



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate H - Trade Defence

Brussels, 12 April 2018

GENERAL DISCLOSURE DOCUMENT

R672 – Expiry review of the anti-dumping measures applicable to imports of oxalic acid originating in the People's Republic of China and in India

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1. PROCEDURE

1.1. Measures in force

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by means of Regulation (EC) No 325/2012¹ a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China ('countries concerned').
- (2) Following the judgment of the General Court of 20 May 2015², the measures were annulled in so far as they concerned the Chinese exporting producer Yuanping Changyuan Chemicals Co. Ltd ('Yuanping'). Following the implementation of that judgment, the Commission re-imposed anti-dumping measures on imports of the product concerned by Yuanping with effect from 30 November 2016³.
- (3) The existing measures take the form of an *ad valorem* duty between 14,6% and 52,2% on imports from the countries concerned. Concerning the People's Republic of China ('PRC'), duties range from 14,6% to 37,7% for Chinese cooperating companies. The country wide dumping duty is 52,2%. Concerning India, the duties range from 22,5% to 31,5% for the cooperating companies. The country wide duty is 43,6%.

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry of the anti-dumping measures in force⁴, the Commission received a request for the initiation of an expiry review of the measures against the countries concerned, pursuant to Article 11(2) of the basic Regulation.
- (5) The request was lodged on 18 January 2017 by Oxaquim S.A. ('the applicant') representing more than 50% of the total Union production of oxalic acid.
- (6) The request was based on the grounds that the expiry of the measures would likely result in continuation of dumping and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

- (7) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced, on 12 April 2017, by a notice published in the Official Journal of the European Union⁵ the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation ('Notice of Initiation').

1.4. Investigation

1.4.1. Review investigation period and period considered

- (8) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 April 2016 to 31 March 2017 (the 'review

¹ Council Implementing Regulation (EU) No 325/2012 of 12 April 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of oxalic acid originating in India and the People's Republic of China (OJ L 106, 18.4.2012, p.1).

² Case T-310/12 Yuanping Changyuan Chemicals Co. Ltd v. Council of the European Union.

³ Commission Implementing Regulation (EU) 2016/2081 of 28 November 2016 re-imposing a definitive anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and produced by Yuanping Changyuan Chemicals Co. Ltd (OJ L 321, 29.11.2016, p. 48).

⁴ OJ C 329, 7.9.2016, p.4.

⁵ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of oxalic acid originating in India and the People's Republic of China (OJ C 117, 12.4.2017, p. 15)

investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2013 to the end of the RIP (the 'period considered').

1.4.2. *Parties concerned by the investigation*

- (9) The Commission officially advised the applicant, the other known Union producer, the known exporting producers in the countries concerned, the known importers, the users and traders known to be concerned, known associations representing Union producers and users and the representatives of the exporting countries, of the initiation of the expiry review.
- (10) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation. No interested party requested a hearing.

1.4.3. *Sampling*

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

1.4.3.1. *Sampling of exporting producers*

- (12) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in India and the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the missions of India and the PRC to the Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (13) Three exporting producers in India provided the requested information and agreed to be included in the sample. Therefore, sampling was not necessary and the Commission sent the questionnaire to all three companies. However, only two Indian companies provided a reply to the questionnaire.
- (14) No company from the PRC came forward. The Commission informed the Chinese authorities by means of a Note Verbale on 18 May 2017 that it had not received any cooperation from exporting producers in the PRC. It therefore intended to base its findings for the exporting producers in the PRC on the facts available in accordance with Article 18 of the basic Regulation. No comments were received.

1.4.3.2. *Sampling of Union producers*

- (15) Oxalic acid was manufactured by only two producers in the Union during the period considered. Thus no sampling of Union producers was necessary. Although questionnaires were sent to both companies, only the applicant provided a questionnaire reply.

1.4.3.3. *Sampling of unrelated importers*

- (16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known unrelated importers to provide the information specified in the Notice of Initiation.
- (17) Seven companies replied to the sampling form. Only one of them indicated that it had imported oxalic acid from the countries concerned. Due to this limited number of companies, sampling was not considered necessary.

1.5. **Questionnaires and verification visits**

- (18) The Commission sought and verified all the information deemed necessary for the purpose of determining the likelihood of continuation or recurrence of dumping, the likelihood of continuation or recurrence of injury and Union interest.
- (19) The Commission sent questionnaires to the two known Union producers, to three Indian exporting producers, to all known users and seven unrelated importers who have replied to the sampling form.
- (20) Questionnaires replies were received from two Indian exporting producers, one Union producer and five users.
- (21) The Commission carried out verifications at the premises of the following companies:
 - (a) Union producer:
 - Oxaquim S.A., Spain
 - (b) Exporting producers:
 - Star Oxochem Pvt. Ltd., India ('Star Oxochem')
 - Radiant Indus Chem Pvt. Ltd., India ('Radiant')

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (22) The product concerned is oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, currently falling within CN code ex 2917 11 00 (TARIC code 2917 11 00 91) and originating in India and the PRC ('product concerned').
- (23) Oxalic acid is used in a wide range of applications, for example as a reducing and bleaching agent, in pharmaceutical synthesis and in the manufacture of chemicals.
- (24) In the original investigation, it was found that there are two types of oxalic acid; unrefined oxalic acid and refined oxalic acid. Refined oxalic acid, which was produced in the PRC but not in India, is manufactured through a purification process of unrefined oxalic acid, the purpose of which is to remove iron, chlorides, metal traces and other impurities. In the absence of cooperation from the PRC, a similar situation was assumed for the current review investigation.

