 = 100)</i>	100	56	48	65

Source: Data submitted by the Union industry and verified questionnaire replies

Table 17

Cash flow

	2015	2016	2017	RIP
Cash flow (own and retailers' brand) (EUR)	17 197 966	32 293 239	16 496 604	24 404 977
<i>Index (2015 = 100)</i>	100	188	96	142

Source: Data submitted by the Union industry and verified questionnaire replies

- (126) The Union industry's annual investments in the production of the like product increased steadily over the period considered from around EUR 4 million in 2015 to around EUR 8 million in the review investigation period, i.e. they increased by 85 %. The investments were made for the renewal of existing equipment and productivity increase.

Table 18

Investments

	2015	2016	2017	RIP
Net investments (EUR)	4 446 615	5 622 002	7 744 202	8 232 340
<i>Index (2015 = 100)</i>	100	126	174	185

Source: Data submitted by the Union industry and verified questionnaire replies

5.6. Conclusion on the situation of the Union industry

- (127) A number of indicators developed negatively between 2015 and the review investigation period. Return on investments declined as did the profitability of sales, employment decreased by 5 %. Imports from Thailand increased with a declining average price. Extremely good crop yields in 2014 resulted in high stock levels in 2015. During the same period low-priced Thai imports negatively affected Union industry even more. In reaction, the Union industry decreased prices and production in 2016 along with de-stocking, which affected negatively their profitability. Only in 2017 the Union industry could increase production but the profitability hit the lowest level given the production and sales delay of one calendar year.
- (128) Union industry's sales of sweetcorn in retailers' brand segment were loss-making during the majority of the period considered. The industry needs the retailer-branded sales, since they account for more than half of their sales. Given the significance of the retailer-branded sales in the total sales value, the overall profitability decreased from 10 % to 6,7 %.
- (129) Some indicators marked positive development. Capacity utilisation increased to 81 %. Cash flow and investments also increased significantly. The volume of the Union industry's retailer-branded sales, which are in direct competition with Thai imports, increased by 3 %. Total sales for both segments combined increased by the same percentage. It should be however noted that the Thai imports prevented the Union industry to pass on cost increases to customers and the Union industry was therefore not able to reach satisfactory profitability levels in order to maintain a substantial market share on a market where only the Union industry and Thai imports compete as the imports from other third countries are dispersed and insignificant.
- (130) The two segments (retailers' brand and own brand) show different situation of the Union industry. On one hand, in the own-branded segment the Union industry does not face strong direct competition. The power of brand owners is strong and the market is consolidated. On the other hand, the retailers are price setters in the retailers' brand segment. Due to the competition from the Thai imports, prices are constantly under pressure. As a result, it is more difficult for the Union producers to pass on production cost increases (mainly sweetcorn and cans) to retailers due to the price pressure exercised by Thai imports.
- (131) Seemingly, the Union industry has been able to increase its market share by favouring volumes over prices. However, it cannot be ignored that for a majority of the period considered and majority of its sweetcorn business (retailers' brand) the Union industry has been loss-making.
- (132) Following final disclosure the Government of Thailand and two exporting producers argued that there was a potential threat coming from the increased volume of sweetcorn imports from China with lower import prices rather than from Thai imports.
- (133) While Chinese imports have lower average price, import volumes during the review investigation period were still negligible (0,4 % market share), therefore those imports were not considered in the injury assessment. This claim was rejected.
- (134) The Government of Thailand and the two exporting producers further argued that the underperformance of the Union industry was due to particular weather conditions in Europe in 2018. The two exporting producers made reference to a press article ⁽¹⁴⁾ about the 2018 corn crop harvest. The Commission notes firstly that the 2018 sweetcorn harvest does not affect Union industry's results in the period considered (ending in June 2018) — as the sales till June 2018 are based on the harvest of the previous year. Secondly, the article is not relevant because corn as opposed to sweetcorn is a different plant which is not used to produce the product under review.
- (135) The Union industry claimed that the injury assessment should distinguish large cans sold under retailers brand segment, where Thai exporting producers had between 20 % and 30 % market share and the Union industry suffered low profitability and material injury.

