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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2015/81

of 19 December 2014

specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 ⁽¹⁾, and in particular Article 70(7) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Single Resolution Fund ('the Fund') was established pursuant to Regulation (EU) No 806/2014 as a single financing arrangement for all the Member States participating in the Single Supervisory Mechanism ('the SSM') pursuant to Council Regulation (EU) No 1024/2013 ⁽²⁾ and in the Single Resolution Mechanism ('the SRM') ('the participating Member States').
- (2) Under Article 67(2) of Regulation (EU) No 806/2014, the Single Resolution Board ('the Board') established pursuant to that Regulation is entrusted with the administration of the Fund.
- (3) In accordance with Article 76 of Regulation (EU) No 806/2014, the Fund should be used in resolution procedures where the Board considers it necessary to ensure the effective application of the resolution tools. The Fund should have adequate financial resources to allow for an effective functioning of the resolution framework by being able to intervene, where necessary, for the effective application of the resolution tools and to protect financial stability without recourse to taxpayers' money.
- (4) The Board is empowered to calculate the individual *ex ante* contributions due from all of the institutions authorised in the territories of all of the participating Member States, under Article 70(2) of Regulation (EU) No 806/2014.
- (5) The Board should calculate the annual contributions to the Fund on the basis of a single target level established as a percentage of the amount of covered deposits of all of the credit institutions authorised in all of the participating Member States. In accordance with Article 69(1) of Regulation (EU) No 806/2014, the Board should ensure that the available financial means of the Fund reach at least the target level referred to in Article 69(1) of that Regulation, by the end of an initial period of eight years from 1 January 2016, or, otherwise, from the date on which Article 69(1) of Regulation (EU) No 806/2014 is applicable by virtue of Article 99(6) of that Regulation.

⁽¹⁾ OJ L 225, 30.7.2014, p. 1.

⁽²⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

- (6) Contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU of the European Parliament and of the Council ⁽¹⁾ and transferred to the Fund by virtue of Article 3(3) of the agreement on the transfer and mutualisation of contributions to the Single Resolution Fund as referred to in point (36) of Article 3(1) of Regulation (EU) No 806/2014 ('the Agreement') should be incorporated in the calculation of individual contributions and hence deducted from the amount due by each institution. That calculation should take into account that the amounts to be transferred by the Contracting Parties to the Agreement in accordance with Article 3(3) and (4) thereof should correspond to 10 % of the target level set out in Article 102(1) of Directive 2014/59/EU. The Board will ensure that the amounts to be transferred in accordance with the Agreement entail the same share of irrevocable payment commitments for each participating Member State.
- (7) Pursuant to Article 70(2) of Regulation (EU) No 806/2014, the annual contribution to the Fund should be based on a flat contribution determined on the basis of an institution's liabilities excluding own funds and covered deposits and a risk-adjusted contribution depending on the risk profile of that institution.
- (8) In accordance with Article 5(1) of Regulation (EU) No 806/2014, the Board is considered, for the application of that Regulation and of Directive 2014/59/EU, to be the relevant national resolution authority, or, in the event of cross-border group resolution, the relevant group-level resolution authority, where it performs tasks and exercises powers which are to be performed or exercised by the national resolution authorities pursuant to those legal acts, without prejudice to Article 7 of Regulation (EU) No 806/2014. Therefore, the Board should also be considered to be the resolution authority for the purpose of the application of Commission Delegated Regulation (EU) 2015/63 ⁽²⁾. The provisions set out in that Delegated Regulation apply to the Board when performing the tasks and exercising powers set out in this Regulation.
- (9) For the purpose of calculating the annual contribution, the Board applies the methodology set out in Delegated Regulation (EU) 2015/63, as required by Article 70(6) of Regulation (EU) No 806/2014. Therefore, the specific regime applicable to institutions which are considered to be small institutions under that Delegated Regulation also applies to all of the institutions authorised in the territories of all of the participating Member States which fulfil the criteria set out in that Delegated Regulation for being recognised as small institutions.
- (10) As the rules laid down in this Regulation determine conditions for the application of the methodology set out in Delegated Regulation (EU) 2015/63 adopted pursuant to Article 103(7) of Directive 2014/59/EU, the differences between the calculation of the annual contributions by the Board for the institutions authorised in the participating Member States and the calculation of the annual contributions in the Member States which are not participating in the SRM should reflect only the specificities of a unified system in the participating Member States. Such specificities arise in particular from the fact that in the SRM there is a single target level for all participating Member States. The application, as a general rule, of the same methodology for the calculation of annual contributions in all Member States should preserve a level playing field among participating Member States and a strong internal market.
- (11) Under a single resolution fund with a European target level the annual individual contributions of institutions authorised in the territories of all of the participating Member States is dependent on those of all of the institutions subject to the SRM. The key for an effective functioning of the SRM and a smooth process of building-up the Fund is that all institutions pay their annual contributions in full to the Fund in a timely manner.
- (12) In accordance with Article 67(4) of Regulation (EU) No 806/2014, the contributions to the Fund calculated by the Board are raised by national resolution authorities and transferred to the Fund in accordance with the Agreement. The data formats and representations defined by the Board may also include the requirement that all the data to be reported by institutions, in particular those referred to in Article 7(2) of Regulation (EU) No 806/2014, are confirmed by an auditor or, where relevant, by the competent authority.

⁽¹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽²⁾ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and the Council with regard to *ex ante* contributions to the national financial arrangements (OJ L 11, 17.1.2015, p. 44).

- (13) Point (b) of Article 70(2) of Regulation (EU) No 806/2014 requires the Board to take account of the principle of proportionality, without creating distortions between banking sector structures of the Member States when applying the risk-adjusted contribution to the calculation of the individual contributions. The risk-adjusted contribution is based on the criteria laid down in Article 103(7) of Directive 2014/59/EU. According to the third subparagraph of Article 1 of Regulation (EU) No 806/2014, the use of the Fund is contingent upon the entry into force of the Agreement. Under the Agreement, contributions raised by the participating Member States are allocated to compartments corresponding to each of them. Compartments are subject to a progressive mutualisation during a transitional period of eight years in a manner such that they will cease to exist after the end of the transitional period.
- (14) The circumstances that, on the one hand, under Regulation (EU) No 806/2014 contributions are calculated on the basis of a single target level and that, on the other hand, by virtue of the Agreement the coverage of certain risks that are correlated within a national banking sector during the transitional period to which it refers will be only progressively mutualised, may have an effect on the market's perception of some institutions and, hence, on their financial condition, in the sense of point (c) of Article 103(7) of Directive 2014/59/EU, thus affecting their risk profile. Moreover, a system temporarily founded on compartments might globally influence the relative importance of institutions to the stability of the financial system or economy, as referred to in point (g) of Article 103(7) of Directive 2014/59/EU. The importance of the institutions to the stability of the financial system or economy should be determined in relation to, respectively, the Member State where the institution is located (i.e., the expected loss for the part of the compartment not yet mutualised) and the Banking union as a whole (i.e., the expected loss for the part of the compartment mutualised). This would make the risk-adjusted contribution commensurate with the expected use of the respective compartment's non-mutualised financial means during the transitional period.
- (15) An adjustment methodology that adequately addresses the circumstances referred to in recital 14 and that, therefore, takes account of the principle of proportionality and avoids distortions between banking sector structures of the Member States should be introduced up to the moment where all *ex ante* contributions paid in the Fund are fully mutualised. The method for calculating contributions should thus be adjusted in a manner such that it correlates to the rhythm of mutualisation of the Fund. Accordingly, the calculation of contributions to be allocated to the mutualised part should rely on the criteria laid down in Regulation (EU) No 806/2014, whereas, by derogation from the period of time provided for by Article 102(1) of Directive 2014/59/EU, the calculation of contributions to be allocated to the non-mutualised part of compartments should rely on the criteria laid down in Directive 2014/59/EU and on the basis of a target level defined over a period of time corresponding to the initial period set out in Regulation (EU) No 806/2014.
- (16) Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 should in no manner affect the financial capacity and the liquidity of the Fund. Irrevocable payment commitments should be called for only in case of a resolution action involving the Fund. During the initial period, under normal circumstances, the Board should allocate the use of irrevocable payment commitments evenly among institutions requesting it. These payment commitments should be fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes of the use of the Fund.
- (17) According to the third subparagraph of Article 70(2) of Regulation (EU) No 806/2014, the relation between the flat contribution and the risk-adjusted contribution shall take into account a balanced distribution of contributions between the different types of institutions. Accordingly, specific arrangements for determining the contributions to be paid by small institutions should be provided.
- (18) Institutions which do not fall within the category of small institutions referred to in Article 10 of Delegated Regulation (EU) 2015/63 and whose total assets are equal or less than EUR 3 000 000 000, involve a lower risk than that of large institutions, and in most cases they do not pose a systemic risk and are less likely to be placed under resolution, which consequently decreases the likelihood that they benefit from the Fund. It is therefore convenient to introduce a simplified calculation of the contributions to be paid by those institutions. This would also prevent possible short-term changes in the status that these institutions might undertake in order to qualify for the application of Article 10 of Delegated Regulation (EU) 2015/63. That calculation should include a component based on a lump sum. This system should avoid distortions between institutions and achieve a balanced distribution of contributions between the different types of institutions. It would also alleviate the administrative and financial burdens from the collection of individual contributions by such institutions.

- (19) The Commission will review the manner in which this Regulation is implemented at the same time that it will review Delegated Regulation (EU) 2015/63 to allow, if needed, for an adjustment of the rules provided for in this Regulation.
- (20) Pursuant to Article 99(2) of Regulation (EU) No 806/2014, that Regulation shall apply as of 1 January 2016. However, from 1 January 2015, the Board shall submit a monthly report approved in its plenary session to the European Parliament, to the Council and to the Commission on whether the conditions allowing for the transfer of the contributions raised at national level have been met. From 1 December 2015, where those reports show that the conditions for the transfer of the contributions to the Fund have not been met, the application of Regulation (EU) No 806/2014 relating to the contributions to the Fund shall be postponed by one month each time. Therefore, this Regulation should also apply as of the date from which Article 69(1) of Regulation (EU) No 806/2014 becomes applicable,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules specifying the conditions for implementing of the obligation of the Single Resolution Board ('the Board') to calculate the contributions for individual institutions pursuant to Regulation (EU) No 806/2014 to the Single Resolution Fund ('the Fund') and the methodology for the calculation of those contributions.

Article 2

Scope

This Regulation applies to the institutions from which contributions are raised in accordance with Article 70 of Regulation (EU) No 806/2014.

Article 3

Definitions

For the purposes of this Regulation, the definitions provided for in Article 3 of Regulation (EU) No 806/2014 shall apply, with the exception of the definitions provided for in points (2) and (11) of that Article. The following definitions shall also apply:

- (1) 'participating Member States' means Member States within the meaning of Article 2 of Regulation (EU) No 1024/2013;
- (2) 'annual target level' means the total amount of annual contributions determined for each contribution period by the Board in accordance with the procedure set out in Article 69(2) of Regulation (EU) No 806/2014 to reach the target level referred to in Articles 69(1) and 70 of that Regulation;
- (3) 'annual contribution' means the amount referred to in Article 70(1) of Regulation (EU) No 806/2014 calculated by the Board each year and raised by the national resolution authorities during the contribution period from all of the institutions authorised in the territories of all of the participating Member States;
- (4) 'contribution period' means a calendar year;
- (5) 'resolution authority of non-participating Member States in the Single Resolution Mechanism' means the authority referred to in point (18) of Article 2(1) of Directive 2014/59/EU, or any other relevant authority appointed by the Member States for the purposes of Article 100(2) and (6) of Directive 2014/59/EU;

- (6) 'covered deposits' means the deposits referred to in Article 6(1) of Directive 2014/49/EU, excluding temporary high balances as defined in Article 6(2) of that Directive;
- (7) 'competent authority' means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, or the European Central Bank, as appropriate;

Article 4

Calculation of the annual contributions

For each contribution period, the Board shall calculate the annual contribution due from each institution, on the basis of the annual target level of the Fund, after consulting the ECB or the national competent authorities and in close cooperation with the national resolution authorities. The annual target level shall be established with reference to the target level of the Fund referred to in Articles 69(1) and 70 of Regulation (EU) No 806/2014 and in accordance with the methodology set out in Delegated Regulation (EU) 2015/63.

Article 5

Communication by the Board

1. The Board shall communicate to the relevant national resolution authorities its decisions on calculation of annual contributions of the institutions authorised in their respective territories.
2. After receiving the communication referred to in paragraph 1, each national resolution authority shall notify each institution authorised in its Member State of the Board's decision on calculation of the annual contribution due from that institution.

Article 6

Reporting

The Board shall set out the data formats and representations to be used by the institutions to report the information required for the purpose of calculating the annual contributions in order to enhance the comparability of the reported information and the effectiveness of processing the information received.

Article 7

Call of irrevocable payment commitments

1. Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 shall in no manner affect the financial capacity and the liquidity of the Fund.
2. When a resolution action involves the Fund in accordance with Article 76 of Regulation (EU) No 806/2014, the Board shall call part or all of the irrevocable payment commitments, made in accordance with Regulation (EU) No 806/2014, in order to restore the share of irrevocable payment commitments in the available financial means of the Fund set by the Board within the maximum threshold set by Article 70(3) of Regulation (EU) No 806/2014.

Once the Fund duly receives the contribution linked to the irrevocable payment commitments that have been called, collateral backing such commitments shall be returned. If the Fund does not duly receive the required amount of cash at first demand, the Board shall seize the collateral backing the irrevocable payment commitment in accordance with Article 70(3) of Regulation (EU) No 806/2014.

3. The irrevocable payment commitments of an institution that no longer falls within the scope of Regulation (EU) No 806/2014 are cancelled and collateral backing these commitments is returned.

Article 8

Specific adjustments in the initial period

1. During the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014, and by way of derogation from Article 4 of this Regulation, the annual contributions of the institutions referred to in Article 2 shall be calculated in accordance with the following adjusted methodology:

- (a) in the first year of the initial period, those institutions shall contribute 60 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 40 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (b) in the second year of the initial period, those institutions shall contribute 40 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 60 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (c) in the third year of the initial period, those institutions shall contribute 33,33 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 66,67 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (d) in the fourth year of the initial period, those institutions shall contribute 26,67 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 73,33 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (e) in the fifth year of the initial period, those institutions shall contribute 20 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 80 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (f) in the sixth year of the initial period, those institutions shall contribute 13,33 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 86,67 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (g) in the seventh year of the initial period, those institutions shall contribute 6,67 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) 2015/63, and 93,33 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (h) in the eighth year of the initial period, those institutions shall contribute 100 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation.

2. During the initial period, when calculating the individual contributions of each institution, the Board shall take into account the contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU and transferred to the Fund by virtue of Article 3(3) of the Agreement, by deducting them from the amount due from each institution.

3. During the initial period, under normal circumstances, the Board shall allow the use of irrevocable payment commitments upon request from an institution. The Board shall allocate the use of irrevocable payment commitments evenly among those institutions requesting it. The allocated irrevocable payment commitments shall not be less than 15 % of the total payment obligations of the institution. When calculating the annual contributions of each institution, the Board shall ensure that, in any given year, the sum of those irrevocable payment commitments does not exceed 30 % of the total amount of annual contributions raised in accordance with Article 70 of Regulation (EU) No 806/2014.

4. For the purposes of paragraph 1, the annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of Delegated Regulation (EU) 2015/63 shall be determined on the basis of a target level defined over a period of time corresponding to the initial period.

5. Without prejudice to Article 10 of Delegated Regulation (EU) 2015/63, during the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014, institutions whose total assets are equal to, or less than, EUR 3 000 000 000, shall pay a lump-sum of EUR 50 000 for the first EUR 300 000 000 of total liabilities, less own funds and covered deposits. For the total liabilities less own funds and covered deposits above EUR 300 000 000, those institutions shall contribute in accordance with Articles 4 to 9 of Delegated Regulation (EU) 2015/63.

Article 9

Entry into force

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

This Regulation shall apply either from 1 January 2016 or from the date on which Article 69(1) of Regulation (EU) No 806/2014 becomes applicable pursuant to Article 99(6) of that Regulation, whichever is later.

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

Done at Brussels, 19 December 2014.

For the Council
The President
S. GOZI

COMMISSION IMPLEMENTING REGULATION (EU) 2015/82**of 21 January 2015****imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Articles 9(4), 11(2), (3) and (5) thereof,

Whereas:

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

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

1.2. Request for an expiry review

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

1.3. Request for partial interim review

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 323, 3.12.2008, p. 1.

⁽³⁾ OJ L 323, 3.12.2008, p. 62.

⁽⁴⁾ OJ L 244, 8.9.2012, p. 27.

⁽⁵⁾ OJ C 60, 1.3.2013, p. 9.

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

1.4. Initiation of an expiry review and interim reviews

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

1.5. Interested parties

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

1.6. Sampling

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

1.6.1. Sampling of importers

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

⁽¹⁾ OJ C 351, 30.11.2013, p. 27.

1.6.2. *Sampling of exporting producers in the PRC*

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

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

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

1.8. **Replies to the questionnaire**

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

1.9. **Verification visits**

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

(a) *Union producers*

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

(b) *Importers*

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

(c) *Users*

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

(d) *Exporting producers in the PRC*

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

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

(e) *Producers in the analogue country*

- Jungbunzlauer Canada Inc., Port Colborne, Canada.

1.10. Review investigation period and period considered

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (20) The product concerned is citric acid (including trisodium citrate dihydrate) originating in the PRC, currently falling within CN codes 2918 14 00 and ex 2918 15 00 ('the product concerned').
- (21) Citric acid is used as an acidulant and pH regulator in a wide range of applications, for example beverages, food, detergents, cosmetics and pharmaceuticals. Its main raw materials are sugar/molasses, tapioca, corn or glucose (obtained from cereals) and different agents for the submerged microbial fermentation of carbohydrates.

2.2. Like product

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

3. DUMPING

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

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

3.1.1. Normal value

- Analogue country

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

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

3.1.2. *Export price*

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

3.1.3. *Comparison*

- (32) The Commission compared the normal value and the export price of the cooperating exporting producers on an ex-works basis.
- (33) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, credit and commissions.

3.1.4. *Dumping margin*

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

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

3.2.1. *Likelihood of continuation of dumping*

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

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

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

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

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

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

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

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

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

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

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

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

3.2.5. Conclusion on the likelihood of continuation of dumping

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

3.3. Partial interim review limited to dumping for Laiwu

3.3.1. Normal value

3.3.1.1. Market economy treatment ("MET")

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

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

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

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

3.3.1.2. Analogue country

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

3.3.2. Export price

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

3.3.3. Comparison

- (81) The Commission compared the normal value and the export price on an ex-works basis.
- (82) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, credit and commissions.

⁽¹⁾ OJ C 351, 30.11.2013, p. 27.

3.3.4. Dumping margin

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

3.3.5. Lasting nature of changed circumstances

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

4. INJURY

4.1. Definition of the Union industry and Union production

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

4.2. Union consumption

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

Table 1

Union consumption

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

Source: Questionnaire replies and Eurostat

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

4.3. Imports from the country concerned

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

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

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

Table 2

Import volume and market share

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

Source: Eurostat

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

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

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

Table 3

Import prices

(EUR/ton)

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

Source: Eurostat

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

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

4.4. Economic situation of the Union industry

4.4.1. General remark

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

4.4.2. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

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

Source: Questionnaire replies

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

4.4.3. Sales volume and market share

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

Table 5

Sales volume and market share

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

Source: Questionnaire replies

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

4.4.4. Growth

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

4.4.5. Employment and productivity

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

Table 6

Employment and productivity

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

Source: Questionnaire replies

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

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

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

4.4.7. Prices and factors affecting prices

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

Table 7

Sales prices in the Union

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

Source: Questionnaire replies

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

4.4.8. Labour costs

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

Table 8

Average labour costs per employee

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

Source: Questionnaire replies

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

4.4.9. Inventories

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

Table 9

Inventories

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

Source: Questionnaire replies

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

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

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

Table 10

Profitability, cash flow, investments and return on investments

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

Source: Questionnaire replies

- (125) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. It was at stable levels almost throughout the period considered. The profitability achieved by the Union industry exceeded the target profit established in the original investigation throughout the period considered.
- (126) The net cash flow is the ability of the Union producers to self-finance their activities. Its development remained at satisfactory levels throughout the period considered.
- (127) The return on investments is the profit in percentage of the net book value of investments. Its development largely mirrored the development of profitability, and remained at satisfactory levels almost throughout the period considered.