2.2. Like product

- (25) Oxalic acid produced and sold by the Union industry in the Union, oxalic acid produced and sold on the domestic market of India and the PRC and oxalic acid imported into the Union from India and the PRC have essentially the same basic physical and chemical characteristics and the same basic end uses.
- (26) Therefore, these products are alike within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (27) In accordance with Article 11(2) of the basic Regulation, the Commission first examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from Indian and Chinese exporting producers.
- (28) During the RIP, exports to the Union of oxalic acid from the PRC and India continued albeit at lower volumes than in the investigation period of the original investigation (from 1 January to 31 December 2010). According to Eurostat data, Chinese and Indian imports of oxalic acid entering the Union accounted for around 16% of the market in the RIP.

3.2. **India**

- (29) There are four known producers of oxalic acid in India, of which two provided a reply to the questionnaire. On the basis of the information at its disposal⁶, the Commission estimated total production in India at around 30 000 metric tonnes. Total exports from India are estimated at around 9 000 metric tonnes, based on Indian government data for 2016-2017⁷.
- (30) The imports from India to the Union in the RIP were limited and amounted to around 800 to 900 tonnes, based on Eurostat and Indian government data.
- (31) The two cooperating Indian producers had very limited Union sales, following a drop since the imposition of the measures. The main exporting producer from India during the RIP was the company that stopped its cooperation by not replying to the questionnaire.
- (32) Imports from India are also subject to the 6.5% CCT⁸ duty.

3.2.1. *Dumping in the review investigation period*

(a) Normal value

- (33) The Commission first examined whether the total volume of domestic sales of the two cooperating Indian companies 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 RIP. On this basis, the total sales of the two cooperating exporting producers of the like product on the domestic market were found representative.
- (34) 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 producers with representative domestic sales. The Commission then examined whether the domestic sales by each 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

⁶ The information provided by the two exporting producers and the following sources: data from the expiry review request, a non-verified sampling form by another exporting producer, and data from the original investigation. The capacity utilisation for the two cooperating exporting producers was taken as estimate for the other two known exporting producers.

⁷ See non-confidential submission of company Star Oxochem on 23 October 2017.

⁸ Common Customs Tariff. The conventional rate of duty for 2917 11 00 Oxalic acid, its salts and esters is 6.5%. See Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 294, 28.10.2016, p.1).

volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the sales of the two cooperating exporting producers were representative.

- (35) The Commission then defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales price for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (36) 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 domestic 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.

In respect of the two cooperating Indian companies in this investigation, it was established that neither of them had profitable sales fulfilling the criteria above.

- (37) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the RIP, 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.

In respect of one cooperating Indian company, Radiant, which only sold one product type domestically and for exports, the normal value was determined based on this methodology and only the profitable sales, amounting to [10-15] % of the sales, were used. For the other cooperating Indian company these criteria did not apply.

- (38) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, the Commission constructed the normal value in accordance with paragraphs (3) and (6) of Article 2 of the basic Regulation. For such product types normal value was constructed by adding to the average cost of production of the like product of the cooperating exporting producer during the RIP:
 - (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP; and
 - (b) the weighted average profit realised by the sole cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the RIP.

- (39) In respect of the other Indian company, Star Oxochem, it sold two product types: one only domestically and the other nearly exclusively for exports (with a few domestic sales). For the product type that was exported, there were no profitable sales. The normal value was constructed by adding to the average cost of manufacturing, the average SG&A and profit percentage based on the domestic sales in the ordinary course of trade of the product type sold domestically, in line with methodology described in recital (38).

- (40) Regarding the determination of the costs of production, the applicant submitted that the cost of producing sodium nitrite, less the revenue from sales, should be allocated to oxalic acid production. For the applicant, sodium nitrite should be treated as a by-product and not as a viable separate business line. The Commission concluded, on the basis of the evidence collected in the investigation, that sodium nitrite is a by-product as it is a secondary product derived from the manufacturing process of oxalic acid. It is not the primary product being produced. A by-product is marketable and needs to be deducted from the cost of manufacturing on the basis of sales. The cost of production was modified through relevant adjustments for one Indian producer so that sodium nitrite is treated as a by-product and not as a viable business line.
- (b) Export price
- (41) The two cooperating exporting producers exported to the Union directly to independent customers. Therefore, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (c) Comparison
- (42) The Commission compared the normal value and the export price as established above on an ex-works basis.
- (43) 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, discounts, credit costs, bank charges and commissions paid by the cooperating exporting producer. The level of adjustments to the domestic prices was in the range of 0 - 5 %. In case of export price it was in the range of 10 – 25 %. Each of the two Indian cooperating exporting producers received the detailed calculations of the adjustments made in the specific disclosure.
- (44) In the context of Article 2(10)(b) of the basic Regulation, both cooperating producers indicated that they had benefitted from the Indian Merchandise Exports from India Scheme ('MEIS')⁹. The MEIS is a scheme of the government of India that provides incentive in the form of duty credit scrip to exporters to compensate for loss on payment of duties. The incentive is paid as a percentage of the realized free on board ('FOB') value (in free foreign exchange) for specific goods going to specific markets. This export incentive is not a permissible adjustment for price comparison. Indeed, the export incentive constitutes an export subsidy. It does not qualify as a duty drawback scheme for which an adjustment under Article 2(10)(b) of the basic Regulation could be considered. First, the value of the scrip is not calculated in relation to the amount of import duties that would be incorporated in exports of downstream products but is determined as a percentage of the FOB value of the exported merchandise. Second, irrespective of the calculation of the value of the incentive, the operation of the system does not lead to a situation where import charges borne by materials physically incorporated in the domestic sales of the like product are refunded or not collected upon exportation of the same production to the Union.