⁽¹⁴⁾ https://www.lemonde.fr/economie/article/2018/10/20/la-roumanie-vampirise-le-marche-europeen-du-mais_5372297_3234.html?xtmc=dracula&xtcr=1

- (136) As mentioned in recital (96), the sweetcorn market is characterised by two sales channels, retailers' brand channel and own brand. In accordance with Article 11(9) of the basic Regulation, and as was done in the original investigation which led to the duty, the injury assessment was based on the Union industry's overall performance (own brand + retailers' brand) as well as, for a number of injury indicators (profitability, sales volume and sales prices) on the retailers' brand. There are no changed circumstances which would justify using a different methodology. Therefore, the claim was rejected.
- (137) The injury picture of the Union industry is mixed. The anti-dumping measures have partially achieved their objective by removing some of the injury suffered by the Union industry as a consequence of dumped imports from Thailand. However, on balance, in particular taking into account the low profitability, the situation of the Union industry is still vulnerable and fragile.
- (138) Consequently, the Commission concluded that while the Union industry did suffer some injury during the review investigation period, it could not be considered material injury within the meaning of Article 3(5) of the basic Regulation.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (139) The Commission concluded in recital (138) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury from the dumped imports from Thailand if the measures were allowed to lapse. On the basis of the above-described trends, it appears that the anti-dumping measures have partially achieved their intended result of removing injury suffered by the Union producers. However, as evidenced by negative development of a number of injury indicators, the Union industry is still in a vulnerable and fragile situation.
- (140) In that regard, the Commission examined the production capacity and spare capacity in the country concerned, attractiveness of the Union market and the impact of imports from the country concerned on the situation of the Union industry should the measures be allowed to lapse.

6.1. Spare production/processing capacity

- (141) As mentioned in recitals (68) - (70), Thai exporters do have significant spare capacity to increase their exports rapidly. In addition, Thai spare processing capacity is estimated around 150 000 tonnes, which is approximately 10 times the Thai export volume to the Union.

6.2. Attractiveness of the Union market

- (142) Given the more lucrative prices on the Union market compared to third country markets as described in recital (72), it is likely that significant quantities currently exported to those countries would be re-directed to the Union market in the event of the anti-dumping measures being allowed to lapse.
- (143) On that basis, in the absence of measures, Thai producers would likely intensely increase their presence in the Union market in terms of both volume and market share and at dumped prices that would exert increased price pressure on the Union industry's sales prices.

6.3. Impact on the Union industry

- (144) With the likely arrival of large quantities of Thai imports undercutting the prices, the Union industry would be forced to reduce its production or lower its prices. Even low undercutting have significant impact on the profitability of the Union industry, as shown in the analysis of the retailers' brand in recitals (122) and (123).

- (145) Given the fragility of the Union industry, decreases in production volumes and sales prices would cause a very quick deterioration of its profitability and other performance indicators.

6.4. Conclusion on likelihood of recurrence of injury

- (146) On the basis of the above, it can be concluded that there is a likelihood of recurrence of material injury should the current anti-dumping measures lapse.
- (147) Two exporting producers commented that there is no likelihood of recurrence of material injury because the Commission did not present sufficient factual evidence of it, mainly because the Union market is not the main and preferred market for the product under review and the existing economic indicators show positive developments. This issue was also raised by the Government of Thailand.
- (148) The evidence of likelihood of recurrence of injury is detailed in recitals (139) to (145), where the Commission conducted a prospective assessment to assess the likelihood of recurrence of injury. Such an analysis is not exclusively based on the current situation regarding the main and preferred market for the product under review and Union industry performance, but it considers the likely situation in the Union market should the anti-dumping measures be repealed. Thus, this claim was rejected.

7. UNION INTEREST

- (149) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known in accordance with Article 21(2) of the basic Regulation.

7.1. Interest of the Union industry

- (150) As mentioned in recital (139), the Union industry is still in a fragile and vulnerable situation. It could use the relief provided by the continuation of the measures to increase its sales prices (in particular for the retailers' brand) in order to recover its increased production costs. This would allow the Union industry to improve its financial situation.

7.2. Interest of retailers and consumers

- (151) In the previous expiry review investigation, it was concluded that retailers would not be disproportionately affected, even if measures were to be extended.
- (152) In the current investigation the Commission did not find any evidence suggesting that this has changed since the previous expiry review. No retailer cooperated with the investigation nor claimed that this conclusion was no longer valid. Accordingly, the Commission concluded that the measures currently in force had no substantial negative effect on the financial situation of retailers and that the continuation of the measures would not unduly affect them.
- (153) As far as consumers are concerned, the average spending in sweetcorn per household is very limited. Taking into account the moderate level of the current measures, the effects of the continued imposition of measures would likely be negligible for consumers.
- (154) Therefore, it is therefore considered that the situation of retailers and of consumers in the Union is unlikely to be substantially affected by the proposed measures.