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

4.4.11. *Conclusion on injury*

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

4.5. **Likelihood of recurrence of injury**

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

5. **UNION INTEREST**

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

5.1. Interest of the Union industry

- (140) Both Union producers accounting together for 100 % of Union production cooperated in this investigation. As stated in recital 130 above, Union industry has recovered from the injury caused by past dumping.
- (141) The measures in force have allowed the Union industry to recover from the past injury. At the same time, Union industry has shown that their operations are viable when not subject to unfair competition by dumped imports.
- (142) At the same time, removal of the measures would very likely lead to increased unfair competition by dumped Chinese imports, threatening the continued operation of the remaining producers in an otherwise viable industry. It is recalled that three producers in the Union had closed down before the imposition of measures against the Chinese imports.
- (143) It is therefore concluded that it is in the interest of the Union industry to maintain the measures in force.

5.2. Interest of unrelated importers

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

5.3. Interest of users

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

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

5.4. Sources of supply on the Union market

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

5.5. Conclusion on Union interest

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

6. ANTI-DUMPING MEASURES

6.1. Interim review limited to injury

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

6.2. Injury elimination level

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

6.3. Definitive anti-dumping measures

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

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

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

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

7. FORM OF MEASURES

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

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

⁽²⁾ See page 75 of this Official Journal.

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of citric acid and trisodium citrate dihydrate, currently falling within CN codes 2918 14 00 and ex 2918 15 00 (TARIC code 2918 15 00 10) and originating in the People's Republic of China.

2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty (%)	TARIC additional code
COFCO Biochemical (Anhui) Co., Ltd — No 1 COFCO Avenue, Bengbu City 233010, Anhui Province, PRC	35,7	A874
Laiwu Taihe Biochemistry Co., Ltd — No 106 Luzhong Large East Street, Laiwu City, Shandong Province, PRC	15,3	A880
RZBC Co., Ltd — No 9 Xinghai West Road, Rizhao City, Shandong Province, PRC	36,8	A876
RZBC (Juxian) Co., Ltd — No 209 Laiyang Road (West Side of North Chengyang Road), Juxian Economic Development Zone, Rizhao City, Shandong Province, PRC	36,8	A877
TTCA Co., Ltd — West, Wenhe Bridge North, Anqiu City, Shandong Province, PRC	42,7	A878

Company	Definitive anti-dumping duty (%)	TARIC additional code
Weifang Ensign Industry Co., Ltd — No 1567 Changsheng Street, Changle, Weifang, Shandong Province, PRC	33,8	A882
Jiangsu Guoxin Union Energy Co., Ltd — No 1 Redian Road, Yixing Economic Development Zone, Jiangsu Province, PRC	32,6	A879
All other companies	42,7	A999

3. Notwithstanding paragraph 1, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.

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

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Implementing Decision (EU) 2015/87 shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

- (a) they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Union; and
- (b) such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex to this Regulation; and
- (c) the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

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

- (a) whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled; or
- (b) when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of Regulation (EC) No 1225/2009 in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

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

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

Done at Brussels, 21 January 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

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

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

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

COMMISSION IMPLEMENTING REGULATION (EU) 2015/83**of 21 January 2015****imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2), (5) and (6) thereof,

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by means of Regulation (EC) No 1187/2008 ⁽²⁾, a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China ('China').
- (2) The imposed measures took the form of an ad valorem duty rate of 39,7 %, with the exception of Hebei Meihua MSG Group Co. Ltd (33,8 %), Tongliao Meihua Bio-Tech Co. Ltd (33,8 %) and Fujian Province Jianyang Wuyi MSG Co. Ltd (36,5 %).

2. Request for an expiry review

- (3) Following the publication of a notice of impending expiry ⁽³⁾ of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation.
- (4) The request was lodged by Ajinomoto Foods Europe SAS ('the applicant'), the sole Union producer of monosodium glutamate, thus representing 100 % of the total Union production of monosodium glutamate.
- (5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. Initiation of an expiry review

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 29 November 2013, by a notice published in the *Official Journal of the European Union* ⁽⁴⁾ ('Notice of Initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Parallel anti-dumping investigation

- (7) In parallel, on the same date, the Commission announced the initiation of an anti-dumping investigation pursuant to Article 5 of the basic Regulation with regard to imports into the Union of monosodium glutamate originating in Indonesia ⁽⁵⁾.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Regulation (EC) No 1187/2008 of 27 November 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in the People's Republic of China (OJ L 322, 2.12.2008, p. 1).

⁽³⁾ OJ C 60, 1.3.2013, p. 10.

⁽⁴⁾ OJ C 349, 29.11.2013, p. 14.

⁽⁵⁾ Notice of Initiation of an anti-dumping proceeding concerning imports of monosodium glutamate originating in Indonesia (OJ C 349, 29.11.2013, p. 5).

- (8) In that investigation, the Commission imposed in August 2014, by means of Regulation (EU) No 904/2014 ⁽¹⁾, a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia ('provisional regulation'). The provisional measures were imposed for a period of six months.
- (9) The two parallel investigations covered the same (review) investigation period and the same period considered as defined in recital 10.

5. Investigation

Relevant periods covered by the expiry review investigation

- (10) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 October 2012 to 30 September 2013 (the 'review investigation period'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 April 2010 to the end of the review investigation period (the 'period considered') ⁽²⁾.

Parties concerned by the investigation and sampling

- (11) The Commission officially advised the applicant, exporting producers, importers and users in the Union known to be concerned and the representatives of the exporting country concerned of the initiation of the expiry review.
- (12) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set in the Notice of Initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (13) In view of the apparent large number of Chinese exporting producers as well as unrelated importers in the Union, sampling was envisaged in the Notice of Initiation in accordance with Article 17 of the basic Regulation.
- (14) In respect of the exporting producers in China, in order to enable the Commission to decide whether sampling would be necessary and, if so, to select a representative sample, those parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of Initiation. Given that only two exporting producers in China provided the Commission with the information requested, sampling was not considered necessary.
- (15) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the Commission requested all unrelated importers to make themselves known and to provide the information specified in the Notice of Initiation.
- (16) Fourteen unrelated importers came forward. However, none of these companies imported MSG from China into the Union during the review investigation period. Sampling was therefore not necessary.

Questionnaires and verification

- (17) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest.
- (18) Questionnaires were sent to both Chinese exporting producers that came forward in the sampling exercise, the sole Union producer and 33 identified users in the Union.
- (19) Questionnaire replies were received from the sole Union producer, from one trader and from five users. Neither of the Chinese exporting producers provided a questionnaire reply.
- (20) Verification visits were carried out at the premises of the following companies:

Union producer

— Ajinomoto Foods Europe SAS, Mesnil-Saint-Nicaise, France

⁽¹⁾ Commission Regulation (EU) No 904/2014 of 20 August 2014 imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia (OJ L 246, 21.8.2014, p. 1).

⁽²⁾ Coincided with the financial years — April to March — of the sole Union producer (FY2010/2011, FY2011/2012, FY2012/2013, IP).

Users

— AkzoNobel, Amersfoort, the Netherlands

— Unilever, Rotterdam, the Netherlands

Disclosure

- (21) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend maintaining the definitive anti-dumping duty on imports of the product concerned originating in China. The parties were also granted a period within which they could make representations subsequent to this disclosure. Their comments were considered and taken into account where appropriate.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (22) The product subject to this review is the same as that covered by the original investigation, namely monosodium glutamate ('MSG') originating in China, currently falling within CN code ex 2922 42 00 ('the product concerned'). MSG is a food additive and mainly used as a flavour enhancer in soups, broths, fish and meat dishes, spice blends, and ready-made foods. MSG is also used in the chemical industry for non-food applications such as detergents. It is produced in the form of white, odourless crystals of various sizes. MSG is available in various packing sizes, ranging from consumer packs of 0,5 g to 1 000 kg bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 20 kg and more are destined for industrial users. In addition, different purity grades exist. However, there are no differences in the characteristics of monosodium glutamate based on pack size or purity grade.
- (23) MSG is mainly produced by fermentation of various sugar sources (corn starch, tapioca starch, sugar syrup, sugar cane molasses and sugar beet molasses).
- (24) The review investigation confirmed that, as in the original investigation, the product concerned and MSG produced and sold on the domestic market in the country concerned, MSG produced and sold by the Union industry on the Union market and MSG produced and sold on the two potential analogue country markets of Thailand and Indonesia have the same basic physical, technical and chemical characteristics and the same basic uses.
- (25) Therefore these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (26) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether or not the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (27) As mentioned in recitals 18 and 19, while questionnaires were sent to both Chinese exporting producers that came forward in the sampling exercise, none of them provided a reply to the questionnaire and none of them cooperated in the investigation. Therefore use had to be made of facts available in accordance with Article 18 of the basic Regulation.
- (28) The Chinese authorities and non-cooperating Chinese exporting producers were notified of the application of Article 18(1) of the basic Regulation and were given an opportunity to present their comments. No comments were received.
- (29) On this basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation of dumping set out below were based on facts available, in particular, information in the request for the expiry review and statistics available, namely Eurostat and the Chinese export database.

2. Dumping of imports during the review investigation period

(a) Analogue country

- (30) According to Article 2(7)(a) of the basic Regulation, normal value was determined on the basis of the price or constructed value in a market economy third country for the exporting producers not granted MET. For this purpose, a market economy third country had to be selected ('the analogue country').

- (31) In the Notice of Initiation, the Commission informed interested parties that it envisaged Thailand or Indonesia as possible appropriate analogue countries and invited parties to comment. Thailand was used in the original investigation ⁽¹⁾ as an appropriate analogue country. Indonesia was proposed in the current investigation in view of the fact that, as mentioned in recital 7, a parallel anti-dumping investigation on imports into the Union of MSG originating in Indonesia was initiated on the same date as the current expiry review investigation ⁽²⁾. One interested party claimed that Thailand was not an appropriate analogue country given that the cooperating Thai producer was part of the same company group as the applicant. Moreover, it was argued that there was lack of competition on the Thai market and that the domestic sales in Thailand were mainly in small packaging to the retail level, while exports from China to the Union were allegedly in large bags or bulk for industrial use.
- (32) The Commission asked more than five known producers of the like product in Thailand to provide information. Only one producer in Thailand came forward and submitted a questionnaire reply. This producer was part of the same group as the applicant. In contrast to what was claimed by an interested party, being part of the same group as the applicant does not automatically imply that normal value is not reliable. The interested party concerned did also not explain how the relationship could have had an impact on the normal value on the domestic market in Thailand. Therefore, this argument should be rejected.
- (33) As set out in recital 24, the investigation revealed that MSG produced and sold in the domestic market in Thailand had the same basic technical, physical and chemical characteristics and same basic end uses as the product produced and exported by the Chinese exporting producers to the Union. Furthermore, production processes in China were similar in comparison to those in the Thai market. Finally, in Thailand there was a considerable degree of competition with several domestic producers and imports from other third countries, including China. Moreover, in contrast to what was claimed, the investigation showed that the domestic sales in Thailand were in bulk and in retail. Therefore, the argument that Thailand would not be a suitable choice for an analogue country for those reasons should be rejected.
- (34) The Indonesian exporting producers agreed that their data provided in the context of the parallel investigation mentioned in recital 7 be used for the purpose of the current expiry review investigation. As set out in recital 24 the investigation revealed that MSG produced and sold in the domestic market in Indonesia had the same basic technical, physical and chemical characteristics and same basic end uses than the products produced and exported by the Chinese exporting producers to the Union. Furthermore, on the basis of the information available production processes in China were similar in comparison to the Indonesian market. Finally, in Indonesia there was a considerable degree of competition with several domestic producers and imports from other third countries, including China. Moreover, the investigation showed that the domestic sales in Indonesia were both in bulk and in retail.
- (35) It follows from the above that both countries, Thailand and Indonesia were potentially suitable to be selected as an analogue country. Nevertheless, given that the level of detail available from the Indonesian exporting producers, subject to the parallel investigation was much higher than the one from the sole cooperating producer in Thailand, the Commission considered it more reasonable to select Indonesia as an appropriate analogue country under Article 2(7)(a) of the basic Regulation.

(b) *Normal value*

- (36) The information received from the cooperating producers in Indonesia was used as a basis for the determination of the normal value for exporting producers in China.
- (37) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales for each of the cooperating producers in Indonesia was representative during the review investigation period. The domestic sales were considered representative if the total domestic sales volume of the like product to independent customers on the domestic market represented at least 5 % of the total export sales volume of the product concerned to the Union during the review investigation period. It was found that the domestic sales in Indonesia were representative for each of the producers. It was further examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable during the review investigation period.

⁽¹⁾ Regulation (EC) No 1187/2008.

⁽²⁾ OJ C 349, 29.11.2013, p. 5.

- (38) As it was found that domestic sales were made in sufficient quantities and in the ordinary course of trade, normal value was based on actual domestic price, which was calculated as a weighted average of the prices of all domestic sales during the review investigation period.

(c) Export price

- (39) In the absence of any cooperation from the Chinese exporting producers, the export price was based on facts available in accordance with Article 18 of the basic Regulation.
- (40) The export price was thus established on the basis of statistics, namely Eurostat, calculated on a weighted average basis.

(d) Comparison and adjustments

- (41) The Commission compared the normal value and the export price on an ex-works basis. Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for freight and transport costs, taking into account the adjustments to the normal value of the Indonesian exporting producers as established in the parallel investigation mentioned in recital 41 of the provisional Regulation.
- (42) In addition, one interested party claimed that the Chinese exporting producers have comparative cost advantages over the Thai producers as regards the production process (vertical integration), the evolution of raw material prices and the energy consumption. As Indonesia was used as an analogue country, this argument was irrelevant. Regarding Indonesia and as described in recital 34, the production processes of MSG in China were similar in comparison to the Indonesian market. It should be noted that all MSG producers around the globe use similar production methods. MSG is produced by fermentation of various sugar sources (corn starch, tapioca starch, sugar syrup, sugar cane molasses and sugar beet molasses).

(e) Dumping margin

- (43) One interested party claimed that exports from China were mainly in bulk, while domestic sales in Thailand are mainly retail. Therefore, it was argued that the dumping margin should be calculated on the basis of bulk sales only. As none of the Chinese exporting producers cooperated, no information was available as to the sales conditions, level of trade or packaging of Chinese export sales.
- (44) Moreover, as Indonesia was used as an analogue country, this argument was irrelevant. In any event, regardless of whether retail sales were included or not, the comparison resulted in all cases in significant dumping margins as shown in recital 47.
- (45) Furthermore, the Commission calculated dumping margins on the basis of the normal value established in the analogue country. The comparison resulted in significant dumping margins as shown in recital 47.
- (46) The Commission compared the weighted average normal value with the weighted average export price in accordance with Article 2(11) and (12) of the basic Regulation. Given the lack of cooperation of Chinese exporting producers, the product types exported from China could not be determined. Therefore, a comparison per product type was not possible. Instead, the comparison had to be based on the statistical data of the export price as explained in recitals 39 and 40.
- (47) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price was over 25 % in all cases.

3. Development of imports should measures be repealed

(a) Preliminary remark

- (48) Further to the finding of the existence of dumping during the review investigation period, the likelihood of continuation of dumping should measures be repealed was investigated and the following elements were analysed: volume and prices of dumped imports from China, production capacity and spare capacity in China; the attractiveness of the Union market in relation to imports from China.

(b) Volume and prices of dumped imports from China

- (49) Despite the measures in place, the volume of imports from China increased during the period considered by 65 %, with a corresponding increase in market share of 68 % as established in recital 81. However, despite this increase in relative terms, Chinese import volumes and market share in absolute terms remained low during the whole period considered.

- (50) Given the non-cooperation from the Chinese exporting producers, import prices were established on the basis of Eurostat. Average import prices from China decreased continuously from FY2010/2011 until the review investigation period and overall by 20 % over the period considered as established in recital 84 and they were found to be dumped during the review investigation period. It was also established that they would undercut the Union industry sales price on average by more than 10 % if considered without anti-dumping duties.

(c) Production capacity and spare capacity in China

- (51) Production capacity and spare capacity in China were established on the basis of the information provided by the applicant. As these data were not publicly available, the Commission crosschecked them with other publicly available sources, including press articles placed in the file open for inspection by interested parties. On this basis, China is the world's largest MSG producing country with an annual production capacity and annual production which increased during the period considered. In 2012, the production capacity of MSG was in the region of 3,5 to 4 million tonnes while the production of MSG was in the region of 2,5 to 3 million tonnes. Thus, in 2012 spare production capacity was in the region of 600 000-900 000 tonnes.
- (52) According to the same source, MSG production capacity and production in China will grow even further until 2017, as the demand of MSG in China is rising.
- (53) In 2011, the Chinese Government through the Ministry of Industry and Information Technology of China (MIIT) launched a general policy to eliminate old and inefficient plant technology which concerned 19 key industries in China, including MSG. The result has been a significant decline in the number of MSG producers in China. On this basis, one interested party claimed that capacity had likely not increased in China. The investigation has showed on the basis of the information contained in the request and press articles that larger companies have increased their capacity. As a result MSG production capacity in China overall increased and the argument from the party concerned should therefore be rejected.
- (54) Moreover, based on the information provided by the applicant, the inventory of MSG in China has consistently grown in recent years and was more than twice as large as the Union consumption during the review investigation period. One interested party claimed that, as the information on the alleged excess inventory has not been made available in the non-confidential file, it would not be verifiable for the interested parties and should not be taken into account. Moreover, it was claimed that the excess inventory looks unlikely in view of the reduction of capacities by the Chinese government. In this regard, it should be noted that the interested party concerned did not provide any evidence substantiating this claim. Moreover, as already explained in recital 27, no Chinese exporting producer cooperated with the investigation. Therefore, use of facts available had to be made in accordance with Article 18 of the basic Regulation. In addition, under Article 19(3) of the basic Regulation, the Commission may disregard information submitted in confidence in case no meaningful non-confidential summary is provided, but the non-submission of such summary does not lead to the automatic rejection of the information provided in confidence. While not all elements contained in the request could be cross-checked, including the information provided on Chinese inventories, in this case, the information provided was nonetheless considered as reasonable and correct, as it followed the same direction as the information provided by the applicant that could be crosschecked. Furthermore, given that the overall production capacity in China increased as described in recital 51, the excess inventory was not the only element to support the conclusion that Chinese exporting producers possess significant spare capacity. Moreover, the Commission, wherever possible, cross-checked with other available sources such as press articles and only used the information when it was satisfied that it was reasonable and sufficiently reliable. Therefore, this argument should be dismissed.
- (55) Following disclosure, the same interested party claimed that the Commission would not have based its findings on facts as required by Article 11(3) of the WTO Anti-Dumping Agreement ⁽¹⁾ but merely on presumptions. This party reiterated its claims regarding the alleged capacity reduction and the spare capacity in China.
- (56) As mentioned above in recital 27, none of the Chinese exporting producers cooperated in the investigation and therefore the Commission had to base its findings on facts available in accordance with Article 18 of the basic Regulation. As also described above in recitals 29 and 51, the information used was mainly the one provided by the applicant in its application for the request, duly cross checked whenever possible. As this was the only reliable information available, the claim that findings were based on mere presumptions was rejected.

⁽¹⁾ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement).

- (57) The information provided by the interested party concerned was also considered. However, as regards the available capacity and spare capacity in China, the interested party concerned provided contradictory information. For example, contrary to what that party claimed, the evidence annexed to its submissions showed an increase of MSG capacity in China rather than a decrease. This is in line with the findings of the Commission as set out in recital 53 above. That party's claim that the overall capacity in China would likely decrease was therefore rejected.
- (58) It is therefore concluded that Chinese exporting producers have significant spare capacity which is likely to be used for substantial additional exports to the Union, as explained below in recitals 61 and 62, should the anti-dumping measures lapse.