⁹ The MEIS scheme was introduced in 2015 to replace former schemes.
<https://www.eepcindia.org/MEIS/about-MEIS-scheme.aspx>

- (45) Moreover, one cooperating producer indicated that it also benefitted from the Central Value Added Tax ('CENVAT') scheme¹⁰. Under this scheme, a manufacturer of the final product or provider of taxable service is allowed to take credit of duty of excise as well as of service tax paid on any input received in the factory or any input service received by manufacturer of final product. The company did not demonstrate that this scheme does not apply equally for final goods sold on the domestic market. Therefore, similar to the MEIS scheme, this exemption for excise duty is not a permissible adjustment for price comparison under Article 2(10)(b) of the basic Regulation.
- (46) Therefore, allowances for the MEIS scheme and CENVAT were not made.
- (47) The two cooperating producers claimed an allowance for currency conversion. This was rejected as currency exchange rates had fluctuated after price setting and therefore did not affect price comparison.
- (d) Dumping margins
- (48) In accordance with Articles 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product under review. Based on this methodology, the individual dumping margins found for the two companies are shown in the table below:

| Exporting producer | Dumping margin |
|------------------------------|----------------|
| Star Oxochem Pvt. Ltd. | 12.40% |
| Radiant Indus Chem Pvt. Ltd. | 27.61% |

- (e) Conclusion
- (49) Based on the above it was concluded that Indian exporting producers continued to export oxalic acid to the Union at dumped prices during the RIP.

3.2.2. *Likely development of imports should measures be repealed*

- (50) Further to the finding of continued dumping during the RIP, the Commission also analysed whether there was a likelihood that volumes of the dumped exports would increase should the measures be allowed to lapse. It looked into the Indian production capacity and spare capacity, the behaviour of Indian exporters on other markets and the attractiveness of the Union market.
- (51) As only two exporting producers in India cooperated, additional elements were gathered from available facts.
- (a) Production and spare capacity in India
- (52) Based on verified data of the cooperating exporting producers, the two visited Indian producers had capacity utilisation of more than 75%.
- (53) Overall, the total capacity of Indian oxalic acid producers is estimated at around 40 000 metric tonnes, and the spare capacity at around 10 000 metric tonnes¹¹. The volume of spare capacity equals the total Union consumption.

¹⁰ <https://archive.india.gov.in/business/taxation/modvat.php> On 1 July 2017 India introduced its Goods & Services Tax, replacing various taxes including CENVAT.

¹¹ See footnote 6.

- (b) Behaviour of the Indian exporters on the markets of third countries
- (54) The two cooperating Indian companies had significant exports sales to the rest of the world in the RIP. One company exported a majority of its production, while the other sold a majority of its production domestically.
- (55) For Indian exports overall, Indian government statistics¹² indicate that the largest export destinations in 2016-2017 were Malaysia, Mexico, Pakistan, Russia and Taiwan. Exports to these five countries amounted to 5 700 metric tonnes. On the basis of Indian government statistics, the average Indian export price to the Union is 7 % higher than the average export price to the rest of the world. Indian export prices to the Union are generally higher than prices to the rest of the world, except notably in the USA and Mexico.
- (c) Attractiveness of the Union market
- (56) Although the Union is a relatively small market for oxalic acid, it remains attractive for the Indian exporting producers. Indeed, as indicated in the recital above, the Union average price is 7 % higher than the rest of the world. The attractiveness is further confirmed by the fact that despite the relatively high level of anti-dumping duties in force, three out of four Indian exporting producers continue to export to the Union market. In addition, an Indian company in its non-confidential reply to the questionnaire explicitly indicated that '*EU Market has huge potential and attractive in terms of product price*'.
- (d) Conclusion
- (57) Given the available spare capacity in India, the Indian producers level of prices generally on third markets and the attractiveness of the Union market in terms of prices, it is highly likely that in the absence of measures at least some of the available capacity in India could be used to produce oxalic acid for export to the Union or that some exports to third markets would be re-directed to the Union considering the higher prices at the Union market.
- (58) In its submission of 23 October 2017, one Indian cooperating company claimed that it has booked full capacity until March 2018 due to reduced production from the PRC. It indicated that reduced production in the PRC might result in pressure on the Union market. However, as indicated below in section 3.5, it is not established that there is such a decrease in Chinese production, and that even if there was one, it would affect the world and Union markets in this manner.
- (59) Overall, it is considered that should the measures be allowed to lapse it is likely that Indian companies would export to the Union in larger quantities than currently and at dumped prices.