7.3. Risk of supply shortages/competition on the Union market

- (155) The consumption in the Union remained stable at around 365 000 tonnes. The Union industry's capacity has continuously exceeded Union's demand over the period considered, reaching a level of around 466 000 tonnes in the review investigation period. It appears that the Union industry has a spare capacity to increase their production in the event of increased demand. Imports from other third countries, in particular the United States and China, can also satisfy part of the demand. Indeed, the anti-dumping measures are not intended to stop the imports from Thailand into the Union. Taking into account the low level of the anti-dumping duty, it is expected that the Thai imports will continue to account for a certain share on the Union market.
- (156) Given the above considerations, it cannot be concluded that maintaining the anti-dumping measures would likely result in a shortage of supply on the Union market or a restriction of competition on the Union market.

7.4. Conclusion on Union interest

- (157) Consequently, the Commission concluded that there were no compelling reasons of the Union interest against maintaining the existing measures on imports of the product under review.

8. ANTI-DUMPING MEASURES

- (158) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on certain prepared or preserved sweetcorn in kernels originating in Thailand should be maintained.
- (159) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The submissions and comments were duly taken into consideration where warranted.
- (160) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ⁽¹⁵⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (161) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling under CN code ex 2001 90 30 (TARIC code 2001 90 30 10), and sweetcorn (*Zea mays var. saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling under CN code ex 2005 80 00 (TARIC code 2005 80 00 10) originating in the Kingdom of Thailand.
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 manufactured by the companies listed below, shall be as follows:

⁽¹⁵⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Company	Anti-dumping duty (%)	TARIC additional code
Karn Corn Co Ltd, 68 Moo 7 Tambol Saentor, Thamaka, Kanchanaburi 711 30, Thailand	3,1	A789
Kuiburi Fruit Canning Co., Ltd, 236 Krung Thon Muang Kaew Building, Sirindhorn Rd., Bangplad, Bangkok 10700, Thailand	14,3	A890
Malee Sampran Public Co., Ltd Abico Bldg. 401/1 Phaholyothin Rd., Lumlookka, Pathumthani 121 30, Thailand	12,8	A790
River Kwai International Food Industry Co., Ltd, 99 Moo 1 Thanamtuen Khaupoon Road Kaengsian, Muang, Kanchanaburi 71000 Thailand	12,8	A791
Sun Sweet Co., Ltd, 9 M. 1, Sanpatong, Chiang Mai 50120, Thailand	11,1	A792
Cooperating exporting producers listed in the Annex	12,9	A793
All other companies	14,3	A999

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

Article 2

Article 1(2) may be amended in order to include a new exporting producer and to attribute to that producer the weighted average anti-dumping duty rate applicable to the cooperating companies not included in the sample of the original investigation, where a new exporting producer in Thailand provides sufficient evidence to the Commission that:

- (a) it did not export to the Union the product described in paragraph 1 in the period between 1 January 2005 and 31 December 2005 (original investigation period);
- (b) it is not related to any exporter or producer in Thailand which is subject to the anti-dumping measures imposed by this Regulation; and
- (c) it has either actually exported to the Union the product under review or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

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, 28 November 2019.

For the Commission
The President
 Jean-Claude JUNCKER

ANNEX

List of the cooperating exporting producers referred to in Article 1(2) under TARIC additional code A793

Name	Address
Agro-On (Thailand) Co., Ltd	50/499-500 Moo 6 Baan Mai, Pakkret, Monthaburi 11120, Thailand
B.N.H. Canning Co., Ltd	425/6-7 Sathorn Place Bldg., Klongtonnesai, Kongsan Bangkok 10600, Thailand
Boonsith Enterprise Co., Ltd	7/4 M.2, Soi Chomthong 13, Chomthong Rd., Chomthong, Bangkok 10150, Thailand
Erawan Food Public Company Limited	Panjathani Tower 16th floor, 127/21 Nonsee Rd., Chongnonsee, Yannawa, Bangkok 10120, Thailand
Great Oriental Food Products Co., Ltd	888/127 Panuch Village Soi Thanaphol 2, Samsen-Nok, Huaykwang, Bangkok 10310, Thailand
Lampang Food Products Co., Ltd	22K Building, Soi Sukhumvit 35, Klongton Nua, Wattana, Bangkok 10110, Thailand
O.V. International Import-Export Co., Ltd	121/320 Soi Ekachai 66/6, Bangborn, Bangkok 10500, Thailand
Pan Inter Foods Co., Ltd	400 Sunphavuth Rd, Bangna, Bangkok 10260, Thailand
Siam Food Products Public Co., Ltd	3195/14 Rama IV Road, Vibulthani Tower 1, 9th Fl., Klong Toey, Bangkok, 10110 Thailand
Viriyah Food Processing Co., Ltd	100/48 Vongvanij B Bldg, 18th Fl, Praram 9 Rd., Huay Kwang, Bangkok 10310 Thailand
Vita Food Factory (1989) Ltd	89 Arunammarin Rd., Banyikhan, Bangplad, Bangkok 10700, Thailand