(d) Attractiveness of the Union market

- (59) During the period considered, due to the measures in place, the Union market represented only a minor part of the Chinese exports. One interested party claimed that the Union would not be an attractive market for Chinese exporting producers as the demand for MSG in Asia and other emerging economies including China is expected to increase. This party further alleged that given that price levels from China to other third countries would be on average higher or similar to Chinese export price levels to the Union, the Chinese exporting producers would not have any incentive to increase their exports to the Union market.
- (60) While the investigation found that Chinese export prices to third countries were on average slightly higher than the export prices to the Union, this may well be due to the fact that Chinese exporting producers decreased their export prices to the Union due to the anti-dumping duties in place. Therefore, it does not necessarily give an indication of the possible level of prices should the measures be allowed to lapse. To the contrary, given the level of the anti-dumping duties in place, Chinese exporting producers would be able to raise their export prices, while still remaining at dumped levels and undercutting the Union industry's sales prices.
- (61) Even if the domestic consumption in China and the consumption in the rest of Asia and other emerging markets are expected to grow, the level of the production overcapacity in China suggests a strong incentive to find alternative markets to absorb this overcapacity.
- (62) The Commission also took into consideration the possible imposition of measures against Chinese MSG exports to the United States of America ('the US') following on-going parallel anti-dumping and anti-subsidy investigations conducted by the US authorities against China concerning the same product. The US authorities indeed imposed definitive anti-dumping measures on 26 November 2014. Four Chinese exporting producers were assigned individual rates, set at 20,09 %, while the residual duty was set at 39,03 %. Consequently, the access to the US market for Chinese exports is likely to be reduced and large quantities of Chinese MSG can likely be re-directed to the Union market, in particular should the measures in the Union be allowed to lapse at the same time. In this regard, it should be noted that in 2013 around 26 600 tonnes of MSG from China were exported to the US, which corresponded to a significant part of the Union consumption during the review investigation period.
- (63) Moreover, the Union industry's average price and the Indonesian exporting producers' average import price in the Union as established in the parallel investigation as mentioned in recitals 61 and 80 of the provisional regulation were both higher when compared to the Chinese average import prices to the Union without anti-dumping duties and to the Chinese average import prices to other third countries. This analysis, given the non-cooperation of the Chinese exporting producers, was based on the information available, i.e. Chinese export data base. The pricing behaviour of Chinese exporters indicated that, should the anti-dumping measures be allowed to lapse, the Union would be an attractive market for Chinese exporters, as they would indeed be able to raise their export prices to the Union.
- (64) The increasing market share of the Chinese imports, despite the measures in force, also showed that the Chinese exporting producers continued to be interested in the Union market. The Union market for MSG remains indeed attractive for Chinese exports, based on the observed price levels. This interest will likely increase should the measure be repealed.
- (65) Following disclosure, the above mentioned interested party reiterated its claims regarding the increasing domestic demand for MSG in China, the low export volumes from China to the Union, its market share and the higher prices of Chinese MSG to the other third countries compared to the Union. This party claimed that these elements had not been taken into consideration in the Commission's analysis.

- (66) Firstly, the claim that that the development of Chinese production capacity and spare capacity, the increasing domestic demand for MSG in China, the low export volumes from China to the Union, its market share as described in recital 49 and Chinese price levels to the Union and other third countries were not taken into consideration is not founded. These elements were indeed analysed as shown above in recitals 49 to 64 and the relevant conclusions were disclosed to the interested parties. Secondly, the party concerned did not provide any new evidence to support its allegations in addition to the elements established by the Commission during the investigation.
- (67) Finally, the party concerned objected to the Commission's assessment in recital 62 that Chinese exports could be re-directed from the US to the Union due to the anti-dumping measures imposed by the US authorities with regard to exports of MSG from China to the US.
- (68) However as already explained in recital 62 it is noted that should the measures in the Union be allowed to lapse, given the anti-dumping measures imposed on Chinese MSG exports to the US, it is likely that the Chinese exports will be re-directed to the Union market.
- (69) Therefore the party's claims in this regard had to be rejected.

4. Conclusion of the likelihood of continuation of dumping

- (70) The foregoing analysis demonstrated that Chinese imports continued to enter the Union market at dumped prices with significant dumping margins. In view of the findings on the significant spare production capacity available in China and the likelihood that exports would be re-directed to the Union market in significant quantities and at dumped prices, the Commission concluded that there is a strong likelihood of continuation of dumping should the measures be removed.

D. DEFINITION OF THE UNION INDUSTRY

- (71) The like product was manufactured by one Union producer during the review investigation period. It constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (72) As the Union industry is constituted of only one producer all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality.

E. SITUATION ON THE UNION MARKET

1. Union consumption

- (73) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from China and other third countries, based on Eurostat, and data provided by the Indonesian exporting producers subject to the parallel anti-dumping investigation mentioned in recital 7.
- (74) One interested party claimed that the relevant CN codes in Eurostat also cover other products than the product concerned and the import volume from China may therefore include glutamic acid and its salts. However, as the import data was extracted from Eurostat on TARIC (integrated tariff of the European Union) code level, it only covered the product concerned and this claim was thus rejected.
- (75) The same interested party claimed that not all MSG produced in China and exported to the Union had the purity grade required in the Union for food additives and questioned whether this was accordingly reflected in the import volumes from China. As established in recital 22 all types of MSG irrespective of their purity levels fall within the scope of the current investigation and therefore this claim was rejected.

- (76) On this basis, Union consumption developed as follows:

Table 1

Union consumption (tonnes)

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Index (FY2010/FY2011 = 100)	100	87	93	98

Source: Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

- (77) Union consumption decreased between FY2010/2011 and FY2011/2012, and slightly increased again in FY2012/2013 and the review investigation period. Overall, consumption decreased by 2 % during the period considered. The decrease in consumption between FY2010/2011 and FY2011/2012 was mainly due to a decrease in the sales of the Union industry on the Union market resulting from a decrease in production in the same period (see recital 100). Total imports remained at similar levels in the same period. The increase in consumption in FY2012/2013 is almost exclusively due to an increase in total imports, as sales of the Union industry remained broadly at the same level. Finally, during the review investigation period, while the Union industry's sales decreased again, import volumes increased considerably, notably from Indonesia (see recital 88).
- (78) One interested party claimed that the description of the development in consumption would be incomplete as it did not take into consideration that Vietnamese imports of MSG were replaced by Indonesian imports and that users, as a consequence, no longer anticipated further price increases and reduced their inventories. While it is true that imports of MSG from other third countries included from Vietnam decreased during the period considered and those of Indonesia increased, this does not affect the development of the overall consumption in the Union as such. Likewise, the effects of any developments in import flows and the possible response of economic operators such as users to these developments, have no bearing on the development of consumption as such. This argument was therefore rejected.

2. Imports from the country concerned*(a) Volume and market share of imports from the country concerned*

- (79) The volume and market share of imports from China were established on the basis of Eurostat and data provided by the Indonesian exporting producers subject to the parallel anti-dumping investigation mentioned in recital 7.
- (80) The import volume into the Union from the country concerned and market share developed as follows:

Table 2

Import volume and market share

Country		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
China	Volume (tonnes)	1 518	758	1 923	2 509
	Index	100	50	127	165
	Market share Index	100	57	136	168

Source: Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

- (81) Import volumes from China decreased from FY2010/2011 to FY2011/2012, but increased substantially in FY2012/2013 and again during the review investigation period. Overall, import volume from China went up by 65 % during the period considered. The corresponding market share showed a similar trend, namely it decreased first between FY2010/2011 and FY2011/2012 and then increased substantially up to the review investigation period. Overall, market share increased by 68 % during the period considered. Despite these increases in relative terms, both volume and market share of Chinese imports in absolute terms remained at low levels during the period considered.

(b) *Prices of imports from the country concerned and price undercutting*

- (82) Import prices were established on the basis of Eurostat.
- (83) The table below shows the average price of imports from China:

Table 3

Import prices

Country		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
China	Average price (EUR/tonne) ⁽¹⁾	1 234	1 199	1 143	992
	Index	100	97	93	80

⁽¹⁾ Average price does not include anti-dumping duties in place.

Source: Eurostat.

- (84) Average import prices from China decreased continuously from FY2010/2011 and the review investigation period and overall by 20 % over the period considered.
- (85) The Commission determined the price undercutting during the review investigation period by comparing:
- the weighted average sales prices of the Union industry charged to unrelated customers on the Union market, adjusted to an ex-works level, and
 - the export price established on the basis of the import statistics available to the Commission, namely Eurostat, calculated on a weighted average basis, with appropriate adjustments by adding customs duties, anti-dumping duties and post-importation costs.
- (86) The result of the comparison showed no undercutting of the Union industry's prices by the imports from China on the Union market. However, when discounting the effect of the anti-dumping duties, the undercutting margin reached a level of more than 10 %.

3. Imports from Indonesia

(a) *Volume and market share of imports from Indonesia*

- (87) The Commission established the volume of imports from Indonesia on the basis of Eurostat and data provided by the Indonesian exporting producers in the parallel investigation mentioned in recital 7.
- (88) The imports into the Union from Indonesia and market share developed as follows:

Table 4

Import volume and market share

Country		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Indonesia	Volume (tonnes)	8 638	9 478	18 317	24 385
	Index	100	110	212	282
	Market share Index	100	126	227	287

Source: Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

- (89) Import volumes from Indonesia almost tripled over the period considered. They increased continuously and significantly, by 182 % from 8 638 tonnes in FY2010/2011 to 24 385 tonnes in the review investigation period.
- (90) The corresponding market share almost tripled over the period considered. It increased by 187 %, despite the overall decrease in consumption (– 2 %).

(b) Prices of the imports from Indonesia

- (91) The Commission established the prices of imports on the basis of Eurostat and data provided by the sampled Indonesian exporting producers in the parallel on-going investigation mentioned in recital 7.
- (92) The average import price into the Union from Indonesia developed as follows:

Table 5

Import price

Country		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Indonesia	Average price (EUR/tonne)	1 266	1 279	1 226	1 162
	Index	100	101	97	92

Source: Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

- (93) The average import price of MSG from Indonesia slightly increased between FY2010/2011 and FY2011/2012 before decreasing in FY2012/2013 and even further in the review investigation period. The average import prices of MSG from Indonesia overall decreased by 8 % during the period considered.

4. Imports from other third countries not subject to measures

- (94) The volume, market share and prices of imports from other third countries developed as follows:

Table 6

Imports from other third countries

Country		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Brazil	Volume (tonnes)	2 321	969	1 070	889
	Index	100	42	46	38
	Market share Index	100	48	49	39
	Average price (EUR/tonne)	1 218	1 306	1 402	1 365
	Index	100	107	115	112

Country		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Korea, Republic of	Volume (tonnes)	1 248	2 157	923	802
	Index	100	173	74	64
	Market share Index	100	198	79	65
	Average price (EUR/tonne)	1 231	1 296	1 293	1 277
	Index	100	105	105	104
Vietnam	Volume (tonnes)	5 707	6 042	1 820	769
	Index	100	106	32	13
	Market share Index	100	121	34	14
	Average price (EUR/tonne)	1 284	1 291	1 361	1 318
	Index	100	101	106	103
Other third countries	Volume (tonnes)	993	681	478	434
	Index	100	69	48	44
	Market share Index	100	79	52	45
	Average price (EUR/tonne)	1 594	1 718	2 044	2 001
	Index	100	108	128	126
Total other third countries	Volume (tonnes)	10 268	9 848	4 291	2 894
	Index	100	96	42	28
	Market share Index	100	110	45	29
	Average price (EUR/tonne)	1 293	1 323	1 433	1 424
	Index	100	102	111	110

Source: Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

- (95) Import volumes from other third countries overall decreased from 10 268 tonnes in FY2010/2011 to 2 894 tonnes in the review investigation period, that is by 72 % over the period considered. The corresponding market share decreased by 71 % in the same period. In the review investigation period, the market share of other third countries' imports represented only around one fourth of its level in FY2010/2011. Overall, the prices of third countries' imports increased by 10 % during the period considered.
- (96) An interested party claimed that total imports including those from China and Indonesia have remained stable over the period considered.
- (97) This allegation was in contradiction with the available statistics on which the findings of the investigation are based as shown in Table 7 below. Indeed, total imports in the Union increased by 46 % during the period considered. The claim was therefore rejected.
- (98) Total imports, including China and Indonesia, developed as follows:

Table 7

Total Imports

		FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Total imports	Volume (tonnes)	20 424	20 084	24 531	29 788
	Index	100	98	120	146

Source: Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

5. Economic situation of the Union industry

- (99) 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.

(a) Production, production capacity and capacity utilisation

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

Table 8

Production, production capacity and capacity utilisation

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Production volume Index	100	95	107	91
Production capacity Index	100	100	100	100
Capacity utilisation Index	100	95	107	91

Source: questionnaire reply.

- (101) Production fluctuated during the period considered. While it decreased between FY2010/2011 and FY2011/2012, it increased between FY2011/2012 and FY2012/2013 and reached the lowest levels during the review investigation period. The investigation showed that the fluctuations were mainly caused by the maintenance shutdowns that the Union industry undertook every 15 months and by the poor weather conditions during the winter of 2010/2011, disrupting the supply of one of the main raw materials (ammonia). During the review investigation period, the maintenance shutdown was prolonged in an attempt to lower the high inventories. Overall, the production volume decreased by 9 % during the period considered.
- (102) One party claimed that production volume and capacity utilization decreased only after having increased substantially in the period before the period considered. On this basis the party argued that the decreasing trend of these factors does therefore not show injury. In establishing trends of the various injury indicators, the Commission based its assessment on the period considered which was determined at the initiation of the investigation. The period considered consists of the review investigation period and the three preceding financial years which corresponds to consistent practice. The mere fact that certain injury indicators show higher values prior to the period considered is insufficient reason to deviate from this practice. Therefore, only the trends during the period considered can be taken into account. This claim was therefore rejected.
- (103) The production capacity remained overall stable in the period considered.
- (104) As a result of the decrease in production volume and stable production capacity, the capacity utilisation developed in line with the production volume, namely it first decreased in FY2011/2012, then increased in FY2012/13 and decreased again in the review investigation period. Overall, capacity utilisation decreased by 9 % over the period considered, in line with the decrease in production volume.

(b) *Sales volume and market share*

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

Table 9

Sales volume and market share

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Sales volume in the Union Index	100	84	85	83
Market share Index	100	96	91	85

Source: questionnaire replies, Eurostat and questionnaire replies/data provided by the Indonesian exporting producers.

- (106) Sales volume of MSG by the Union industry decreased by 17 % over the period considered. Sales volume dropped mostly between FY2010/2011 and FY2011/2012, while in the following years it remained relatively stable. The drop in sales volume, together with the parallel decrease in consumption and increase in imports mainly from Indonesia led to a decrease in market share of the Union industry by overall around 15 % during the period considered. The market share of the Union industry decreased by 4 % between FY2010/2011 and FY2011/2012, coinciding with an increase in market shares of Indonesian and Chinese imports in the same period. Between FY2012/2013 and the review investigation period, the market shares of the Union industry continued to steadily decrease, while import volumes and market shares from Indonesia substantially increased. Likewise, imports and market share from China increased during the period considered, albeit remained at low levels throughout this period.

(c) *Growth*

- (107) While Union consumption decreased by 2 % over the period considered, the sales volume of the Union industry decreased by 17 %, which translated in a loss of market share of 15 %.

(d) *Employment and productivity*

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

Table 10

Employment and productivity

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Number of employees Index	100	103	107	108
Productivity (unit/employee) Index	100	92	100	85

Source: questionnaire reply.

- (109) Employment of the Union industry continuously increased and overall by 8 % in the period considered. This increase was mainly due to the integration of a former affiliated company in 2011 and the expansion of the Union industry's maintenance department.
- (110) Productivity decreased due to the combination of an increase in employment and the decrease in production as shown in Table 8 in recital 100.

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

- (111) The dumping margin established for China was well above the *de minimis* level, while the import volume from China remained low throughout the period considered. However, should measures be repealed, the impact of the actual dumping margins on the Union industry would be significant given the increasing volume and decreasing prices of imports from China and the expected development of Chinese imports should measures be allowed to lapse. In parallel, in the anti-dumping investigation concerning imports of MSG from Indonesia, mentioned in recital 7, substantial dumping margins were established for the cooperating exporting producers from Indonesia, which increased substantially their market share in the Union market during the period considered.
- (112) The Union industry was still in a recovery process from the effects of past injurious dumping of imports of MSG originating in China, as mentioned in recital 124. As dumped imports from Indonesia increased significantly during the period considered and were found to have caused material injury to the Union industry ⁽¹⁾, it could be concluded that this recovery process was reversed.

(a) *Prices and factors affecting prices*

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

Table 11

Average sales prices

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Average unit selling price in the Union (EUR/tonne) Index	100	107	101	97
Unit cost of production (EUR/tonne) Index	100	120	124	130

Source: questionnaire reply.

⁽¹⁾ Implementing Regulation (EU) No 904/2014.

- (114) The Union industry's average unit selling price to unrelated customers in the Union decreased by 3 % over the period considered. It first increased by 7 % between FY2010/2011 and FY2011/2012, but continuously decreased since then until the review investigation period. The increase in price between FY2010/2011 and FY2011/2012 can be seen as a consequence of the cost increases during the same period, albeit the cost increase was more pronounced than the increase in prices. At the same time Indonesian imports increased and exercised significant price pressure on the Union industry. As a consequence, prices of the Union industry decreased by 6 % between FY2011/2012 and FY2012/2013 and further 4 % between FY2012/2013 and the review investigation period.
- (115) Unit cost of production increased over the period considered by 30 %. There was a continuous increase starting in FY2011/2012 which was mainly due to an increase in the raw material and labour costs. As mentioned above, this cost increase could not be captured by an equivalent price increase due to the price pressure of the dumped imports from Indonesia.
- (116) One interested party requested the Commission to investigate whether the potential inclusion of by-products in the cost of production of the Union industry may have artificially increased the Union industry's average cost of production. The investigation established that the by-products were correctly allocated and did not in any way distort the injury picture. This claim was therefore rejected.

(b) *Labour costs*

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

Table 12

Average labour costs per employee

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Average labour costs per employee (EUR)	100	117	125	124
Index				

Source: questionnaire reply.

- (118) The average labour costs per employee increased by 24 %. This could be mainly explained by increasing efforts of the Union industry to improve the performance of its workers and staff in order to optimize the production process.

(c) *Inventories*

- (119) Stock levels of the Union producer developed over the period considered as follows:

Table 13

Inventories

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Closing stocks	100	82	164	143
Index				
Closing stocks as a percentage of production	100	86	153	156
Index				

Source: questionnaire reply.

- (120) Overall closing stocks increased by 43 % over the period considered. From FY2010/2011 to FY2011/2012 the closing stocks decreased following a decrease in production volume and an increase in export sales volume. From FY2011/2012 to FY2012/2013 stocks increased due to an increase in production while sales of the Union industry on the Union market remained almost stable. From FY2012/2013 to the review investigation period closing stocks decreased again mainly because of a decision to decrease production in an attempt to reduce the high stocks levels.
- (121) Closing stocks as a percentage of production decreased between FY2010/2011 and FY2011/2012 but almost doubled between FY2011/2012 and FY2012/2013. They further increased between FY2012/2013 and the review investigation period. Overall they increased by 56 % during the period considered. The increase in FY2012/2013 and in the review investigation period has to be seen in the light of increasing volumes of dumped imports from Indonesia, while Union sales remained almost stable during the same period.
- (d) *Profitability, cash flow, investments, return on investments and ability to raise capital*
- (122) Profitability, cash flow, investments and return on investments of the Union producer developed over the period considered as follows:

Table 14

Profitability, cash flow, investments and return on investments

	FY2010/2011	FY2011/2012	FY2012/2013	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover) Index	100	30	– 31	– 80
Cash flow (EUR) Index	100	39	– 48	– 19
Investments (EUR) Index	100	182	143	197
Return on investments Index	100	14	– 61	– 110

Source: questionnaire reply.