3.3. People's Republic of China

- (60) The PRC is by far the world's largest oxalic acid producing country with an estimated production of [150 000-200 000] metric tonnes¹³. Total exports from the PRC amount to about [25 000-50 000] metric tonnes. No Chinese producer cooperated in this investigation and the findings are thus based on the best facts available in accordance with Article 18 of the basic Regulation.

¹²

See non-confidential submission of company Star Oxochem on 23 October 2017.

¹³

Estimate from the expiry review request. It is noted that estimates vary, and this is a conservative estimate. The information was provided in ranges by the applicant as its own market intelligence.

- (61) On 28 November 2016, measures were re-imposed for Yuanping after an annulment by the General Court. Until this re-imposition Yuanping could export without anti-dumping duties.
 - (62) Imports from the PRC are subject to the 6.5% CCT duty.
- 3.3.1. *Dumping in the review investigation period*
- (a) Analogue country
 - (63) According to Article 2(7)(a) and (b) of the basic Regulation, normal value has to be determined on the basis of the prices paid or payable on the domestic market or the constructed value in an appropriate market economy third country (the 'analogue country').
 - (64) The Notice of Initiation envisaged using India as analogue country. The Notice of Initiation also indicated Japan as potential analogue country. In a Note to the file of 18 May 2017, the Commission indicated that India would be used as analogue country. India is the leading exporting country of oxalic acid to the Union. It is subject to the same investigation. It has already served as analogue country in the initial anti-dumping investigation. In addition, two exporting producers from India cooperated with the investigation.
 - (65) No comment was received on this choice.
 - (66) In view of the above, the Commission concluded that India was an appropriate analogue country under Article 2(7)(a) and (b) of the basic Regulation.
 - (b) Normal value
 - (67) The information received from the two cooperating producers in the analogue country was used as a basis for the determination of the normal value. The methodology was set out in section 3.2. A weighted average normal value between the two Indian companies was used as normal value for the PRC.
 - (68) In line with the original investigation, an adjustment to the normal value was made because Chinese companies, in addition to unrefined oxalic acid, also manufacture and export to the Union so called "refined" oxalic acid, which was not produced in the analogue country India. In the absence of cooperation and indication on the types produced and exported during the RIP, it is considered reasonable, based on facts available, to make the same adjustment (uplift of 12%) to the weighted average normal value of the two Indian cooperating companies.
 - (c) Export price
 - (69) In the absence of cooperation from Chinese exporters, the Commission resorted to available statistical data as best facts available to determine the export price. The Commission decided to base its calculations using price information from the Comext database (Eurostat).
 - (70) Where justified by the need to ensure a fair comparison, the Commission adjusted the export price for differences affecting prices and price comparability: An average export price for the RIP was extracted from the Eurostat database. The CIF price was adjusted to ex-works based on the actual transport and insurance costs determined on the basis of verified data from the Chinese cooperating companies in the original investigation (adjustment of [15-20] %). It should be noted that even if the more recent data from the Indian cooperating companies would have been used and adjusted

for the longer shipping distance from Chinese ports, the level of adjustment would have been very similar (less than a percentage point difference).

- (d) Comparison
- (71) The Commission compared the normal value and the average Chinese export price as determined above on an ex-works basis.
- (e) Dumping margin
- (72) On this basis (adjustments based on Indian cooperating companies verified data), the weighted average dumping margin expressed as a percentage of the CIF Union frontier price during the RIP, duty unpaid, was found to be 8,7%. The Commission observed that if it based its findings on data from the China export database, the dumping margin found would be even higher.
- (f) Conclusion
- (73) On this basis, the Commission established that there is continuation of dumping to the Union as the Chinese exporting producers were still exporting oxalic acid at dumped prices during the RIP.

3.3.2. *Likely development of imports should measures be repealed*

- (74) Further to the finding of continued dumping during the RIP, the Commission also analysed whether there was a likelihood that volumes of the dumped exports would increase should the measures be allowed to lapse.
- (75) In the absence of cooperation of the Chinese exporting producers, this analysis was made on the basis of best facts available, namely on the basis of the information contained in the review request and publicly available information.
- (76) The Commission assessed the Chinese production capacity and spare capacity, the behaviour of Chinese exporters on other markets, and the attractiveness of the Union market.
 - (a) Production and spare capacity in the PRC
 - (77) According to the statistics presented by the applicant in the request for review, Chinese producers have a combined annual capacity of approximately [150 000-200 000] metric tonnes. Internal market consumption of oxalic acid in the PRC amounts to about [50 000-100 000] and exports at about [25 000-50 000]. Consequently, assuming that the Chinese domestic market is supplied exclusively by Chinese producers, Chinese producers' spare capacity is estimated at about [30 000-40 000] metric tonnes, which amounts to about 20% of their total capacity and three times the estimated Union consumption.
 - (78) While an Indian company indicated that recently Chinese production has been shut down due to environmental concerns, the applicant contested this statement in its submission of 28 November 2017. No evidence was provided to substantiate either of these claims. Consequently, the Commission rejected both claims.
 - (b) Behaviour of the Chinese exporters on the markets of third countries
 - (79) In order to analyse the likely behaviour of Chinese exporting producers in the absence of the measures, the Commission examined the price level with regard to Chinese exports sales to the rest of the world by using the China export database. In the top 10 export markets of the PRC (with the exception of Japan), the export price adjusted ex-works was significantly below the normal value also established at ex-works level,

which would indicate dumping behaviour on third markets. On average, the rest of the world price (at ex-works level) is 30% below the normal value, as well as below the Chinese export price to the Union.

- (c) Attractiveness of the Union market
- (80) As set out above in section 3.2, the Union market is considered small but attractive in terms of prices. Moreover, Chinese exports continued to enter the Union market despite the conventional and anti-dumping duties in force.
- (d) Conclusion
- (81) Given the available spare capacity in the PRC, the Chinese producers' behaviour generally on third markets and the attractiveness of the Union market in terms of prices, it is likely that in the absence of measures at least some of the available capacity in the PRC could be used to produce oxalic acid for export to the Union or that some exports to third markets would be re-directed to the Union considering the higher prices on the Union market.
- (82) Overall, the Commission considered that should the measures be allowed to lapse it is likely that Chinese companies would export to the Union in larger quantities than currently and at dumped prices.

3.4. Conclusion on dumping

- (83) In conclusion, the dumping margins established during the RIP for both India and the PRC, the large estimated production capacity, the high spare capacity in combination with the price levels on other export markets and the attractiveness of the Union market, indicate that a repeal of the measures would likely result in significant increase of exports to the Union. Given the dumping margin found during the RIP for both countries concerned, it is also likely that future exports will be made at significantly dumped prices.
- (84) On that basis, the Commission established that dumping from India and the PRC would continue if the measures were allowed to lapse.

4. INJURY

4.1. Definition of Union industry and Union production

- (85) The Union industry is still composed by the same plants as during the original investigation. The product concerned is manufactured by two known Union producers during the review investigation period: Oxaquim S.A. ('Oxaquim') and WeylChem Lamotte S.A.S. ('WeylChem')¹⁴. Oxaquim as such represented a major proportion of the total Union production of oxalic acid during the review period (more than 50% of the total Union production). WeylChem did not object to the initiation of the review investigation but decided not to cooperate. There is currently no other producer of the product concerned in the Union. On this basis, the two producers Oxaquim and WeylChem constitute the Union industry within the meaning of Article 4(1) of the basic Regulation. They will be hereafter referred to as 'the Union industry'.
- (86) The total Union production has been established on the basis of all available information, including information provided in the expiry review request, data collected before and after the initiation of the investigation and information obtained from the cooperating Union producer. This information allowed confirming the

¹⁴ The French plant producing the product concerned which belonged to the Swiss group Clariant S.A. was sold in 2014 to a new investor WeylChem. However, no structural changes are reported.

existence and the level of production also of the producer which did not cooperate in the investigation. On that basis, the total Union production during the RIP was estimated to be between 15 000 and 20 000 tonnes¹⁵.

4.2. Union consumption

- (87) Consumption was established on the basis of import volume, and the total sales volume on the Union market of the Union industry, including verified data for Oxaquim and an estimate for WeylChem based on Eurostat.
- (88) During the period considered the Union consumption developed as follows:

Table 1- Union consumption

| Total consumption | 2013 | 2014 | 2015 | 2016 | RIP |
|---|--------|--------|--------|--------|--------|
| Tonnes | 11 544 | 11 803 | 10 315 | 10 175 | 10 482 |
| Index (2013 = 100) | 100 | 102 | 89 | 88 | 91 |
| <i>Source : Eurostat, verified questionnaire reply, estimate for non-cooperating Union producer</i> | | | | | |

- (89) Union consumption decreased over the period considered, i.e. from 11,544 tonnes in 2013 to 10,482 tonnes during the RIP, or by 9%.

4.2.1. Volume and market share of imports from India and the PRC

Table 2 - Volume and market shares of imports from India and the PRC

| Import volumes (tonnes) | 2013 | 2014 | 2015 | 2016 | RIP |
|--------------------------|--------|--------|--------|--------|--------|
| India and PRC | 2 633 | 2 397 | 1 818 | 1 855 | 1 658 |
| Index (2013 = 100) | 100 | 91 | 69 | 70 | 63 |
| Market share % | 22.8 % | 20.3 % | 17.6 % | 18.2 % | 15.8 % |
| <i>Source : Eurostat</i> | | | | | |

- (90) Import volumes from India and the PRC decreased, from 2 633 tonnes in 2013 to 1 658 tonnes in the RIP, i.e. by 37 %, with a corresponding decrease in market share from 22.8 % to 15.8 %, namely a decrease of 7 percentage points during the period considered.
- (91) While import volumes and market share from India and the PRC decreased, the exporting producers from the countries concerned nevertheless managed to maintain a non-negligible market share.

4.2.2. Price of imports and price undercutting

¹⁵ All figures are presented in indexed form or given as ranges to protect confidentiality of the Union producer who cooperated with the investigation.