- (123) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. In FY2010/2011 and FY2011/2012 profitability decreased significantly, but still remained positive. As of FY2012/2013 profitability turned negative. It decreased even further in the review investigation period. Overall the profitability decreased by 180 % during the period considered. This development was mainly due to the price pressure of the Indonesian imports which entered into the Union at dumped prices and did not allow the Union industry to set their prices in line with the cost increase. The net cash flow is the Union industry's ability to self-finance their activities. The net cash flow showed the same trend as profitability that is a continuous decrease over the period considered with negative results as from FY2012/2013. This trend was accentuated in the review investigation period. Overall net cash flow decreased by 119 % over the period considered.
- (124) The investments increased by 97 % over the period considered. They mainly represented investments necessary for maintenance and compliance with legal safety requirements. While the Union industry was still recovering from past dumping by Chinese exporting producers prior to the period considered, it started to improve its situation and was profitable at the beginning of the period considered until FY2011/2012. Under these circumstances a number of investments that could no longer be postponed were made which explains the significant increase of investment levels in the FY2011/2012 and the subsequent years.

- (125) The return on investments is the profit in percentage of the net book value of investments. As with the other financial indicators, the return on investment from the production and sale of the like product was negative as from FY2012/2013, reflecting the negative trend in profitability. Overall, return on investments decreased by 210 % over the period considered.
- (126) Taking into account the decreasing profitability and decreasing cash flow, the company's ability to raise capital was also negatively affected.

(e) Conclusion on injury

- (127) Almost all main injury indicators showed a negative trend. Thus, production volume and capacity utilisation decreased by around 9 % and sales volume by 17 % during the period considered. In an attempt to offset the losses in sales volume and market share, the Union industry average prices decreased by 3 % during the period considered, while costs of production increased by 30 % in parallel. As a consequence profitability, which was positive at the beginning of the period considered, decreased and became negative in FY2012/2013 and continued to decrease in the review investigation period. Similar negative trends could be observed for net cash flow as well as for return on investments.
- (128) Employment increased by 8 % over the period considered. The increase over the period considered can be explained by the integration of a former affiliated company in 2011 and the expansion of the Union industry's maintenance department. Investments also showed a positive trend. They were mainly linked to prevention measures and security requirements, but not to any capacity increase. These positive trends did not therefore preclude the existence of injury.
- (129) One interested party claimed that a negative trend in only some of the injury indicators is not sufficient to conclude that there is material injury. Article 3(5) of the basic Regulation does not require that all injury indicators show a negative trend, but the situation of the Union industry has to be analysed by assessing the development of all injury indicators as a whole. In the present case, almost all injury indicators showed a negative trend, including main indicators such as sales and production volume, market share, average sales prices and profitability.
- (130) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

F. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY

1. Preliminary remark

- (131) As shown in recitals 99 to 130, the Union industry suffered material injury during the review investigation period. During the whole period considered, Chinese imports were only present on the Union market in limited quantities, while import volume and market share from Indonesia almost tripled during the same period. In the parallel investigation concerning imports of MSG from Indonesia mentioned in recital 7, it was concluded that imports from Indonesia were dumped and caused material injury to the Union industry, while imports from China, given their low volume and price levels, did not contribute to this injury ⁽¹⁾. At the same time, as outlined in recitals 48 and 70, the investigation has shown that the Chinese imports were made at dumped price levels during the review investigation period and there was a likelihood of continuation of dumping should the measures be allowed to lapse.

2. Impact of the projected volume of imports from China and price effects in case of repeal of measures

- (132) The Commission assessed the likelihood of recurrence of injury if the measures currently in force were allowed to lapse, namely the potential impact of the Chinese imports on the Union market and on the Union industry, pursuant to Article 11(2) of the basic Regulation.
- (133) This analysis focussed on the spare capacity of the Chinese exporting producers, the attractiveness of the Union market, the pricing behaviour of the Chinese producers in the Union. Finally, the anti-dumping measures imposed on imports of MSG from Indonesia were also taken into account.
- (134) As established in recital 51, total spare capacity of MSG in China was estimated at around 600 000-900 000 tonnes in 2012. This amount exceeded largely the total Union consumption of MSG during the same period.

⁽¹⁾ Implementing Regulation (EU) No 904/2014.

- (135) It can be reasonably expected that, as a consequence of the attractiveness of the Union market described in recitals 59-64, should measures be repealed, at least part of this spare capacity will, in all likelihood, be redirected to the Union market.
- (136) As mentioned above in recital 50, Chinese import prices without anti-dumping duties would undercut the Union sales prices by more than 10 % on average. They would also be lower than the Indonesian import prices. On this basis, it was concluded that, in the absence of measures, Chinese exporting producers will likely increase the price pressure on the Union market, thus worsening the material injury suffered by the Union industry. In this respect, it has to be recalled that the parallel anti-dumping investigation showed that Imports from Indonesia exerted a price pressure on the Union market so that the Union industry could not raise its prices in line with the increase in its cost, but, to the contrary had to decrease its prices over the period considered.
- (137) As outlined in recital 60, Chinese import prices may increase should measures be allowed to lapse. However, taking into consideration the significant undercutting margins established when deducting the anti-dumping duties, even if Chinese import prices indeed increased there is therefore a margin allowing Chinese exporters to keep import price levels below the Union industry's price levels, which will very likely allow them to gain further market shares in the Union market. Should this occur, the Union industry would face an immediate drop in its sales and sales prices.
- (138) Finally, in view of the parallel investigation against Indonesia and the corresponding measures against imports of MSG from this country, the Union industry is expected to be able to recover from the material injury suffered. This recovery process would be jeopardised should the imports from China resume in substantial quantities and at dumped prices, as a result of the measures being allowed to lapse.

3. Comments received after disclosure

- (139) Following disclosure, one interested party claimed that the maintenance of the measures would not enhance the situation of the Union producer as the deterioration of its situation would mainly be caused by factors other than imports of MSG from China. That party argued that these factors would be in particular the impact of the Union industry's investment policy on its profitability, the increase in labour costs and the allegedly inefficient use of resources. It was claimed that the effect of these factors had not been sufficiently taken into consideration when assessing the Union industry's overall situation.
- (140) It should be noted that the interested party in question did not provide any new information or evidence in support of these allegations.
- (141) As regards the investments made by the Union industry, this party did not explain to what extent these investments could have had an impact on their profitability. As described in recital 124, the investments made by the Union industry were based on reasonable business decisions and cannot be considered undue. Moreover, investment costs are depreciated over time and, as such, did not have any significant impact on the Union industry's profitability.
- (142) With regard to the increase in labour costs, while precise figures cannot be given for reasons of confidentiality, the investigation has showed that the impact of this increase on the total cost of production was not significant.
- (143) As to the inefficient use of resources, the party failed to specify the nature of the alleged inefficiencies and the investigation did not bring to light any potential inefficiency of the Union industry.
- (144) On these grounds these claims were rejected.

4. Conclusion

- (145) In view of the findings of the investigation, namely the spare capacity, the attractiveness of the Union market and the expected price levels of Chinese imports, it is considered that the repeal of the measures would in all likelihood lead to a recurrence of injury and further deteriorate the injurious situation of the Union industry due to the likely increase of Chinese imports at dumped prices undercutting the Union industry's sales prices.

G. UNION INTEREST

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

- (147) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (148) On this basis the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

1. Interest of the Union industry

- (149) The investigation established that the Union industry suffered material injury during the review investigation period. As mentioned in recital 131 the material injury was caused by the dumped imports from Indonesia. The investigation also established that there was a likelihood of recurrence of material injury should measures against Chinese imports be allowed to lapse. In particular, the expected recovery of the Union industry from the injury suffered due to the imports from Indonesia due to the anti-dumping measures imposed against this country is likely to be jeopardised should Chinese imports of MSG resume on the Union market at dumped prices.
- (150) Should measures be maintained it is expected that the Union industry will be able to fully benefit from the effects of the measures imposed in the context of the parallel investigation concerning imports of MSG from Indonesia, namely it will recover from the material injury suffered. Eventually it should be able to improve its profitability.
- (151) It was therefore concluded that maintaining the measures in force against China would be in the interest of the Union industry.

2. Interest of importers/traders

- (152) Fourteen companies came forward following the publication of the Notice of Initiation. However, none of these companies imported MSG from China into the Union during the review investigation period.
- (153) One trader in the Union involved in the resale of MSG inside and outside the Union made itself known during the investigation as user. This trader purchased MSG mainly from the Union industry, but also from importers. The trader did not purchase any MSG of Chinese origin, but of Indonesian and other third countries' origin. The trader's MSG-related activity was marginal as compared to its total activity. On these grounds it was considered that the measures in force on imports of MSG from China did not have any significant adverse effect on this trader's situation.

3. Interest of users

- (154) Users are mainly active in the 'food and beverage' sector, using MSG in the production of spice mixes, soups and ready-made foods. MSG is also used in specific 'non-food' applications, for instance in the production of detergents.
- (155) Thirty-three companies came forward and received a questionnaire. Five companies cooperated in the investigation by submitting a questionnaire reply. Four of them were active in the food and beverage sector and one in the non-food sector. Two of the cooperating companies, one operating in the 'food and beverage' sector and the second producing detergents, were verified on-the-spot.

(a) Food and beverage sector

- (156) The investigation showed that, on average, MSG represented around 5 % of the total cost of the products incorporating MSG manufactured by the cooperating companies which provided the necessary data.
- (157) Out of the four cooperating users only one imported MSG from China. This cooperating company purchased MSG from the Union industry and imported around 40 % of its total MSG purchases from China. The activity linked to products incorporating MSG represented around one third of its total activity. During the review investigation period the company was found to be profitable.
- (158) The other three companies did not import MSG from China during the review investigation period. Of these, two companies had a relatively insignificant MSG-related activity as compared to their overall activity. In addition, on the basis of the information provided, these two companies were profitable during the review investigation period. Concerning the third company, although its activity linked to the products incorporating MSG represented around one third of its total activity, during the review investigation period the company was found to be profitable.

(b) *Non-food sector*

- (159) One of the cooperating companies used MSG to produce detergents. MSG represented between 15 and 20 % of the cost of production of these products. During the review investigation period the company purchased MSG mainly from the Union industry. It also imported MSG from other third countries but not from China. Only a minor part of its activity was devoted to the products incorporating MSG as compared to its total activity which was in addition found to realise positive profit margins of [5-10] % in the investigation period.
- (160) This interested party alleged that, given the EU regulatory framework which bans the use of phosphates and other phosphorus compounds ⁽¹⁾ MSG is likely to be used in increased quantities to replace phosphates and other phosphorus compounds in the production of detergents. Therefore, it is expected that the demand of MSG in the Union will increase substantially and any anti-dumping duties on imports of MSG would have a detrimental effect on the development of this new market. In particular, the party argued that the level of the anti-dumping measures on imports of MSG from China in place would not allow Chinese imports to enter the Union market and that therefore, there would be a risk of lack of supply in the Union. This company claimed further that since measures are also in force against imports of MSG from Indonesia, there would also be a lack of alternative sources of supply.
- (161) This user further claimed that, given the expected increase in the MSG consumption the Union industry would benefit therefrom and also increase its sales volume on the Union market. On the other hand, the user claimed that the Union industry would not have enough capacity to supply the increased demand in the Union market.
- (162) However, at this stage it is difficult to predict how the new legal framework will impact the Union market and whether or to what extent it will boost the production of MSG-based detergents and thus have an effect on the MSG demand in the Union. The interested party also did not provide any evidence as to the extent to which an anti-dumping duty could have a detrimental effect. In this respect, it is noted that the aim of the anti-dumping duty is to restore a level playing field on the Union market. The investigation also revealed a number of alternative sources of supply, such as Brazil, Vietnam and Korea.
- (163) Further to disclosure, the same interested party reiterated its claim that the demand for MSG would significantly increase in the Union due to the ban of phosphates and that the Union industry would not be able to supply this increasing demand in the Union. However, the party in question did not provide any new information or evidence to substantiate the argument and therefore this claim was rejected.
- (164) Regarding the alternative sources of supply, in FY2010/2011 the market share of imports from other third countries was substantial and only decreased because of unfair priced imports from Indonesia. It is expected that the imposition of duties against imports of MSG from Indonesia in the parallel investigation should enable other third countries to recapture lost market shares in the Union. Should measures be repealed with regard to China, the expected effect of the anti-dumping duties against Indonesia would be jeopardised as imports from China are likely to penetrate the Union market in significantly increased quantities at dumped price levels undercutting the Union industry's sales prices in the Union market (as established above in recitals 149-151).
- (165) Following disclosure, the above mentioned interested party reiterated that there were no real alternative sources of supply as the producers in other third country markets belonged to the same group as the Union industry.
- (166) As mentioned in recitals 94 and 95 above, alternative sources of supply of MSG exist in several third countries, such as, inter alia, Brazil, Republic of Korea or Vietnam. In the review investigation period, the market share of imports from third countries other than China or Indonesia represented only one fourth of its level in FY2010/2011. Should measures be continued towards imports from China, there are no reasons why imports from other third countries could not cover at least partially the needs of the users of MSG, with a corresponding market share going back to or beyond its level of FY2010/2011. In addition, according to the information available which was available to parties in the non-confidential file, these alternative sources belong either to companies/groups of companies independent from Ajinomoto group or to this group. In any event, even if these alternative sources belonged to Ajinomoto group there is no indication that they would not supply the Union market at fair conditions. The argument should therefore be rejected.

⁽¹⁾ Regulation (EU) No 259/2012 of the European Parliament and of the Council of 14 March 2012 amending the Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents (OJ L 94, 30.3.2012, p. 16).

- (167) The same party also alleged that the Union industry held a dominant position and that there would be a lack of competition on the Union market. It argued that maintaining the measures against Chinese MSG would even further reinforce the Union industry's position on the Union market.
- (168) The investigation clearly showed that the Union industry was unable to maintain its sales volume in the Union as it lost market share, notably to Indonesian imports. Furthermore, the Union industry was not able to increase its price levels in line with the increase in raw material costs, given the price pressure from the dumped imports from Indonesia, and suffered significant losses in the review investigation period. The Commission also noted that there is competition from imports originating in a number of other third countries, benefitting from free access to the Union market. On these grounds, there was insufficient evidence on any allegedly dominant position of the Union industry and the argument had to be rejected.
- (169) Following disclosure, the interested party in question claimed that it would not be in the Union interest that users in the Union would have to rely on the Union industry and that there should be sufficient alternative sources of supply. In support of this claim, the party concerned noted that the decrease in consumption between FY2010/2011 and FY2011/2012 was mainly due to a decrease of the Union industry production volume.
- (170) As mentioned above in recital 100, production decreased by 5 % between FY2010/2011 and FY2011/2012 while consumption decreased by 13 % in the same time (see recitals 76 and 78). In FY2011/2012, capacity utilisation was 5 % below its level in FY2010/2011 meaning there was a reserve of capacity in FY2011/2012. Production of the Union industry cannot therefore be considered as a factor having had an impact on the decrease in consumption in FY2011/2012. In any event, as expressed above in recital 166, there are alternative sources of supply in other third countries. The argument should therefore be dismissed.
- (171) On this basis, and in particular the fact that the measures against China did not appear to have had any significant adverse effect on the cooperating users, the Commission concluded that should the measures be maintained, the impact on the economic situation of these operators is likely not to be significant.

4. Interest of suppliers

- (172) Four Union suppliers of raw materials came forward and replied to the questionnaire. Their sales of raw materials to the Union industry represented only a small part of their total turnover. Two of these suppliers contested this conclusion claiming that the disappearance of the Union industry would have a significant impact on their business activity. These suppliers argued that the effect of a potential halt of Union MSG production would have a detrimental effect on their overall business, since the sugar plants cannot avoid producing a certain volume of sugar syrups and molasses, of which the Union industry is the main buyer. If sugar in these forms remains unsold, this would affect the overall efficiency of the plant in question.
- (173) These arguments were however not supported by any evidence and were therefore rejected.

5. Other arguments

- (174) One interested party claimed that the effects of the measures in force against China should be assessed cumulatively with the effects of the measures imposed on imports of MSG from Indonesia.
- (175) The impact of both measures on users was analysed in the context of the availability of alternative sources of supply. This analysis showed that a number of third countries had in fact the potential to export MSG to the Union. These third countries were indeed present on the Union market before Indonesian dumped imports entered the Union in increased quantities.

6. Conclusion on Union interest

- (176) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures against China.

H. ANTI-DUMPING MEASURES

- (177) All 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 submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

- (178) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of MSG originating in China, imposed by Regulation (EC) No 1187/2008 should be maintained.
- (179) 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 Commission. 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*.
- (180) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of monosodium glutamate currently falling within CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1, and manufactured by the companies listed below shall be as follows:

Company	AD duty rate (%)	TARIC additional code
Hebei Meihua MSG Group Co. Ltd, and Tongliao Meihua Bio-Tech Co. Ltd	33,8	A883
Fujian Province Jianyang Wuyi MSG Co. Ltd	36,5	A884
All other companies	39,7	A999

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

Article 2

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

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

Done at Brussels, 21 January 2015.

For the Commission
The President
Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/84**of 21 January 2015****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in Indonesia**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

A. PROCEDURE**1. Provisional Measures**

- (1) The European Commission ('the Commission') imposed as from 22 August 2014 a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia by Implementing Regulation (EU) No 904/2014 ⁽²⁾ ('the provisional Regulation').
- (2) The proceeding was initiated on 29 November 2013 following a complaint lodged on 16 October 2013 by Ajinomoto Foods Europe SAS ('the complainant'), the sole Union producer of monosodium glutamate, thus representing 100 % of the total Union production of monosodium glutamate.
- (3) As set out in recital 20 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2012 to 30 September 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 April 2010 to the end of the investigation period ('the period considered').

2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (5) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.
- (6) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of monosodium glutamate originating in Indonesia and definitively collect the amounts secured by way of provisional duty ('the definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure.
- (7) The comments submitted by the interested parties were considered and taken into account where appropriate.

3. Sampling

- (8) In the absence of comments concerning the method of sampling of unrelated importers, the provisional findings in recitals 7 to 19 of the provisional Regulation are confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (9) As set out in recital 21 of the provisional Regulation, the product concerned is monosodium glutamate ('MSG') originating in Indonesia, currently falling within CN code ex 2922 42 00 ('the product concerned'). MSG is a food additive and mainly used as a flavour enhancer in soups, broths, fish and meat dishes, spice blends and

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Commission Implementing Regulation (EU) No 904/2014 of 20 August 2014 imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia (OJ L 246, 21.8.2014, p. 1).

ready-made foods. It is produced in the form of white, odourless crystals of various sizes. MSG is also used in the chemical industry for non-food applications such as detergents. MSG is available in various packing sizes, ranging from consumer packs of 0,5 g to 1 000 kg bulk bags. Smaller packing sizes are sold via retailers to private consumers, while the larger sizes of 20 kg and more are destined for industrial users. In addition, different purity grades exist. However, there are no differences in the characteristics of monosodium glutamate based on pack size or purity grade.

- (10) In the absence of any comments regarding the product concerned and the like product, the conclusions reached in recitals 21 to 25 of the provisional Regulation are confirmed.

C. DUMPING

1. Normal value

- (11) In the absence of any comments regarding normal value, recitals 26 to 31 of the provisional Regulation are confirmed.