Table 3 - Average price of imports from India and the PRC

| Import price (EUR/tonne) | 2013 | 2014 | 2015 | 2016 | RIP |
|--------------------------|--------------------------|------|------|------|-----|
| India and PRC | 745 | 645 | 769 | 724 | 718 |
| Index (2012 = 100) | 100 | 87 | 103 | 97 | 96 |
| | <i>Source : Eurostat</i> | | | | |

- (92) The average prices of imports from the countries concerned first decreased from 745 EUR/tonne in 2013 to 645 EUR/tonne in 2014, but increased to 769 EUR/tonne in 2015. It decreased again in 2016 and in the RIP where it reached a level of 718 EUR/tonnes. Overall, the decrease between 2013 and the RIP was 4 %.
- (93) A comparison of sales prices on the Union market was made between the prices of the cooperating Union producer and prices of imports from the countries concerned. The relevant sales prices of the cooperating Union producer were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Union and after deduction of discounts and rebates.
- (94) These prices were compared with prices charged by the Indian and Chinese exporting producers adjusted to CIF Union frontier. Due to the non-cooperation from the PRC the price was based on Eurostat data since it provides price quotes at CIF Union frontier level. The CIF price was then adjusted upwards for the post-importation costs, i.e. custom clearance, conventional customs duty and anti-dumping duty, handling and loading costs.
- (95) It was observed that the prices of the cooperating Union producer decreased by 10% in the period between 2013 and the RIP, while the decrease was less steep for the imported goods from the countries concerned, around 3.6 % for PRC and 6 % for India. However, the price difference between imported goods and goods produced in the Union remained high and resulted in a significant price undercutting during the RIP. The result of the comparison, when expressed as a percentage of the Union producer's turnover during the RIP, showed a weighted average undercutting. The undercutting margin for the PRC is 8 %¹⁶, and for the two cooperating Indian exporting producers the price undercutting is 7.1 % and 6.6 % respectively.

4.3. Economic situation of the Union industry

4.3.1. General remarks

- (96) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.
- (97) As mentioned in recital (15), no sampling was used for the determination of possible injury suffered by the Union industry.
- (98) For the injury determination the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated macroeconomic indicators relating to the whole Union industry on the basis of information provided by the applicant in the expiry review request, trade statistics and data collected after the

¹⁶

Due to the non-cooperation from the PRC these calculations were based on Eurostat.

initiation of the review investigation. The Commission evaluated microeconomic indicators relating only to the cooperating Union producer, Oxaquim, on the basis of the data contained in the questionnaire reply that has been verified. Both sets of data were found representative of the economic situation of the Union industry.

- (99) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, employment, productivity and magnitude of the dumping margin.
- (100) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments and return on investments.
- (101) Taking into account the fact that the data for the injury analysis is derived in large part from one source, the data relating to the Union industry had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

4.3.2. Macroeconomic indicators

4.3.2.1. Production, production capacity and capacity utilisation

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

Table 5 - Production, production capacity and capacity utilisation

| Index 2013 = 100 | 2013 | 2014 | 2015 | 2016 | RIP |
|----------------------|--|------|------|------|-----|
| Production volume | 100 | 114 | 114 | 116 | 124 |
| Production capacity | 100 | 100 | 100 | 100 | 108 |
| Capacity utilisation | 100 | 114 | 114 | 116 | 115 |
| | <i>Source : Verified questionnaire reply and estimate for non-cooperating Union producer</i> | | | | |

- (103) Production increased during the period considered. Overall, the production volume increased by 24 % during the period considered.
- (104) The production capacity increased by 8 % during the period considered due to investments.
- (105) As a result of the slightly higher increase in production volume than in production capacity, the capacity utilisation increased by 15 % over the period considered.

4.3.2.2. Sales volume to unrelated customers in the Union and market share

- (106) The Union industry's sales volume to unrelated customers in the Union and market share developed over the period considered as follows:

Table 6 - Sales volume to unrelated customers and market share

| Index (2013 = 100) | 2013 | 2014 | 2015 | 2016 | RIP |
|--------------------|------|------|------|------|-----|
| Sales volume | 100 | 103 | 95 | 89 | 94 |

| | | | | | |
|--------------|--|-----|-----|-----|-----|
| Market share | 100 | 101 | 106 | 101 | 103 |
| | <i>Source : Eurostat, verified questionnaire reply and estimate for non-cooperating Union producer</i> | | | | |

- (107) Sales volume decreased over the period considered by 6 % following the 9 % decrease of the Union consumption described in recital (88). Although sales volumes decreased, the market share of the Union industry slightly increased in the review investigation period. This increase correlates with the decrease in market share of imports from India and the PRC.

4.3.2.3. Employment, productivity and labour cost

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

Table 7 – Employment, productivity and labour cost

| Index (2013 = 100) | 2013 | 2014 | 2015 | 2016 | RIP |
|-----------------------------------|---|------|------|------|-----|
| Number of employees | 100 | 105 | 100 | 112 | 117 |
| Productivity | 100 | 108 | 113 | 103 | 105 |
| Average labour costs per employee | 100 | 101 | 104 | 108 | 111 |
| | <i>Source : Verified questionnaire reply, estimate for non-cooperating Union producer</i> | | | | |

- (109) Employment of the Union industry overall increased by 17 % during the period considered. This is in line with the increase of the production volume of 24 % and the increase of the productivity with 5 % during the period considered.
- (110) Between 2013 and the RIP, the average labour costs per employee of the cooperating Union producer increased by 11 %.

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

- (111) During the review investigation period, the individual dumping margins found for the cooperating Indian exporting producers as well as for the Chinese imports were still substantial (see recitals(48) and (72) above).
- (112) However, despite the fact there was still dumping from India and from the PRC, the analysis of the injury indicators shows that the measures in place had a positive impact on the Union industry.

4.3.3. Microeconomic indicators

4.3.3.1. General remarks

- (113) The analysis of microeconomic indicators (sales prices and cost of production, stocks, profitability, cash flow, investments and return on investment) was carried out at the level of the only cooperating Union producer.

4.3.3.2. Prices and factors affecting prices

- (114) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 8 – Average sales prices and unit costs

| Index (2013 = 100) | 2013 | 2014 | 2015 | 2016 | RIP |
|--|------|------|------|------|-----|
| Average unit selling price in the Union | 100 | 88 | 90 | 91 | 90 |
| Unit cost of production | 100 | 81 | 89 | 82 | 80 |
| <i>Source : Verified questionnaire reply</i> | | | | | |

- (115) The Union industry's average unit sales price to unrelated customers in the Union decreased by 10 % over the period considered. This decrease followed to a certain extent the decrease of the cost of production with 20 % in the RIP.

- (116) The investigation showed that the decrease in cost was mainly due to the decrease of the price of raw materials during the period as well as the optimisation of the production process through investments in technological improvements.

4.3.3.3. Inventories

- (117) Stock levels of the Union industry developed over the period considered as follows:

Table 9 – Inventories

| Index (2013 = 100) | 2013 | 2014 | 2015 | 2016 | RIP |
|--|-------|-------|-------|-------|-------|
| Closing stocks | 100 | 27 | 11 | 13 | 49 |
| Closing stocks as percentage of production | 2.8 % | 0.7 % | 0.3 % | 0.3 % | 1.1 % |
| <i>Source : Verified questionnaire reply</i> | | | | | |

- (118) Given the nature of the product concerned, no stocks are held. Since the product concerned deteriorates quickly, the producers only produce goods for immediate shipment. Therefore, this indicator is not very meaningful in order to describe the Union industry condition.

4.3.3.4. Profitability, cash flow, investments and return on investments

Table 10 - Profitability, cash flow, investments and return on investment

| Index (2013 = 100) | 2013 | 2014 | 2015 | 2016 | RIP |
|--|------|------|------|------|-----|
| Profitability of sales in the Union to unrelated customers | 100 | 267 | 134 | 305 | 332 |

| | | | | | |
|----------------------|--|-----|-----|-----|-----|
| Cash flow | 100 | 144 | 110 | 149 | 165 |
| Investments | 100 | 56 | 194 | 328 | 247 |
| Return on investment | 100 | 281 | 144 | 283 | 333 |
| | <i>Source : Verified questionnaire reply</i> | | | | |

- (119) The Commission established the profitability of the cooperating Union producer by expressing the pre-tax net profit of the sales of the product concerned to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered, the Union industry profitability increased steadily reflecting the bigger decrease of the cost of production compared to the sales price during the period considered as explained in recital (116).
- (120) The net cash flow is the Union industry's ability to self-finance their activities. The cash flow increased during the period considered, except in 2015 when it decreased. Overall net cash flow increased by 65 % over the period considered, in line with the increased profitability.
- (121) The investments increased by 147 % over the period considered, with the exception of 2014 when they decreased by 44 % compared to 2013. The investments served mainly to increase capacity and therefore exports in order to remain competitive on the global market but also led to technological improvement, higher quality, better yield and lower consumption of raw materials thus to improved productivity and increased environmental protection.
- (122) As the other financial indicators, the return on investment from the production and sale of the like product was positive reflecting the trend in profitability.

4.3.4. Conclusion on injury

- (123) The investigation showed that the imposition of measures as from 2011 allowed the Union industry to recover from the injury suffered.
- (124) The injury indicators show a positive trend for the Union industry.
- (125) The profitability of the Union industry increased significantly during the period considered (by 332 % between 2013 and the RIP). This is a considerable improvement compared to the low or negative level of profitability observed between 2007 and 2011 (period considered during the original investigation). These profits, which are partially linked also to the decrease in the price of raw materials, allowed the Union industry to undertake some investments, including reducing waste and decreasing the environmental impact.
- (126) Despite the fact that the consumption in the Union decreased by 9 % during the period considered, the production volume increased by 24% and production capacity by 8% while sales volume on the Union market decreased by 6%. The Union industry market share increased by only 3 % in the RIP compared to 2013. Export sales of Union industry also increased during the period considered.
- (127) Investments increased by 147 % during the period considered and return on investments by 333 %.

- (128) Productivity improved during the period considered. Employment also increased in line with production volumes during the period considered.
- (129) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the period considered.

5. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY

- (130) Since the Union industry did not suffer material injury during the review investigation period, it was assessed whether there would be a likelihood of recurrence of injury should measures against India and the PRC be allowed to lapse in accordance with Article 11(2) of the basic Regulation.
- (131) In this regard, the Commission examined the production capacity and spare capacities in India and the PRC, the attractiveness of the Union market and the possible impact of the price development of Indian and Chinese import volumes and prices as well as the impact of such development on the Union industry's sales volumes, prices and profitability.
- (132) Regarding import price levels, the investigation showed that despite the anti-dumping measures in force, there was still a constant undercutting of Union industry's prices during the period considered. Furthermore, should the measures in force be repealed and assuming that import price from the countries concerned and the price of the Union industry would remain the same as during the RIP, the import prices would undercut the prices of the Union industry between 12% and 34.1%. As a consequence, the Union industry is likely to lose sales volume as well as market shares on the Union market.
- (133) Regarding production capacities and spare capacities in India and the PRC, the analysis made in recitals (52), (53), (77) and (78) was taken into consideration. This analysis showed that the PRC disposes of significant spare capacity and the spare capacity of India is equal to or higher than the total size of the European market. The Chinese and Indian domestic demand and export markets other than the Union market are not likely to be able to fully absorb the entire spare capacity.
- (134) Finally, as observed in recitals (54), (55), (56), (79) and (80), the Union market for oxalic acid is attractive and there is an incentive for Indian and Chinese producers to shift exports from other third countries to the higher priced Union market in case of repeal of the measures in force.
- (135) It is considered that potentially significant imports of dumped products from India and the PRC in the absence of measures would weaken again the Union industry and threaten its viability and survival.
- (136) To assess the likely impact of such low-priced imports from the countries concerned on the Union industry the Commission first looked at a potential loss of their market share. It simulated what the impact would be if the exporting producers from the countries concerned would import the same quantities as in the original investigation period, that is, before the imposition of the measures. As established in the original investigation, such a volume of dumped imports of the product concerned was sufficient to cause material injury to the Union industry in the past.
- (137) The Commission for this analysis considered that the prices of the exporting producers from the countries concerned and those of the Union industry would remain the same as during the RIP. Furthermore the Commission assumed that the import volumes

from the countries concerned would first take over the market share of other third countries and then the market share of the Union industry. With these assumptions, the analysis mentioned in recital (136) showed that in case the measures are repealed and Chinese and Indian imports reach their volume levels of the original investigation period, the cooperating Union producer would be loss-making and injury would recur to the Union industry.

- (138) The investigation showed that in case the measures are repealed and Chinese and Indian imports reach their level of the original IP, the cooperating Union producer would return to be loss-making and injury would recur.
- (139) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of exports from the PRC and India at dumped prices and material injury would be likely to recur.

6. UNION INTEREST

6.1. Preliminary remarks

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

6.2. Interest of the Union industry

- (141) The investigation found that during the RIP the Union industry had recovered from the injury caused by the dumped imports from India and the PRC. Should the measures against India and PRC be repealed it is, however, likely that the injury would recur as the Union industry would be exposed to dumped imports potentially in significant volumes and exerting significant price pressure. As a consequence, the economic situation of the Union industry would likely deteriorate significantly for the reasons described above. On the contrary, maintaining the measures would bring certainty in the market, allowing the Union industry to maintain its positive economic situation and continue its investments and growth plans.
- (142) On this basis the Commission concluded that the continuation of the anti-dumping measures in force would be in the interest of the Union industry.

6.3. Interest of unrelated importers

- (143) The Commission received no cooperation from unrelated importers during the investigation.
- (144) On this basis, there were no indications that the maintenance of the measures would have a significant negative impact on the importers outweighing the positive impact of the measures on the Union industry.

6.4. Interest of users

- (145) Questionnaires were sent to known users. The Commission received a reply form only five users of the product concerned, although the product concerned is used in many industries. Two users sent back complete questionnaire replies; two other users sent only filled-in tables and one user provided comments.
- (146) No user opposed to the extension of the measures and four of them clearly stated that they are in favour of maintaining the current anti-dumping measures.

- (147) Given that the Commission has not received any opposition from users, it seems unlikely that maintaining the anti-dumping measures would have a negative impact on Union users outweighing the positive impact of the measures on the Union industry.

6.5. Conclusion on Union interest

- (148) On the basis of the above, the Commission concluded that there were no compelling reasons based on Union interest for terminating the anti-dumping measures on imports of oxalic acid originating in India and the PRC.

7. ANTI-DUMPING MEASURES

- (149) In view of the conclusions reached with regard to continuation/recurrence of dumping and continuation/recurrence of injury as described above it is proposed that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of oxalic acid originating in India and the PRC, imposed by Regulation (EC) No 325/2012 should be maintained.

- (150) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission¹⁷. The request must contain all the relevant information enabling 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 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 will be published in the Official Journal of the European Union.

- (151) In view of the recent case-law of the Court of Justice¹⁸, it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties, because the relevant provisions in force concerning customs duties do not provide for such an interest rate, and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.

8. DISCLOSURE

- (152) All interested parties are informed of the essential facts and considerations leading to the above conclusions and are invited to comment. They are also granted a period to submit comments subsequent to this disclosure. The submissions and comments will be duly taken into consideration where warranted.

¹⁷

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¹⁸

Judgment in Wortmann, C-365/15, EU:C:2017:19, paragraphs 35 to 39.