2. Export price

- (12) Both cooperating Indonesian exporting producers reiterated their claims that sales prices to their related companies are at arm's length and that the determination of the export price should therefore be based on the sales price between the mother company in Indonesia and the first related customer, rather than on a constructed export price.
- (13) In support of this claim both exporting producers argued that no evidence was available concerning cross-compensation between products or other cost incurred between the mother company in Indonesia and their related companies. The conclusions in recital 37 of the provisional Regulation should not have been therefore based on these elements.
- (14) One exporting producer claimed, in addition, that its related company in the Union was not an importer but an intermediate who resold the product in the Union before customs clearance. This exporting producer argued that on this basis the conclusions reached in recital 37 of the provisional Regulation, that is that the transfer price between related companies was not at a level that could allow the related importers to make a reasonable profit in the Union, would therefore not be applicable.
- (15) At the outset, it should be noted that the mere fact of association between the exporter and the importer is enough to enable the Commission to treat the actual export prices as unreliable because the existence of association between the exporter and the importer is one of a number of reasons for which the actual export prices may be regarded as unreliable. Due to the association between supplier and importer, prices charged by a supplier to its related company in the Union are transfer prices which are not the result of arm's length negotiations which normally prevail between independent companies. Moreover, it is clear that costs entailed by the activities of a related company and a profit margin such a company achieves effectively reduce the amount received by the exporting producer in as much as they are normally incurred by the importer.
- (16) In addition, in the current case the investigation revealed that the relevant related companies did not realise a sustainable profit margin in the Union. In this respect, it should be first noted that the profit margin of an unrelated cooperating importer could not be used as it was confidential and could thus not be disclosed to competitors. Therefore, a profit margin which was used in a previous proceeding concerning another chemical product manufactured by a similar industry and imported to the Union under similar circumstances as in the present case was used ⁽¹⁾ as a benchmark. This profit margin is the most objective basis available for the purpose of arriving at a satisfactory estimate of an arm's length export price. This reasonable profit margin used was at 5 %. As the profit realised by related companies in the Union is significantly lower than this threshold, and in light of the unsustainable nature of such profit, the transfer price could not be considered as reliable.
- (17) Moreover, positive evidence that cross-compensation or certain costs incurred and normally borne by an importer but paid by any party have indeed taken place between the related companies is not necessarily required. As mentioned above, these costs are always incurred by a related company as soon as such a company is performing selling and importing functions. As a consequence of the association between the related companies, the existence of cross-compensation via other products or such costs cannot be excluded and therefore the transfer prices are unreliable.

⁽¹⁾ Commission Regulation (EU) No 1036/2010 of 15 November 2010 imposing a provisional anti-dumping duty on imports of zeolite A powder originating in Bosnia and Herzegovina (OJ L 298, 16.11.2010, p. 27).

- (18) It is also not relevant whether the related company in the Union is carrying out the full functions of an importer or indeed other functions. The relevant factor is whether the export price at the Community frontier level is reliable. As mentioned above in recital 15 the current investigation revealed that the price levels between related companies did not allow the related companies in the Union to realise a reasonable profit margin. None of the exporters provided any evidence why this profit margin would be inappropriate and therefore the claims made in this regard should be considered as unsubstantiated. The argument that one of these related companies did not perform the functions of an importer in the Union was not warranted as, as mentioned above, it is irrelevant which precise functions the company performed in the Union. Moreover, the fact that the company performed only some functions of an importer is necessarily reflected in the amount of selling, general and administrative ('SG&A') costs of the related companies but certainly not in the profit margin used. Moreover, it should be noted that the fact that certain activities are performed by the related company prior to importation does not mean that the export price may not be constructed on the basis of the resale price to the first independent customer with the necessary allowances being made pursuant to Article 2(9) of the basic Regulation.
- (19) Following final disclosure, the two cooperating Indonesian exporting producers reiterated their claims regarding the determination of the export price. One exporting producer contested the findings set out in recital 15 that the mere fact of an association between the exporter and the importer is enough to enable the Commission to treat actual export prices as unreliable and claimed that this would be against Article 2(9) of the basic Regulation. Moreover, the same exporting producer claimed that the considerations set out in recital 17 that certain costs incurred by a related company as soon as such a company is performing selling and importing functions was not based on the facts of the case. Finally, this exporting producer claimed that the Commission did not address the fact that the levels of the prices to the related company and those to independent customers in the Union were similar.
- (20) The other exporting producer reiterated its claim that its export price to the first independent customer at the Union frontier should be taken into account for the determination of the export price emphasising that the related company only acted as an intermediary and that among others, the customs clearance was performed by the unrelated customers in the Union.
- (21) In reply to these claims it is noted that in accordance with Article 2(9) of the basic Regulation, the Commission considered that, on the basis of the facts of the case, the export prices should be constructed due to the association between the exporters and the related parties. Indeed, the investigation revealed that the relevant related parties did not realise a sustainable profit margin in the Union during the investigation period. In this regard, the function of the related company in the Union is not relevant when determining whether export prices in the present case should be constructed. In addition, as stated in recital 18 above, the fact that the related companies perform only certain functions is not an obstacle to the application of Article 2(9) of the basic Regulation but is reflected in a lower amount of SG&A to be deducted from the price at which the product concerned is first resold to an independent buyer. Finally, it is also noted that the exporting producers did not provide any new factual evidence which could revert these conclusions. Regarding the claim relating to similar price level to related and independent customers in the Union, it should be noted that this claim was addressed in recital 37 of the provisional Regulation. The investigation found that despite similar price levels with the independent customers, the transfer prices between the related companies were not at a level that could allow the related importers to make sustainable profit in the Union. Therefore, these arguments should be rejected.
- (22) The arguments concerning the recourse to constructed export prices in the present investigation should therefore be rejected.
- (23) The same two exporting producers claimed that, should export prices be constructed despite their arguments mentioned in recitals 12 to 14, the reasonable profit margin of 5 % used to construct the export price was overestimated and that the actual profit margin of their related companies should be used instead as prices between the related parties were at the same level as those to independent customers.
- (24) On the basis of the considerations set out in recitals 15 to 18 concerning the reliability of transfer prices and profit margins of the related companies in the Union, this argument should be rejected. In any event, the allowances made for costs incurred in accordance with Article 2(9) of the basic Regulation were based on the relevant companies' own SG&A costs and reflected therefore the activities of these companies, whatever their functions. Consequently, this argument should be rejected.
- (25) One of the above exporting producers claimed that, for specific transactions with a company not related to the exporting producer, the export price should have been based on the actual price paid or payable in accordance with Article 2(8) of the basic Regulation. The Commission found, however, that the sales in question were not

export sales to the Union. On this basis, the transactions concerned were excluded from the determination of the export price. Following final disclosure, the exporting producer contested this exclusion on the basis that the Commission should take into account all sales of the product concerned in the Union produced by the exporting producer. However, all the sales to the independent customer concerned were taken into account for the determination of the export price. Any subsequent transaction from this independent customer have to be disregarded because first they are not export sales within the meaning of Article 2(8) and (9) of the basic Regulation and second, there is a risk of double counting of these sales. On this basis, the exporting producer's claim was rejected.

- (26) In the absence of any other comments regarding the determination of the export price, the conclusions reached in recitals 32 to 38 of the provisional Regulation are confirmed.

3. Comparison

- (27) After provisional disclosure, the two cooperating exporting producers contested that the costs incurred to move the goods from the factory to the warehouse be considered as internal logistic costs thereby not affecting price comparability.
- (28) One of the exporting producers had several distribution warehouses on the domestic market from which MSG was shipped to the final customers. This exporting producer claimed that transport cost from the factory to the warehouses should be considered as domestic freight cost and be deducted from the normal value as no such costs incurred on export sales. The other exporting producer claimed that in some cases the cost to move goods to the warehouse could be linked to a specific invoice and therefore is a direct selling expense and this cost is included in the price charged to the customers, affecting price comparability. It should therefore be deducted from the normal value.
- (29) Warehouses are considered to be part of the premises of an exporting producer and only from the moment a product is in the warehouse it is ready to be sold. The distance of the warehouse from the factory is irrelevant, as well as the fact whether the transport from the factory to the warehouse can be linked to a specific domestic sales transaction as these are costs typically incurred prior to the sale and therefore not a direct selling expense having an effect on price comparability. Therefore, based on Article 2(10)(e) of the basic Regulation the claims in this regard should be rejected.
- (30) After provisional disclosure, the cooperating exporting producer who exported MSG via a related company located outside the Union claimed that its export should not be adjusted under Article 2(10)(i) of the basic Regulation, as the related company outside the Union did not act as an agent and did not work on a commission basis. The exporting producer further claimed that the mark-up for the related company in question, which served as the basis for the adjustment made, does not affect price comparability because when constructing the export price, the Commission already deducted a reasonable profit margin at the level of the related company in the Union which would cover all profit margins relating to all inter-company transactions. The exporting producer claimed further that if anything, only the SG&A costs of the related company outside the Union should be deducted from the constructed export price.
- (31) The investigation established that the related company located outside the Union kept a mark-up for every export sale to the Union. The mark-up affected price comparability, as it was only kept on export sales and not on sales in the domestic market. The claim that the profit margin of the related company was already accounted for when constructing the export price in accordance with Article 2(9) of the basic Regulation could not be accepted. This is because adjustments under Article 2(9) and Article 2(10) of the basic Regulation have different objectives, are separate and distinct from each other and governed by different substantive rules. Article 2(9) of the basic Regulation aims to establish a reliable export price while Article 2(10) of the basic Regulation aims to ensure comparability of the export price and the normal value. Once the export price has been duly established pursuant to paragraphs (8) or (9) of Article 2 of the basic Regulation, any further adjustments under its Article 2(10) no longer concern the export price as such and are in no way meant to determine the normal value and export price as such. Therefore, the cooperating exporting producer overlooks the purpose of the adjustment under Article 2(10)(i) of the basic Regulation, which is to render the price comparable to the normal value and to not determine the export price as such. Therefore, the reasonable profit margin deducted under Article 2(9) of the basic Regulation does not cover any possible mark-up realised in the same sales channel. As regards the amount to be adjusted, the adjustment made reflects the mark-up actually charged between the related companies

and thus actually affecting prices and price comparability. There is thus no reason to replace it with another theoretical amount. Finally, the Commission is entitled to have regard to the fact that the related company located outside the Union is receiving payment (in the form of the mark-up retained by the related company on sales which it invoices to customers in the Union). For the related company to qualify as a firm subject to corporate tax in the country located outside the Union (which has a considerably lower corporate tax rate than in Indonesia) on those payments, it must be carrying out a genuine economic activity there. As such, the Indonesian exporting producer cannot simultaneously seek to ensure the favourable fiscal treatment it obtains from the presence of the related company in the country outside the Union and the latter's economic activity in that jurisdiction while simultaneously contending in the context of anti-dumping proceedings that the related company carries out no economic activities. Therefore, these claims should be rejected.

- (32) After final disclosure, the exporting producer reiterated its claims regarding the mark-up adjustment of its related company and contested that tax considerations should be placed in the context of an anti-dumping investigation. The exporting producer further claimed that while it does not contest that its related company had commercial activities in the third country concerned, these were limited regarding the product concerned. Moreover, it was reiterated that the related company's activities were clearly different from those of an agent and did not receive any commission from the exporting producer regarding the sales to the Union. Finally, the exporting producer reiterated that when constructing the export price, the Commission already deducted a reasonable profit margin at the level of the related company in the Union which would cover all profit margins relating to all inter-company transactions. In this regard, the exporting producer alleged that in case of successive sales between related companies, it would be indeed the Commission's practice to deduct only the profit margin of the related company directly selling to the independent customer in the Union but not the profit margins from the other related companies on the same sales channel.
- (33) It is noted that in the present case the existence of a separate tax entity can serve as an indication of significant economic activities carried out by the related party located outside the Union as such activities are required under domestic tax law. In the present case and as explained in recital 31 the Commission took into account the fact that the exporting producer concerned has a related party outside the Union with a significant economic activity and the fact that the related party outside the Union deducted a mark-up for each sales transaction of the product concerned between the related parties, thus affecting price comparability for export of MSG to the Union. Moreover, as mentioned in recital 31 the amount on which the adjustment was based reflected the actual verified mark-up charged between the related companies and therefore also reflected precisely the activities of the related company. Therefore, these arguments should be rejected.
- (34) After provisional disclosure, the same exporting producer objected to the adjustment made for commissions paid on the export price claiming that they were not direct selling expenses, but paid on a monthly basis, thereby not linked to a specific sales transaction and not affecting price comparability. This exporting producer alleged that the commissions paid only had an effect between the related companies and that therefore Article 2(10)(i) of the basic Regulation would not be applicable. The exporting producer also argued that, based on the assumption that they were considered as a single economic entity with its related company, any transfer of money within this economic entity would not be an expense or revenue for this economic entity.
- (35) The investigation established that according to a 'commission agreement' between the exporting producer and its related company, commissions became due when the exporting producer in Indonesia sold directly to independent customers in the Union market (instead of via its related company). The commission paid was directly linked to the net sales value. As a result, the direct relationship between the sale and the commission paid affected price comparability under Article 2(10)(i) of the basic Regulation.
- (36) Finally, the assumption that the related companies were considered as a single economic entity is inaccurate. The investigation established that the exporting producer had itself a fully functional export department and there was no duplication of export-related tasks between the exporting producer and the related importer. Therefore the related company cannot be considered as an internal sales department and these arguments should be rejected.
- (37) Alternatively, in the event export prices would be adjusted based on Article 2(10)(i) of the basic Regulation, the exporting producer claimed that the amount of commissions paid should also be excluded from the SG&A cost of the related company which were deducted from the resale price to the first independent customer in the Union in accordance with Article 2(9) of the basic Regulation. However, under Article 2(9) of the basic Regulation, when constructing a reliable export price all costs incurred between importation and resale should be

deducted from the resale price to the first independent customer in the Union and there is no legal basis to compensate such costs by any income as requested by the exporting producer. Moreover, the SG&A costs of the related company in the Union pertained to a different sales channel (i.e. via the related customer) than the income from commission which pertained to the sales channel to unrelated customers. Finally, the adjustment for mark-up under Article 2(10) of the basic Regulation and the determination of the export price under paragraphs (8) or (9) of the same Article 2 have different purposes and represent two different stages of the dumping analysis.

- (38) Following final disclosure, the exporting producer reiterated its claims regarding the commission described in recital 35 and argued that it would be inconsistent to consider transfer prices between related parties as unreliable on the one hand and to adjust the export price based on a commission agreement between the related parties on the other hand. The exporting producer further contested the findings laid out in recital 35 that the commission paid was directly linked to the net sales value and that there was therefore a direct relationship between the sale and the commission paid thus affecting price comparability, as it was paid once per month and the details of calculation of the commission were not disclosed between parties.
- (39) The exporting producer did neither substantiate further the claims nor provide any additional factual information supporting its statement that could revert the abovementioned conclusions. Therefore, the conclusions set out in recitals 35 to 37 are confirmed.
- (40) After provisional disclosure, one exporting producer claimed an adjustment should be made on the normal value for promotional and incentive costs. The exporting producer argued that these costs did not incur on export sales to the Union while they had a direct impact on the domestic sales price. In support of this argument, the exporting producer claimed that at least in certain cases these costs could be traced to specific domestic sales transactions. Finally, this exporting producer argued that promotional and incentive costs reflected the different levels of trade on the domestic market (where MSG was sold directly to retailers) on the one hand and sales to the Union (which were made to traders and distributors) on the other hand.
- (41) The investigation showed that promotional and incentive costs were mostly tied to client accounts and not to specific sales transactions. Incentives and promotional costs are incurred irrespective of whether the product was finally sold. In addition, the investigation revealed that the costs claimed to be linked to a specific sales transaction were in fact not reflected in the price. On this basis it was concluded that promotional and incentive costs did not affect prices and price comparability and that this claim should be rejected.
- (42) One exporting producer claimed that MSG of large size crystals (mesh size) had different physical characteristics and was sold at a different level of trade when compared to MSG exported to the Union. The exporting producer argued therefore that MSG of large size crystals should be excluded from the determination of the normal value.
- (43) The investigation established that several sizes of mesh existed: powder, fine, small, regular, and large. All mesh sizes are included in the product scope, as they have the same basic characteristics, end uses and are interchangeable. Therefore all product types should be included in the determination of the normal value. Furthermore, the investigation established that different mesh sizes were not cost drivers.
- (44) The investigation further showed that customers on the domestic market who bought large size mesh MSG also bought other mesh sizes. There was no evidence that the price difference observed for large size mesh MSG was linked to physical characteristics or to the level of trade since it was possible to link this price difference to other elements such as customers and volumes purchased. Moreover, the exporting producer did not quantify the alleged difference in physical characteristics. Therefore the arguments made in this regard should be rejected.
- (45) In the absence of any other comments regarding comparison, the conclusions reached in recitals 39 to 46 of the provisional Regulation are confirmed.

4. Dumping margins

- (46) In the absence of any comments, the methodology used for calculating the dumping margins, as set out in recitals 47 to 48 of the provisional Regulation, is confirmed.

- (47) Taking into account the exclusion of certain transactions from the determination of the export price of one exporting producer as described in recital 25, and in the absence of any further comments, the definitive dumping margins, expressed as a percentage of the CIF (cost, insurance, freight) Union frontier price, duty unpaid, are as follows:

Company	Dumping margin
PT. Cheil Jedang Indonesia	7,2 %
PT. Miwon Indonesia	13,3 %
All other companies	28,4 %

D. INJURY

1. Definition of the Union industry and Union production

- (48) Interested parties reiterated that the Commission should exclude the cooperating Union producer from the Union industry due to the non-cooperation of an exporting producer in Indonesia related to it. It was argued that the injury picture may be affected by this relationship.
- (49) The parties concerned did not bring forward any new information or evidence in this respect. In particular, they did not substantiate their claim as to what extent the injury picture could have been affected. As set out in recital 53 of the provisional Regulation, in this case there is no need to exclude the cooperating Union producer from the Union industry despite its relationship with the non-cooperating exporting producer in Indonesia because this sole Union producer fully cooperated with the Commission during the investigation and was subject to a full verification. Hence, the failure by an Indonesian exporting producer to cooperate in the investigation did not have any impact on the running of the investigation. Therefore, this argument should be rejected.
- (50) After disclosure, the parties concerned reiterated their argument that the cooperating Union producer should be excluded from the Union industry due to the non-cooperation of an exporting producer in Indonesia related to it. These parties argued that the non-cooperation of the related exporting producer in Indonesia could have affected the injury picture of the Union industry. In substance, they argued that prices of MSG would be negotiated on a global worldwide basis and that due to the relationship there was a risk of cross compensation consisting in lowering prices to customers in the Union market and charging higher prices in a third country market. By not cooperating with the investigation, the related exporting producer in Indonesia would deprive the Commission from the possibility to check whether cross compensation took place.
- (51) The parties concerned limited themselves to raise the argument without however substantiating it with any actual evidence. In any event, as regards prices charged by the Union producer to its customers in the Union market, which were verified during the investigation, there was no indication that these prices were lowered for reasons of cross compensation. To the contrary, as mentioned in recital 100 of the provisional Regulation, imports prices from Indonesia decreased by 8 % over the period considered which exerted a price pressure on the Union market so that the Union industry could not raise its prices in line with the increase in its costs. Therefore the Union industry as a whole was forced to decrease its prices over the period considered. The argument was therefore rejected.
- (52) In the absence of any other comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals 50 and 51 of the provisional Regulation were confirmed.

2. Union consumption

- (53) After provisional disclosure, one interested party claimed that the description of the development of the Union consumption in recital 55 of the provisional Regulation was incomplete. In particular, this party argued that the decrease in consumption from FY2010/2011 to FY2011/2012 was due to the fact that imports from Vietnam were replaced by cheaper imports from Indonesia and that therefore, customers in the Union, no longer expecting price increases, sold their accumulated stocks with the effect that the overall sales volume in the Union decreased.

- (54) The circumstances described by the interested party concerned did not contradict as such the conclusions set out in recital 55 of the provisional Regulation that the decrease in consumption between FY2010/2011 and FY2011/2012 was mainly due to a decrease in the sales of the Union industry on the Union market. In specific, between FY2010/2011 and FY2011/2012, both the sales of the Union industry and the imports from third countries decreased. However, while total imports only decreased by 2 % (see recital 107 of the provisional Regulation) sales volume of the Union industry dropped by 16 % (recital 72 of the provisional Regulation). The decrease in sales volume from the Union industry coincided with a decrease in the Union industry's production volume as shown in the table in recital 68 of the provisional Regulation.
- (55) However, as shown in the table in recital 104 of the provisional Regulation, imports from Vietnam between FY2010/2011 and FY2011/2012 increased, in contrast to what was claimed by the interested party concerned, while imports from other third countries, such as Brazil dropped by almost 60 % during the same period. The assumption that imports from Vietnam were replaced by imports from Indonesia is therefore not confirmed by the findings.
- (56) Moreover, the party concerned did not substantiate its claim that users had accumulated stocks prior to the period considered and that they sold these in increased quantities when imports from Indonesia increased. These allegations could also not be confirmed during the investigation. The interested party's claims in this respect should therefore be rejected.
- (57) In the absence of any other comments with respect to Union consumption, the conclusions set out in recitals 52 to 55 of the provisional Regulation were confirmed.

3. Imports from the country concerned

- (58) In the absence of any comments concerning the imports from the country concerned, the conclusions set out in recitals 56 to 66 of the provisional Regulation were confirmed.

4. Economic situation of the Union industry

- (59) One interested party claimed that although production volume and capacity utilisation decreased during the period considered this was only a consequence of a substantial increase before that period. This party claimed that, therefore, the decrease in the period considered was not to be considered as a negative development and would not show injury. However, only trends established during the period considered are normally taken into account when assessing the development of the injury indicators. In the present case there was no valid reason to deviate from this practice and to assess the developments of the injury indicators over an extended period. This argument should therefore be rejected.
- (60) The same interested party alleged that the possible inclusion of by-products may have inflated the costs of production of the Union industry which would also have had an impact on profitability. This allegation was incorrect. The Union industry's cost of production, including by-products were subject to verification and the completeness and correctness of costs have been satisfactorily established. This claim should therefore be rejected.
- (61) In the absence of any other comments concerning the development of the injury indicators, the conclusions set out in recitals 67 to 93 of the provisional Regulation are confirmed.

5. Conclusion on injury

- (62) One interested party claimed that not all injury indicators showed a negative trend and that the existence of a negative trend in only a few injury indicators is not sufficient to conclude that the Union industry suffered material injury.
- (63) Under Article 3(5) of the basic Regulation not all injury indicators must have a negative trend to conclude on the existence of injury. In addition, the claim was incorrect as the investigation has shown that almost all injury indicators showed a negative trend during the period considered. The claims should therefore be rejected.

- (64) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals 94 to 96 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation were confirmed.

E. CAUSATION

1. Effect of the dumped imports

- (65) One party claimed that given the findings set out in recital 66 of the provisional Regulation, that is that the weighted average undercutting margin of Indonesian imports was between 0 % and 5 % during the investigation period, these imports could not have caused the injury suffered by the Union industry as they could not have exerted any price pressure on the Union market.
- (66) This allegation was not supported by the facts of the investigation. As outlined in recitals 99 and 100 of the provisional Regulation, dumped imports from Indonesia increased substantially during the period considered, both in absolute terms and in terms of market share. This increase coincided with a decrease in sales volume and market share from the Union industry. The imports in such substantial quantities forced the Union industry to lower its sales prices in order to align them with the price levels of the Indonesian imports. As a consequence the undercutting margins found were indeed low. However, at the same time the Union industry was not able to set their prices in line with the cost increase which led to a significant decrease of its profitability during the period considered. This is confirmed by the magnitude of the injury margins found which range between 24,9 % and 47,0 % as mentioned below in recital 125. Therefore, this argument should be rejected.
- (67) In the absence of any other comments as regard the effects of the dumped imports, the conclusions set out in recitals 98 to 101 of the provisional Regulation were confirmed.

2. Effect of other factors

2.1. Effect of imports from China

- (68) Two interested parties alleged that, contrary to the conclusions reached in recital 103 of the provisional Regulation, Chinese imports had a negative effect on the Union industry's sales prices and contributed therefore to the material injury.
- (69) In absolute terms, the volume of Chinese imports remained at low levels during the period considered as mentioned in recital 102 of the provisional Regulation. Furthermore, when taking into consideration the anti-dumping duties, import prices were at higher levels than the Union industry's sales prices and also higher than the Indonesian import prices. The allegation that Chinese imports contributed to the material injury suffered by the Union industry was, in view of the import volumes and import prices levels from China, rejected.
- (70) The conclusions reached in recitals 102 and 103 of the provisional Regulation were therefore confirmed.

2.2. Imports from other third countries

- (71) In the absence of any comments with regard to the effect of imports from other third countries, the conclusions reached in recitals 104 to 108 of the provisional Regulation were confirmed.

2.3. Development of Union consumption

- (72) Following the provisional disclosure, one interested party claimed that the decrease in sales of the Union industry coincided with the decrease in Union consumption which was therefore the main cause of the material injury suffered by the Union industry.
- (73) As set out in recital 109 of the provisional Regulation, the decrease in consumption was only 2 % while the decrease in sales of the Union industry was 17 % during the period considered. Therefore, the decrease in consumption cannot explain the much higher decrease in sales volume. In addition, imports from Indonesia increased despite the decreasing consumption. This claim should therefore be rejected.

- (74) In the absence of any other comment in this regard, the conclusions reached in recital 109 of the provisional Regulation were confirmed.

2.4. *Export performance of the Union industry*

- (75) In the absence of any comments regarding the effect of the Union industry's export performance, the conclusions reached in recitals 110 to 112 were confirmed.

2.5. *Alleged inefficiencies of the Union industry*

- (76) Following provisional disclosure, two parties reiterated that the injury suffered by the Union industry was due to the alleged inefficiencies inherent to the Union industry's production process including the inefficient use of resources by the Union industry.
- (77) These parties failed to specify the nature of the alleged inefficiencies. As laid down in recital 113 of the provisional Regulation, the investigation did not bring into light any potential inefficiency of the Union industry and the claims in this regard were rejected.
- (78) Following disclosure, an interested party reiterated its claims regarding the inefficiencies of the Union Industry. In this respect the party concerned alleged that the maintenance shutdowns, the integration of its former affiliated company, the increase in labour cost and upcoming important investments and its effect on the situation of the Union industry were not investigated.
- (79) In contrast to what was claimed, the abovementioned factors were indeed analysed by the Commission as set out in recitals 94 to 96 (maintenance shutdowns), recitals 89 and 90 (integration of the former affiliated company), recital 91 (labour costs) and recitals 82 and 83 (investments) below but did not point to any potential inefficiency of the Union industry. This claim was therefore rejected.
- (80) In the absence of any other comments concerning the above, the conclusions reached in recital 113 of the provisional Regulation were confirmed.

2.6. *The financial crisis*

- (81) In the absence of any comments regarding the effect of the financial crisis, the conclusions reached in recital 114 of the provisional Regulation were confirmed.

2.7. *Investments and EU regulatory safety requirements*

- (82) Following provisional disclosure, one interested party claimed that the high level of investments made by the Union industry caused the injury. This party argued that it would be irrelevant whether investments were necessary, as only their effect on the situation of the Union industry should be analysed and in particular their effects on the profitability of the Union industry.
- (83) This party did not explain to what extent the investments made by the Union industry could have had an impact on their profitability. As described in recital 116 of the provisional Regulation the investment made by the Union industry were based on reasonable business decisions and could not be considered as undue. Moreover, investment costs are depreciated over time and as such did not have any significant impact on the Union industry's profitability. The interested party's claims in this regard were therefore rejected.
- (84) Following disclosure, this interested party reiterated its claims that the injury was caused by the regulatory safety requirements and the high level of investments made by the Union industry to address such requirements. They also reiterated that it would be irrelevant that these decisions were reasonable business decisions and that the analysis should only have taken into consideration the effect on the profitability. In this regard it was finally claimed that the fact that investment costs were depreciated over time was irrelevant.
- (85) In contrast to what was claimed, the assessment took into consideration the effect of the investments made on the Union industry's profitability. The depreciation of investment costs is a cost factor which is relevant in the establishment of profitability and had to be therefore taken into consideration. This argument was therefore rejected.

- (86) In the absence of any other comments with regard to the effects of investments and EU regulatory safety requirements, the conclusions in recitals 115 and 116 of the provisional Regulation were confirmed.

2.8. *Costs of raw materials and other costs*

2.8.1. *Cost of production*

- (87) One interested party claimed that the profitability decreased due to the parallel increase in the cost of production in general. Therefore the injury is caused by this increase in cost of production rather than by the imports from Indonesia.
- (88) As set out in recital 100 of the provisional Regulation, the cost of production increase could not be reflected in the sales price due to the price pressure exerted by Indonesian imports of MSG. The decreasing profitability was therefore mainly due to the increase in dumped imports and this argument should be rejected.

2.8.2. *Integration of a former affiliated company*

- (89) The same interested party claimed that the effects of the integration of a former affiliated company on the profitability of the Union industry was insufficiently analysed. This party alleged that this integration had a negative impact on profitability and therefore caused the injury suffered by the Union industry.
- (90) The Commission further investigated the effects of the integration of a former affiliated company on the relevant injury indicators such as cost of production, employment, investment and profitability. It is noted that the affiliated company in question was only involved in selling the product concerned. It was found that the Union industry was profitable during the financial year in which the integration took place (FY2011/2012). The following financial year (FY2012/2013), the profitability turned negative. This coincided, however, with an increase of imports volume from Indonesia which in fact doubled during the same year. On this basis, the analysis did not confirm that the integration of the former affiliated company had a significant negative impact on profitability and the claims made in this regard should therefore be rejected.

2.8.3. *Labour costs*

- (91) Several parties claimed that the increase in labour costs caused the injury suffered by the Union industry. While the increase in overall cost was also due to the increase in labour cost during the period considered, the investigation showed that the impact of the increase of the labour cost on the total cost of production was not significant (Precise figure cannot be given for confidentiality reasons). On this basis the increase in labour cost could not be considered as having caused the material injury suffered by the Union industry and the claims made in this regard should be rejected.
- (92) Following disclosure, an interested party claimed that labour cost should not be assessed in isolation, but the impact of the increase of various cost elements as a whole should have been taken into consideration.
- (93) As mentioned in recitals 87 and 88, the increase of the cost of production as a whole was assessed by the Commission and therefore the argument in this regard was rejected.

2.8.4. *Maintenance shutdowns*

- (94) Following provisional disclosure one interested party claimed that the decrease in production and sales was attributable to the maintenance shutdowns of the Union industry which, in turn, caused the decrease in sales volume. Therefore the decrease in production and sales volume of the Union industry should not be attributed to the imports from Indonesia.
- (95) The investigation showed that the decrease in production between FY2012/2013 and the investigation period coincided indeed with a prolonged maintenance shutdown of the production, which was, however, only performed in an attempt to reduce the high inventories caused by the decreasing sales in the prior years within the period considered.
- (96) Therefore, the decrease in production and sales was a consequence of the increase of dumped imports of MSG from Indonesia and this argument should be rejected.

- (97) Following disclosure, another interested party reiterated its claim that the injury was attributable to the maintenance shutdowns and that it was irrelevant whether such shutdowns were necessary or not. The party argued that only the impact of these shutdowns on the Union industry's profitability should have been taken into consideration.
- (98) As mentioned in recitals 95 and 96, the maintenance shutdowns were the consequence of decreasing sales which themselves were a consequence of the increase in dumped imports from Indonesia. Therefore, imports from Indonesia have indeed caused the maintenance shutdowns which can therefore not be assessed in isolation nor be considered as having broken the causal link between these imports and the injury suffered. The argument of the interested party concerned was therefore rejected.

2.8.5. Depreciation of the Indonesian Rupiah

- (99) Following provisional disclosure one interested party claimed that the depreciation of the Indonesian Rupiah between January 2012 and January 2014 gave the exporting producers a comparative advantage unrelated to their pricing decisions. This party claimed that the impact of this factor should be investigated.
- (100) In this context, it is recalled that the likely effect of the dumped imports on the Union industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Union industry's sales prices are compared, and export prices used for the injury calculations may sometimes need to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that in this case the exchange rate cannot be considered a factor causing injury to the Union industry because it is inseparable from the imports themselves. The argument should therefore be rejected.

2.8.6. Conclusions

- (101) In the absence of any other comments with regards to the effect of costs of raw materials and other costs, the conclusions reached in recitals 117 to 120 of the provisional Regulation were confirmed.

3. Conclusion on causation

- (102) In the absence of any other comments with regard to causation, the conclusions reached in recitals 121 to 125 of the provisional Regulation were confirmed.

F. UNION INTEREST

1. Interest of the Union industry

- (103) In the absence of any comments regarding the interest of the Union industry, the recitals 127 to 129 of the provisional Regulation were confirmed.

2. Interest of importers/traders

- (104) In the absence of any comments regarding the interest of unrelated importers and traders, recitals 130 to 132 of the provisional Regulation were confirmed.

3. Interest of users

- (105) Following provisional disclosure, one user reiterated its claim, described in recital 140 of the provisional Regulation, according to which Union consumption of MSG is expected to increase significantly, in particular due to an EU ban on phosphates and other phosphorus compounds which will allegedly be replaced by MSG used for the non-food sector. This user further argued that the capacity of the Union industry would be insufficient to supply the increasing demand in the Union market. This party also claimed that an increase in consumption would benefit the Union industry as it would be able to increase its sales volume. The same user reiterated its claim that there would not be enough alternative sources of supply, in particular because producers in other third countries were also part of the same company group as the Union industry and are therefore not supplying the Union market.

- (106) As outlined in recital 141 of the provisional Regulation, it is difficult to predict how the new regulatory framework in the Union concerning the ban of phosphates and phosphorus compounds will impact the Union industry. In particular, the party concerned did not provide any information or evidence whether and to what extent this event will boost the demand of MSG in the Union.
- (107) The investigation has shown that the Union industry had spare capacity available and would be able to increase its production volume and supply an increased demand in the Union market at least partly. Total Union capacity exceeded the total consumption in the Union during the investigation period.
- (108) Regarding alternative sources of supply, and as already mentioned in recital 147 of the provisional Regulation, the investigation revealed that there was production of MSG in several third countries. At the beginning of the period considered, i.e. in FY2010/2011 the market share of imports from other third countries (e.g. Brazil, Vietnam and Korea) was substantial and only decreased when low priced imports from Indonesia increased. The investigation also revealed that several third countries had suppliers who did not belong to the same group as the Union industry. Imports from other third countries could resume should the level playing field in the Union market be restored.
- (109) The claims made in this regard should therefore be rejected.
- (110) Further to final disclosure, the same interested party reiterated its claim that demand of MSG would significantly increase in the Union due to the future ban of phosphates and that the Union industry will not be able to supply this increasing demand in the Union. However, the party in question did not provide any new information or concrete evidence and therefore this claim was rejected.
- (111) The same interested party also argued after final disclosure that the Commission did not take into account the percentage that MSG represents in the total costs of detergents. However, the party concerned did not submit any new element that would contradict the findings expressed in recitals 138 and 139 of the provisional Regulation according to which the possible impact of the measures on this company would be limited. The argument was therefore rejected.
- (112) The same interested party finally argued that additional costs for non-food industry and users of the non-food products were disregarded. However it did not submit any new information or evidence and therefore this claim was rejected.
- (113) Another user claimed that the impact on users of measures against Indonesia and China should be assessed collectively.
- (114) The impact of both measures on users was analysed in particular in the context of the availability of alternative sources of supply in recital 147 of the provisional Regulation. As mentioned in recital 108 this analysis showed that a number of third countries had the potential to export MSG to the Union. These third countries were present on the Union market before Indonesian dumped imports entered the Union in increased quantities.
- (115) It was claimed that users are unable to pass on the additional costs of an anti-dumping duty to the final consumer, given the high competitiveness on the Union finished food product market.
- (116) As mentioned in recitals 135 to 137 of the provisional Regulation, regarding the food and beverage sector MSG only represented around 5 % of the total cost of the products incorporating MSG by the cooperating companies. These companies were found to be profitable. The interested party did not provide any information which would have contradicted these findings. Therefore, the conclusions set out in recital 136 of the provisional Regulation, that measures would only have a limited impact on these companies were confirmed and the claim made in this regard should be rejected.

4. Interest of raw materials suppliers

- (117) Further to the provisional disclosure, two suppliers contested the conclusion described in recital 143 of the provisional Regulation claiming that the disappearance of the Union industry would have a significant impact on their business activity. These suppliers argued that the effect of a potential halt of the Union industry's MSG production would have a detrimental effect on their overall business, since the sugar plants cannot avoid producing a certain volume of sugar syrups and molasses, of which the Union industry is the main buyer. If sugar in these forms remains unsold, this would affect the overall efficiency of the plant in question.

- (118) These claims were however not substantiated and could therefore not be taken into account.

5. Other arguments

- (119) Subsequent to the provisional disclosure, one interested party reiterated its comments on the alleged dominant position of the Union industry, claiming that by imposing measures on MSG, the Union industry would have a comparative advantage on the Union market. However, no new evidence was adduced to support these claims. Therefore the conclusions reached in recital 145 of the provisional Regulation were confirmed and the claim made in this regard should be rejected.

6. Conclusion on Union interest

- (120) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals 126 to 148 of the provisional Regulation were confirmed.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level (Injury margin)

- (121) Following provisional disclosure one interested party contested the target profit used in order to determine the injury elimination level as set out in recital 151 of the provisional Regulation. This party argued that a pre-tax profit margin of 3 %-5 % would be a reasonable and market-related profit level based on the pre-tax net profit margin of MSG producers in two Asian countries realised in 2013.
- (122) The profit margin used to establish the injury elimination level corresponded to the profit margin the Union industry could reasonably expect to achieve under normal conditions of competition. As mentioned in recital 151 of the provisional Regulation, dumped imports from Indonesia only started to produce effects during the third year of the period considered. Therefore it was considered reasonable to establish the profit margin by reference to the first two years of the period considered.
- (123) In the absence of any other comments regarding the injury elimination level, the conclusions reached in recitals 150 to 152 of the provisional Regulation were confirmed.

2. Definitive measures

- (124) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the dumping margins, in accordance with the lesser duty rule. In this case the individual duty rate of one exporting producer has been revised following provisional disclosure, as certain transactions were excluded from the determination of its export price.
- (125) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Indonesia	PT. Cheil Jedang Indonesia	7,2	(24,9-40,2)	7,2
Indonesia	PT. Miwon Indonesia	13,3	(27,9-43,6)	13,3
Indonesia	All other companies	28,4	(31,4-47,0)	28,4

- (126) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imported product concerned produced by any other company not specifically mentioned with its name and address in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

- (127) 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 Commission ⁽¹⁾. 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*.
- (128) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in the Annex. Imports not accompanied by that invoice will be subject to the anti-dumping duty applicable to 'all other companies'.
- (129) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies will apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

3. Definitive collection of the provisional duties

- (130) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected.
- (131) The Committee established by Article 15(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of monosodium glutamate, currently falling within CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in Indonesia.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed in the table shall be as follows:

Company	Definitive anti-dumping duty (%)	TARIC additional code
PT. Cheil Jedang Indonesia	7,2	B961
PT. Miwon Indonesia	13,3	B962
All other companies	28,4	B999

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex. If no such invoice is presented, the duty applicable to 'All other companies' shall apply.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Implementing Regulation (EU) No 904/2014 shall be definitively collected.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, BELGIUM.

Article 3

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

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

Done at Brussels, 21 January 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

- the name and function of the official of the entity issuing the commercial invoice,
- the following declaration:

‘I, the undersigned, certify that the (volume) of monosodium glutamate sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in Indonesia. I declare that the information provided in this invoice is complete and correct.’

Date and signature

COMMISSION IMPLEMENTING REGULATION (EU) 2015/85
of 21 January 2015
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 21 January 2015.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code (1)	Standard import value
0702 00 00	EG	285,0
	IL	160,5
	MA	126,0
	TR	157,8
	ZZ	182,3
0707 00 05	JO	241,9
	MA	66,8
	TR	179,2
	ZZ	162,6
0709 91 00	EG	119,3
	ZZ	119,3
0709 93 10	MA	235,4
	TR	179,6
	ZZ	207,5
0805 10 20	EG	50,2
	MA	67,7
	TN	52,0
	TR	64,8
	ZA	97,5
	ZZ	66,4
0805 20 10	IL	141,6
	MA	88,9
	ZZ	115,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	115,2
	JM	118,0
	KR	153,2
	MA	143,8
	TR	114,1
	ZZ	128,9
	TR	65,2
	ZZ	65,2
0808 10 80	BR	65,4
	CL	87,7
	MK	24,4
	US	185,5
	ZZ	90,8

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0808 30 90	CL	265,9
	CN	92,1
	US	138,7
	ZZ	165,6

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/86**of 21 January 2015****fixing the allocation coefficient to be applied to the quantities on which applications for import licences and applications for import rights lodged from 1 to 7 January 2015 are based under the tariff quotas opened by Regulation (EC) No 616/2007 for poultrymeat**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(1) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 616/2007 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products originating in Brazil, Thailand and other third countries.
- (2) The quantities on which applications for import licences lodged from 1 to 7 January 2015 for the sub-period from 1 April to 30 June 2015 are based relate, for some quotas, to quantities exceeding those available. The extent to which import licences may be issued should therefore be determined by fixing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (3) The quantities on which applications for import rights lodged from 1 to 7 January 2015 for the sub-period from 1 April to 30 June 2015 are based relate, for some quotas, to quantities exceeding those available. The extent to which import rights may be issued should therefore be determined by fixing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 6(3) in conjunction with Article 7(2) of Commission Regulation (EC) No 1301/2006.
- (4) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities on which applications for import licences lodged pursuant to Regulation (EC) No 616/2007 for the sub-period from 1 April to 30 June 2015 are based shall be multiplied by the allocation coefficient set out in part A of the Annex hereto.
2. The quantities on which applications for import rights lodged pursuant to Regulation (EC) No 616/2007 for the sub-period from 1 April to 30 June 2015 are based shall be multiplied by the allocation coefficient set out in part B of the Annex hereto.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas in the sector of poultrymeat originating in Brazil, Thailand and other third countries (OJ L 142, 5.6.2007, p. 3).

⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

Article 2

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

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

Done at Brussels, 21 January 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

ANNEX

PART A

Group No	Order No	Allocation coefficient — applications lodged for the sub-period from 1 April to 30 June 2015 (%)
1	09.4211	0,401561
2	09.4212	0,975198
4A	09.4214	—
	09.4251	0,954412
	09.4252	—
6A	09.4216	0,449999
	09.4260	0,997014
7	09.4217	—
8	09.4218	—

PART B

Group No	Order No	Allocation coefficient — applications lodged for the sub-period from 1 April to 30 June 2015 (%)
5A	09.4215	0,661893
	09.4254	—
	09.4255	—
	09.4256	—

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2015/87

of 21 January 2015

accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 8 thereof,

After consulting the Committee established by Article 15(1) of the basic Regulation,

Whereas:

1. PROCEDURE

- (1) On 30 November 2013, the European Commission ('the Commission') announced by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an expiry review and of partial interim reviews ('reviews') of the anti-dumping measures applicable to imports into the Union of citric acid originating in the People's Republic of China ('PRC').
- (2) The definitive findings and conclusions of the reviews are set out in Commission Implementing Regulation (EU) 2015/82 ⁽³⁾ imposing a definitive anti-dumping duty on imports of citric acid originating in the PRC following an expiry review pursuant to Article 11(2) of the basic Regulation and of partial interim reviews pursuant to Article 11(3) of the basic Regulation.
- (3) It is noted that the measures in force ⁽⁴⁾ have the form of undertakings for five exporting producers including a group of exporting producers which were accepted by the Commission Decision 2008/899/EC ⁽⁵⁾ ('undertakings currently in force').

2. UNDERTAKINGS

- (4) Prior to the adoption of definitive anti-dumping measures, the same five cooperating exporting producers in the PRC who are parties to the undertakings currently in force mentioned in recital 3 above, namely COFCO Biochemical (Anhui), Jiangsu Guoxin Union Energy (previously Yixing-Union Biochemical), the RZBC group, TTCA and Weifang Ensign Industry, offered new price undertakings in accordance with Article 8 of the basic Regulation with the purpose of replacing the undertakings currently in force.
- (5) As in the undertakings currently in force, in these revised undertaking offers, the exporting producers have offered to sell citric acid at or above price levels which eliminate the revised injurious effects of dumping.
- (6) In addition, the offers provide for the indexation of the minimum import prices given that the prices of citric acid varied significantly before, during and after the investigation period. The indexation is made in accordance with public quotations of corn in the EU, the main raw material normally used in the production of citric acid.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 351, 30.11.2013, p. 27.

⁽³⁾ Council Regulation (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (See page 8 of this Official Journal).

⁽⁴⁾ Council Regulation (EC) No 1193/2008 of 1 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 1).

⁽⁵⁾ Commission Decision 2008/899/EC of 2 December 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 62).

- (7) Moreover, the exporting producers, in order to reduce the risk of price violations by means of cross-compensation of prices, offered to report all non-EU sales to those customers whose organisation or structure extends beyond the EU, should the exporting producer sell to such customers in the EU.
- (8) The exporting producers will also provide the Commission with regular and detailed information concerning their exports to the EU, meaning that the undertakings can be monitored effectively by the Commission. Furthermore, the sales structure of these companies is such that the Commission considers the risk of circumventing the agreed undertakings to be limited.
- (9) It is noted also that the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters ('CCCMC') is joining the five companies mentioned in recital 4, and that therefore the CCCMC will play also an active role in the monitoring of the undertakings.
- (10) In view of this, the undertakings offered by the exporting producers and CCCMC are acceptable.
- (11) In order to enable the Commission to monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to the undertakings is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Implementing Regulation (EU) 2015/82. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when the other conditions provided for by the abovementioned Implementing Regulation are not met, the appropriate rate of anti-dumping duty shall instead be payable.
- (12) To further ensure the respect of the undertakings, importers have been made aware by the abovementioned Implementing Regulation that the non-fulfilment of the conditions provided for by that Regulation, or the withdrawal by the Commission of the acceptance of the undertakings, may lead to a customs debt being incurred for the relevant transactions.
- (13) In the event of a breach or withdrawal of the undertaking, or in case of withdrawal of the acceptance of the undertaking by the Commission, the anti-dumping duty imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply pursuant to Article 8(9) of the basic Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The undertakings offered by the exporting producers mentioned below together with the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China, are hereby accepted.

Country	Company	Taric Additional Code
People's Republic of China	COFCO Biochemical (Anhui) Co., Ltd — No 1 COFCO Avenue, Bengbu City 233010, Anhui Province	A874
	Manufactured by RZBC Co., Ltd — No 9 Xinghai West Road, Rizhao City, Shandong Province, PRC and sold by its related sales company RZBC Imp. & Exp. Co., Ltd — No 66 Lvzhou South Road, Rizhao City, Shandong Province	A926
	Manufactured by RZBC (Juxian) Co., Ltd — No 209 Laiyang Road (West Side of North Chengyang Road), Juxian Economic Development Zone, Rizhao City, Shandong Province, PRC and sold by its related sales company RZBC Imp. & Exp. Co., Ltd — No 66 Lvzhou South Road, Rizhao City, Shandong Province	A927
	TTCA Co., Ltd — West, Wenhe Bridge North, Anqiu City, Shandong Province	A878
	Jiangsu Guoxin Union Energy Co., Ltd — No 1 Redian Road, Yixing Economic Development Zone, Jiangsu Province	A879
	Weifang Ensign Industry Co., Ltd — No 1567 Changsheng Street, Changle, Weifang, Shandong Province	A882

Article 2

Decision 2008/899/EC is hereby repealed.

Article 3

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

Done at Brussels, 21 January 2015.

For the Commission
The President
Jean-Claude JUNCKER

III

(Other acts)

EUROPEAN ECONOMIC AREA

DECISION OF THE EEA JOINT COMMITTEE

No 153/2014

of 9 July 2014

amending Annex X (Services in general) to the EEA Agreement [2015/88]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) Commission Implementing Directive 2012/52/EU of 20 December 2012 laying down measures to facilitate the recognition of medical prescriptions issued in another Member State ⁽²⁾ is to be incorporated into the EEA Agreement.
- (3) Annex X to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is added after point 1c (Commission Decision 2011/130/EU) of Annex X to the EEA Agreement:

- '2. **32011 L 0024:** Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

Without prejudice to future development by the EEA Joint Committee, it should be noted that the following acts are not incorporated into the EEA Agreement:

- (a) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality,
- (b) Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.

Therefore all references to these acts shall not apply to the EFTA States.

⁽¹⁾ OJ L 88, 4.4.2011, p. 45.

⁽²⁾ OJ L 356, 22.12.2012, p. 68.

- 2a. **32012 L 0052:** Commission Implementing Directive 2012/52/EU of 20 December 2012 laying down measures to facilitate the recognition of medical prescriptions issued in another Member State (OJ L 356, 22.12.2012, p. 68).'

Article 2

The texts of Directive 2011/24/EU and Implementing Directive 2012/52/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 10 July 2014, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

For the EEA Joint Committee
The President
Kurt JÄGER

(*) Constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 154/2014

of 9 July 2014

amending Annex XIII (Transport) to the EEA Agreement [2015/89]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Article 29 of Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) Annex XIII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is added in point 41c (Regulation (EU) No 913/2010 of the European Parliament and of the Council) of Annex XIII to the EEA Agreement:

‘, as amended by:

- **32013 R 1316**: Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 (OJ L 348, 20.12.2013, p. 129).’

Article 2

The texts of Regulation (EU) No 1316/2013 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 10 July 2014, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

For the EEA Joint Committee

The President

Kurt JÄGER

⁽¹⁾ OJ L 348, 20.12.2013, p. 129.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 155/2014

of 9 July 2014

amending Annex XXII (Company law) to the EEA Agreement [2015/90]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Commission Implementing Decision 2013/288/EU of 13 June 2013 amending Decision 2011/30/EU on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) Annex XXII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is added in point 10fd (Commission Decision 2011/30/EU) of Annex XXII to the EEA Agreement:

‘, as amended by:

- **32013 D 0288**: Commission Implementing Decision 2013/288/EU of 13 June 2013 (OJ L 163, 15.6.2013, p. 26).’

Article 2

The texts of Implementing Decision 2013/288/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 10 July 2014, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

For the EEA Joint Committee

The President

Kurt JÄGER

⁽¹⁾ OJ L 163, 15.6.2013, p. 26.

(*) No constitutional requirements indicated.

Declaration by the EFTA States to Decision of the EEA Joint Committee No 155/2014 of 9 July 2014 incorporating Commission Implementing Decision 2013/288/EU into the EEA Agreement

‘Commission Implementing Decision 2013/288/EU of 13 June 2013 deals with equivalence for third countries. The incorporation of this Decision is without prejudice to the scope of the EEA Agreement.’

DECISION OF THE EEA JOINT COMMITTEE

No 156/2014

of 9 July 2014

amending Annex XXII (Company law) to the EEA Agreement [2015/91]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Commission Implementing Decision 2013/280/EU of 11 June 2013 on the adequacy of the competent authorities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) Commission Implementing Decision 2013/281/EU of 11 June 2013 on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council ⁽²⁾ is to be incorporated into the EEA Agreement.
- (3) Annex XXII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following points are inserted after point 10fd (Commission Decision 2011/30/EU) of Annex XXII to the EEA Agreement:

- '10fe. **32013 D 0280:** Commission Implementing Decision 2013/280/EU of 11 June 2013 on the adequacy of the competent authorities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council (OJ L 161, 13.6.2013, p. 4).
- 10ff. **32013 D 0281:** Commission Implementing Decision 2013/281/EU of 11 June 2013 on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council (OJ L 161, 13.6.2013, p. 8).'

Article 2

The texts of Implementing Decisions 2013/280/EU and 2013/281/EU in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 10 July 2014, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

⁽¹⁾ OJ L 161, 13.6.2013, p. 4.

⁽²⁾ OJ L 161, 13.6.2013, p. 8.

(*) No constitutional requirements indicated.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

For the EEA Joint Committee

The President

Kurt JÄGER

Declaration by the EFTA States to Decision of the EEA Joint Committee No 156/2014 of 9 July 2014 incorporating Commission Implementing Decisions 2013/280/EU and 2013/281/EU into the EEA Agreement

‘Commission Implementing Decision 2013/280/EU of 11 June 2013 on the adequacy of the competent authorities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council and Commission Implementing Decision 2013/281/EU of 11 June 2013 on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and of the Council deal with third country relations. The incorporation of these Decisions is without prejudice to the scope of the EEA Agreement.’

DECISION OF THE EEA JOINT COMMITTEE

No 157/2014

of 9 July 2014

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms [2015/92]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

- (1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 ⁽¹⁾.
- (2) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

The following is added in paragraph 5 of Article 2 of Protocol 31 to the EEA Agreement:

— **32013 R 1316:** Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

The EFTA States shall only participate in the telecommunications sector of the Connecting Europe Facility.

Liechtenstein shall be exempted from the participation in, and the financial contribution to, this programme.'

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*).

It shall apply from 1 January 2014.

*Article 3*This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

*For the EEA Joint Committee**The President*

Kurt JÄGER

⁽¹⁾ OJ L 348, 20.12.2013, p. 129.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE

No 158/2014

of 9 July 2014

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms [2015/93]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

- (1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 ⁽¹⁾.
- (2) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

Article 5 of Protocol 31 shall be amended as follows:

1. In paragraph 5, the words ', in the programme referred to in the fourteenth indent as from 1 January 2014' are inserted after the words 'in the programme referred to in the thirteenth indent as from 1 January 2012'.
2. The following is added in paragraph 8:

— **32013 R 1381:** Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 (OJ L 354, 28.12.2013, p. 62).

Liechtenstein shall only participate in the activities which may result from budget lines 33 01 04 01 Support expenditure for Rights and Citizenship and 33 02 02 Promoting non-discrimination and equality.

Norway shall be exempted from the participation in, and the financial contribution to, this programme.'

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*).

It shall apply from 1 January 2014.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

For the EEA Joint Committee

The President

Kurt JÄGER

⁽¹⁾ OJ L 354, 28.12.2013, p. 62.

(*) No constitutional requirements indicated.

DECISION OF THE EEA JOINT COMMITTEE**No 159/2014****of 9 July 2014****amending certain Annexes and Protocols to the EEA Agreement [2015/94]**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Article 128 of the EEA Agreement stipulates that any European State becoming a member of the European Union shall apply to become a Party to the EEA Agreement, and that the terms and conditions for such participation shall be subject to an agreement between the Contracting Parties and the applicant State.
- (2) Following successful conclusion of the European Union enlargement negotiations, the Republic of Croatia ('the New Contracting Party') submitted an application to become party to the EEA Agreement.
- (3) The Agreement on the participation of the Republic of Croatia in the European Economic Area ⁽¹⁾ ('the EEA Enlargement Agreement') was signed on 11 April 2014.
- (4) Pursuant to Article 1(2) of the EEA Enlargement Agreement, the provisions of the EEA Agreement, as amended by the Decisions of the EEA Joint Committee adopted before 30 June 2011, shall, as from the entry into force of the EEA Enlargement Agreement, be binding on the New Contracting Party under the same conditions as on the present Contracting Parties and under the terms and conditions laid down in the EEA Enlargement Agreement.
- (5) Since 30 June 2011, a number of EU acts have been incorporated into the EEA Agreement by decisions of the EEA Joint Committee.
- (6) In order to guarantee the homogeneity of the EEA Agreement and legal security for individuals and economic operators, it needs to be made clear that the EU acts referred to or contained in the abovementioned decisions shall be binding upon the New Contracting Party as of the entry into force of the EEA Enlargement Agreement.
- (7) Pursuant to Article 3(5) of the EEA Enlargement Agreement, where adaptations to EU acts incorporated into the EEA Agreement prior to the date of entry into force of the EEA Enlargement Agreement are required by reason of the New Contracting Party's participation, and where such adaptations have not been provided for in the EEA Enlargement Agreement, those adaptations will be addressed in accordance with the procedures laid down in the EEA Agreement.
- (8) Pursuant to Article 4(2) of the EEA Enlargement Agreement, any of the arrangements of relevance for the EEA Agreement referred to in or adopted on the basis of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community ⁽²⁾ ('Act of Accession of 9 December 2011'), which is not reflected in the EEA Enlargement Agreement, will be addressed in accordance with the procedures laid down in the EEA Agreement.
- (9) Pursuant to Protocol 44 to the EEA Agreement on safeguard mechanisms pursuant to enlargements of the European Economic Area, which is inserted into the EEA Agreement by Article 2(2) of the EEA Enlargement Agreement, the decision-making procedure provided for by the EEA Agreement shall be applicable to decisions taken by the European Commission in application of Article 38 of the Act of Accession of 9 December 2011.
- (10) The Annexes and Protocols to the EEA Agreement should therefore be amended accordingly.

⁽¹⁾ OJ L 170, 11.6.2014, p. 18.

⁽²⁾ OJ L 112, 24.4.2012, p. 21.

- (11) The amendments to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ⁽¹⁾ provided for by the Act of Accession of 9 December 2011 are to be made part of the EEA Agreement.
- (12) Commission Regulation (EU) No 481/2013 of 24 May 2013 adapting Implementing Regulation (EU) No 788/2012 as regards the number of samples to be taken and analysed by Croatia for the pesticide/product combinations ⁽²⁾ is to be incorporated into the EEA Agreement.
- (13) Council Regulation (EU) No 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia ⁽³⁾ is to be incorporated into the EEA Agreement.
- (14) Commission Regulation (EU) No 519/2013 of 21 February 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, right of establishment and freedom to provide services, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, fisheries, transport policy, energy, taxation, statistics, social policy and employment, environment, customs union, external relations, and foreign, security and defence policy, by reason of the accession of Croatia ⁽⁴⁾ is to be incorporated into the EEA Agreement.
- (15) Commission Regulation (EU) No 656/2013 of 10 July 2013 laying down transitional measures regarding the model passport issued in Croatia for dogs, cats and ferrets ⁽⁵⁾ is to be incorporated into the EEA Agreement.
- (16) Council Directive 2013/15/EU of 13 May 2013 adapting certain directives in the field of free movement of goods, by reason of the accession of the Republic of Croatia ⁽⁶⁾ is to be incorporated into the EEA Agreement.
- (17) Council Directive 2013/16/EU of 13 May 2013 adapting certain directives in the field of public procurement, by reason of the accession of the Republic of Croatia ⁽⁷⁾ is to be incorporated into the EEA Agreement.
- (18) Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia ⁽⁸⁾ is to be incorporated into the EEA Agreement.
- (19) Council Directive 2013/18/EU of 13 May 2013 adapting Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, by reason of the accession of the Republic of Croatia ⁽⁹⁾ is to be incorporated into the EEA Agreement.
- (20) Council Directive 2013/20/EU of 13 May 2013 adapting certain directives in the field of food safety, veterinary and phytosanitary policy, by reason of the accession of the Republic of Croatia ⁽¹⁰⁾ is to be incorporated into the EEA Agreement.
- (21) Council Directive 2013/21/EU of 13 May 2013 adapting Council Directive 67/548/EEC and Directive 1999/45/EC of the European Parliament and of the Council in the field of environment, by reason of the accession of the Republic of Croatia ⁽¹¹⁾ is to be incorporated into the EEA Agreement.
- (22) Council Directive 2013/22/EU of 13 May 2013 adapting certain directives in the field of transport policy, by reason of the accession of the Republic of Croatia ⁽¹²⁾ is to be incorporated into the EEA Agreement.

⁽¹⁾ OJ L 39, 13.2.2008, p. 16.

⁽²⁾ OJ L 139, 25.5.2013, p. 5.

⁽³⁾ OJ L 158, 10.6.2013, p. 1.

⁽⁴⁾ OJ L 158, 10.6.2013, p. 74.

⁽⁵⁾ OJ L 190, 11.7.2013, p. 35.

⁽⁶⁾ OJ L 158, 10.6.2013, p. 172.

⁽⁷⁾ OJ L 158, 10.6.2013, p. 184.

⁽⁸⁾ OJ L 158, 10.6.2013, p. 193.

⁽⁹⁾ OJ L 158, 10.6.2013, p. 230.

⁽¹⁰⁾ OJ L 158, 10.6.2013, p. 234.

⁽¹¹⁾ OJ L 158, 10.6.2013, p. 240.

⁽¹²⁾ OJ L 158, 10.6.2013, p. 356.

- (23) Council Directive 2013/23/EU of 13 May 2013 adapting certain directives in the field of financial services, by reason of the accession of the Republic of Croatia ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (24) Council Directive 2013/24/EU of 13 May 2013 adapting certain directives in the field of company law, by reason of the accession of the Republic of Croatia ⁽²⁾ is to be incorporated into the EEA Agreement.
- (25) Council Directive 2013/25/EU of 13 May 2013 adapting certain directives in the field of right of establishment and freedom to provide services, by reason of the accession of the Republic of Croatia ⁽³⁾ is to be incorporated into the EEA Agreement.
- (26) Commission Directive 2013/26/EU of 8 February 2013 adapting certain directives in the field of food safety, veterinary and phytosanitary policy, by reason of the accession of Croatia ⁽⁴⁾ is to be incorporated into the EEA Agreement.
- (27) Commission Implementing Decision 2013/290/EU of 14 June 2013 amending Decision 2009/821/EC as regards the lists of border inspection posts and veterinary units in Traces due to the accession of Croatia ⁽⁵⁾ is to be incorporated into the EEA Agreement.
- (28) Commission Implementing Decision 2013/291/EU of 14 June 2013 laying down transitional measures for certain products of animal origin covered by Regulation (EC) No 853/2004 of the European Parliament and of the Council introduced into Croatia from third countries before 1 July 2013 ⁽⁶⁾ is to be incorporated into the EEA Agreement.
- (29) Commission Implementing Decision 2013/346/EU of 28 June 2013 approving the plan submitted by Croatia for the approval of establishments for the purposes of intra-Union trade in poultry and hatching eggs pursuant to Council Directive 2009/158/EC ⁽⁷⁾ is to be incorporated into the EEA Agreement.
- (30) Commission Implementing Decision 2013/347/EU of 28 June 2013 approving contingency plans submitted by Croatia for the control of certain animal diseases ⁽⁸⁾ is to be incorporated into the EEA Agreement.
- (31) As the EEA Agreement extends the internal market to the EFTA States, it is necessary for the good functioning of the internal market that this decision will apply and enter into force without undue delay.
- (32) As the EEA Enlargement Agreement has not yet entered into force, but is applicable on a provisional basis, this Decision will, pending the entry into force of the EEA Enlargement Agreement, apply provisionally as well,

HAS ADOPTED THIS DECISION:

Article 1

Decisions of the EEA Joint Committee adopted after 30 June 2011 shall be binding upon the New Contracting Party.

Article 2

The texts of the Decisions of the EEA Joint Committee referred to in Article 1 shall be drawn up and authenticated by the Contracting Parties in the Croatian language.

⁽¹⁾ OJ L 158, 10.6.2013, p. 362.

⁽²⁾ OJ L 158, 10.6.2013, p. 365.

⁽³⁾ OJ L 158, 10.6.2013, p. 368.

⁽⁴⁾ OJ L 158, 10.6.2013, p. 376.

⁽⁵⁾ OJ L 164, 18.6.2013, p. 22.

⁽⁶⁾ OJ L 164, 18.6.2013, p. 25.

⁽⁷⁾ OJ L 183, 2.7.2013, p. 12.

⁽⁸⁾ OJ L 183, 2.7.2013, p. 13.

Article 3

The following indent is added in point 9 (Regulation (EC) No 110/2008 of the European Parliament and of the Council) of Chapter XXVII of Annex II to the EEA Agreement:

- ‘— **1 2012 J003**: Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, adopted on 9 December 2011 (OJ L 112, 24.4.2012, p. 21).’.

Article 4

The transitional arrangements referred to in Annex I to this Decision are incorporated into and made part of the EEA Agreement.

Article 5

1. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex II to this Decision:

- ‘— **32013 R 0517**: Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ L 158, 10.6.2013, p. 1).’.

2. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex III to this Decision:

- ‘— **32013 R 0519**: Commission Regulation (EU) No 519/2013 of 21 February 2013 (OJ L 158, 10.6.2013, p. 74).’.

3. If an indent referred to in the previous paragraphs is the first indent to be added in the point in question, it shall be preceded by the words ‘, as amended by:’.

Article 6

1. The following indent is added in the points of the Annexes to the EEA Agreement listed in Annex IV to this Decision:

- ‘— **32013 L 0015**: Council Directive 2013/15/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 172).’.

2. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex V to this Decision:

- ‘— **32013 L 0016**: Council Directive 2013/16/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 184).’.

3. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex VI to this Decision:

- ‘— **32013 L 0017**: Council Directive 2013/17/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 193).’.

4. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex VII to this Decision:

- ‘— **32013 L 0018**: Council Directive 2013/18/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 230).’.

5. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex VIII to this Decision:

- ‘— **32013 L 0020**: Council Directive 2013/20/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 234).’.

6. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex IX to this Decision:

- ‘— **32013 L 0021**: Council Directive 2013/21/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 240).’.

7. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex X to this Decision:

‘— **32013 L 0022**: Council Directive 2013/22/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 356).’

8. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex XI to this Decision:

‘— **32013 L 0023**: Council Directive 2013/23/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 362).’

9. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex XII to this Decision:

‘— **32013 L 0024**: Council Directive 2013/24/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 365).’

10. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex XIII to this Decision:

‘— **32013 L 0025**: Council Directive 2013/25/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 368).’

11. The following indent is added in the points of the Annexes and Protocols to the EEA Agreement listed in Annex XIV to this Decision:

‘— **32013 L 0026**: Council Directive 2013/26/EU of 13 May 2013 (OJ L 158, 10.6.2013, p. 376).’

12. If the indent referred to in the previous paragraphs is the first indent to be added in the point in question, it shall be preceded by the words ‘, as amended by:’.

13. Other adaptations required by reason of the acts incorporated by the previous paragraphs are listed in Part II of the respective Annexes to this Decision.

Article 7

1. The following indent is added in point 39 (Commission Decision 2009/821/EC) of Part 1.2 of Chapter I of Annex I to the EEA Agreement:

‘— **32013 D 0290**: Commission Implementing Decision 2013/290/EU of 14 June 2013 (OJ L 164, 18.6.2013, p. 22).’

2. The following indent is added in point 74 (Commission Implementing Regulation (EU) No 788/2012) of Chapter XII of Annex II to the EEA Agreement:

‘— **32013 R 0481**: Commission Regulation (EU) No 481/2013 of 24 May 2013 (OJ L 139, 25.5.2013, p. 5).’

3. If the indent referred to in the previous paragraphs is the first indent to be added in the point in question, it shall be preceded by the words ‘, as amended by:’.

Article 8

Chapter I of Annex I to the EEA Agreement shall be amended as follows:

1. The following is added in point 121 (Commission Decision 2003/803/EC) in Part 1.2:

‘The transitional arrangements set out in the following act shall apply:

— **32013 R 0656**: Commission Regulation (EU) No 656/2013 of 10 July 2013 laying down transitional measures regarding the model passport issued in Croatia for dogs, cats and ferrets (OJ L 190, 11.7.2013, p. 35).’

2. The following indent is added in point 17 (Regulation (EC) No 853/2004 of the European Parliament and of the Council) in Part 6.1 under the heading on transitional arrangements:

‘— **32013 D 0291**: Commission Implementing Decision 2013/291/EU of 14 June 2013 laying down transitional measures for certain products of animal origin covered by Regulation (EC) No 853/2004 of the European Parliament and of the Council introduced into Croatia from third countries before 1 July 2013 (OJ L 164, 18.6.2013, p. 25).’

3. Under the heading 'ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT' in Part 4.2, the following point is inserted after point 58 (Commission Decision 2007/17/EC):

'59. **32013 D 0346**: Commission Implementing Decision 2013/346/EU of 28 June 2013 approving the plan submitted by Croatia for the approval of establishments for the purposes of intra-Union trade in poultry and hatching eggs pursuant to Council Directive 2009/158/EC (OJ L 183, 2.7.2013, p. 12).

This act shall not apply to Iceland.'

4. Under the heading 'ACTS OF WHICH THE EFTA STATES AND THE EFTA SURVEILLANCE AUTHORITY SHALL TAKE DUE ACCOUNT' in Part 3.2, the following point shall be inserted after point 48 (Commission Implementing Decision 2013/764/EU):

'49. **32013 D 0347**: Commission Implementing Decision 2013/347/EU of 28 June 2013 approving contingency plans submitted by Croatia for the control of certain animal diseases (OJ L 183, 2.7.2013, p. 13).

This act shall not apply to Iceland.'

Article 9

The texts of Regulations (EU) No 481/2013, (EU) No 517/2013, (EU) No 519/2013 and (EU) No 68/2014 and Directives 2013/15/EU, 2013/16/EU, 2013/17/EU, 2013/18/EU, 2013/20/EU, 2013/21/EU, 2013/22/EU, 2013/23/EU, 2013/24/EU, 2013/25/EU and 2013/26/EU and Implementing Decisions 2013/290/EU and 2013/291/EU in the Icelandic and Norwegian language and of Regulation (EU) No 656/2013 and Implementing Decisions 2013/346/EU and 2013/347/EU in the Norwegian language, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 10

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*), or on the day of the entry into force of the EEA Enlargement Agreement, whichever is the later.

Pending the entry into force of the EEA Enlargement Agreement, this Decision shall apply provisionally from the date of its adoption.

Any constitutional requirements indicated by any Contracting Party concerning any of the Decisions of the EEA Joint Committee referred to in Article 1, will remain unaffected by this Decision.

Article 11

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 9 July 2014.

For the EEA Joint Committee
The President
Kurt JÄGER

(*) No constitutional requirements indicated.

ANNEX I

TRANSITIONAL ARRANGEMENTS REFERRED TO IN ARTICLE 4 OF THE DECISION

Annex XIII (Transport) to the EEA Agreement shall be amended as follows:

The following text is added in point 25a (Regulation (EC) No 1072/2009 of the European Parliament and of the Council):

‘The transitional arrangements set out in the Annexes to the Act of Accession of 9 December 2011 for Croatia (Annex V, Chapter 7, point (2) shall apply.’

Annex XX (Environment) to the EEA Agreement shall be amended as follows:

1. The following text is added in point 1f (Directive 2008/1/EC of the European Parliament and of the Council):

‘The transitional arrangements set out in the Annexes to the Act of Accession of 9 December 2011 for Croatia (Annex V, Chapter 10, Section V, point (3) shall apply.’;

2. The following text is added in point 14c (Directive 2008/50/EC of the European Parliament and the Council):

‘The transitional arrangements set out in the Annexes to the Act of Accession of 9 December 2011 for Croatia (Annex V, Chapter 10, Section II) shall apply.’

Protocol 47 (on the abolition of technical barriers to trade in wine) to the EEA Agreement shall be amended as follows:

The following text is added before the adaptation text in point 8 (Council Regulation (EC) No 1234/2007) of Appendix 1:

‘The transitional arrangements set out in the Annexes to the Act of Accession of 9 December 2011 for Croatia (Annex V, Chapter 4, point (3) shall apply.’

ANNEX II

LIST REFERRED TO IN ARTICLE 5(1) OF THE DECISION

The indent referred to in Article 5(1) shall be inserted in the following locations in the Annexes and Protocols to the EEA Agreement:

In Annex I (Veterinary and phytosanitary matters):

A. In Chapter I (Veterinary issues):

- Part 1.1, point 7b (Council Regulation (EC) No 21/2004),
- Part 1.1, point 7c (Regulation (EC) No 1760/2000 of the European Parliament and of the Council),
- Part 1.1, point 10 (Regulation (EC) No 998/2003 of the European Parliament and of the Council),
- Part 1.1, point 11 (Regulation (EC) No 882/2004 of the European Parliament and of the Council),
- Part 1.1, point 12 (Regulation (EC) No 854/2004 of the European Parliament and of the Council),
- Part 6.1, point 17 (Regulation (EC) No 853/2004 of the European Parliament and of the Council),
- Part 7.1, point 8b (Regulation (EC) No 2160/2003 of the European Parliament and of the Council),
- Part 7.1, point 12 (Regulation (EC) No 999/2001 of the European Parliament and of the Council);

B. In Chapter II (Feedingstuffs):

- Point 31j (Regulation (EC) No 882/2004 of the European Parliament and of the Council);

In Annex II (Technical regulations, standards, testing and certification):

A. In Chapter I (Motor vehicles):

- Point 45zy (Regulation (EC) No 78/2009 of the European Parliament and of the Council);

B. In Chapter XI (Textiles):

- Point 4d (Regulation (EU) No 1007/2011 of the European Parliament and of the Council);

C. In Chapter XII (Foodstuffs):

- Point 54zzzi (Regulation (EC) No 882/2004 of the European Parliament and of the Council);

D. In Chapter XV (Dangerous substances):

- Point 12zc (Regulation (EC) No 1907/2006 of the European Parliament and of the Council),
- Point 12zze (Regulation (EC) No 1272/2008 of the European Parliament and of the Council);

In Annex VI (Social Security):

- Point 1 (Regulation (EC) No 883/2004 of the European Parliament and of the Council);

In Annex XIII (Transport):

- Point 1 (Regulation (EEC) No 1108/70 of the Council),
- Point 5 (Decision No 661/2010/EU of the European Parliament and of the Council),
- Point 19a (Regulation (EC) No 1071/2009 of the European Parliament and of the Council),
- Point 21 (Council Regulation (EEC) No 3821/85),
- Point 25a (Regulation (EC) No 1072/2009 of the European Parliament and of the Council),

- Point 32a (Regulation (EC) No 1073/2009 of the European Parliament and of the Council),
- Point 39 (Regulation (EEC) No 1192/69 of the Council);

In Annex XX (Environment):

- Point 1ea (Regulation (EC) No 1221/2009 of the European Parliament and of the Council);

In Annex XXI (Statistics):

- Point 1 (Regulation (EC) No 295/2008 of the European Parliament and of the Council),
- Point 7f (Regulation (EU) No 70/2012 of the European Parliament and of the Council),
- Point 7h (Regulation (EC) No 437/2003 of the European Parliament and of the Council),
- Point 18i (Regulation (EC) No 1177/2003 of the European Parliament and of the Council),
- Point 19d (Council Regulation (EC) No 2223/96),
- Point 19dc (Regulation (EC) No 1221/2002 of the European Parliament and of the Council),
- Point 19o (Regulation (EC) No 501/2004 of the European Parliament and of the Council),
- Point 19q (Council Regulation (EC) No 1222/2004),
- Point 19t (Regulation (EC) No 1161/2005 of the European Parliament and of the Council),
- Point 19x (Regulation (EC) No 716/2007 of the European Parliament and of the Council),
- Point 25 (Regulation (EC) No 1921/2006 of the European Parliament and of the Council),
- Point 25a (Regulation (EC) No 218/2009 of the European Parliament and of the Council),
- Point 25b (Regulation (EC) No 217/2009 of the European Parliament and of the Council),
- Point 25c (Regulation (EC) No 216/2009 of the European Parliament and of the Council);

In Annex XXII (Company law):

- Point 10a (Council Regulation (EC) No 2157/2001);

In Protocol 26 (On the powers and functions of the EFTA Surveillance Authority in the field of State Aid):

- Article 2(1) (Council Regulation (EC) No 659/1999).

ANNEX III

LIST REFERRED TO IN ARTICLE 5(2) OF THE DECISION

The indent referred to in Article 5(2) shall be inserted in the following locations in the Annexes and Protocols to the EEA Agreement:

In Chapter I (Veterinary issues) of Annex I (Veterinary and phytosanitary matters):

- Part 1.2, Point 39 (Commission Decision 2009/821/EC),
- Part 1.2, Point 115 (Commission Regulation (EC) No 136/2004),
- Part 1.2, Point 141 (Commission Regulation (EC) No 911/2004),
- Parts 2.2 and 4.2, Points 33 and 85 respectively (Commission Regulation (EC) No 504/2008),
- Part 4.2, Point 86 (Commission Regulation (EC) No 1251/2008),
- Part 6.2, Point 39 (Commission Decision 98/536/EC),
- Part 7.2, Point 14 (Commission Decision 98/179/EC),
- Part 7.2, Point 49 (Commission Decision 2007/453/EC),
- Part 9.2, Point 4 (Commission Decision 2006/778/EC);

In Annex II (Technical regulations, standards, testing and certification):

A. In Chapter I (Motor vehicles):

- Point 45zr (Commission Regulation (EC) No 706/2007),
- Point 45zu (Commission Regulation (EC) No 692/2008),
- Point 45zze (Commission Regulation (EU) No 1008/2010),
- Point 45zzh (Commission Regulation (EU) No 109/2011),
- Point 45zzl (Commission Regulation (EU) No 582/2011),
- Point 45zzm (Commission Regulation (EU) No 406/2010);

B. In Chapter XV (Dangerous substances):

- Point 12l (Commission Decision 2000/657/EC),
- Point 12zze (Regulation (EC) No 1272/2008 of the European Parliament and of the Council);

In Annex X (Services in general):

- Point 1b (Commission Decision 2009/767/EC);

In Annex XIII (Transport):

- Point 37da (Commission Decision 2007/756/EC),
- Point 42gb (Commission Regulation (EU) No 36/2010);

In Annex XX (Environment):

- Point 32cb (Commission Regulation (EC) No 1418/2007);

In Annex XXI (Statistics):

- Point 1k (Commission Regulation (EC) No 250/2009),
- Point 1l (Commission Regulation (EC) No 251/2009),
- Point 4ca (Commission Regulation (EC) No 772/2005),
- Point 7bb (Commission Decision 2008/861/EC),
- Point 7i (Commission Regulation (EC) No 1358/2003),
- Point 18wb (Commission Regulation (EU) No 912/2013),
- Point 19s (Regulation (EC) No 184/2005 of the European Parliament and of the Council);

In Annex XXII (Company law):

- Point 10fd (Commission Decision 2011/30/EU);

In Protocol 21 (On the implementation of competition rules applicable to undertakings):

- Point 1(2) of Article 3 (Commission Regulation (EC) No 802/2004),
- Point 1(4) of Article 3 (Commission Regulation (EC) No 773/2004);

In Protocol 47 (On the abolition of technical barriers to trade in wine):

- Point 11 of Appendix 1 (Commission Regulation (EC) No 607/2009).
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ANNEX IV

LIST REFERRED TO IN ARTICLE 6(1) OF THE DECISION

The indent referred to in Article 6(1) shall be inserted in the following locations in Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement:

A. In Chapter I (Motor Vehicles):

- Point 2 (Council Directive 70/157/EEC),
- Point 4 (Council Directive 70/221/EEC),
- Point 8 (Council Directive 70/388/EEC),
- Point 10 (Council Directive 71/320/EEC),
- Point 11 (Council Directive 72/245/EEC),
- Point 14 (Council Directive 74/61/EEC),
- Point 16 (Council Directive 74/408/EEC),
- Point 17 (Council Directive 74/483/EEC),
- Point 19 (Council Directive 76/114/EEC),
- Point 22 (Council Directive 76/757/EEC),
- Point 23 (Council Directive 76/758/EEC),
- Point 24 (Council Directive 76/759/EEC),
- Point 25 (Council Directive 76/760/EEC),
- Point 26 (Council Directive 76/761/EEC),
- Point 27 (Council Directive 76/762/EEC),
- Point 29 (Council Directive 77/538/EEC),
- Point 30 (Council Directive 77/539/EEC),
- Point 31 (Council Directive 77/540/EEC),
- Point 32 (Council Directive 77/541/EEC),
- Point 36 (Council Directive 78/318/EEC),
- Point 39 (Council Directive 78/932/EEC),
- Point 45r (Directive 94/20/EC of the European Parliament and of the Council),
- Point 45t (Directive 95/28/EC of the European Parliament and of the Council),
- Point 45y (Directive 2001/85/EC of the European Parliament and of the Council),
- Point 45za (Directive 2002/24/EC of the European Parliament and of the Council),
- Point 45zc (Directive 2003/97/EC of the European Parliament and of the Council),
- Point 45zx (Directive 2007/46/EC of the European Parliament and of the Council),
- Point 45zys (Directive 2000/40/EC of the European Parliament and of the Council),
- Point 45zys (Directive 2001/56/EC of the European Parliament and of the Council);

B. Chapter II (Agricultural and forestry tractors):

- Point 11 (Directive 2009/57/EC of the European Parliament and of the Council),
- Point 13 (Council Directive 78/764/EEC),
- Point 17 (Directive 2009/75/EC of the European Parliament and of the Council),
- Point 20 (Council Directive 86/298/EEC),
- Point 22 (Council Directive 87/402/EEC),
- Point 23 (Directive 2009/144/EC of the European Parliament and of the Council),
- Point 28 (Directive 2003/37/EC of the European Parliament and of the Council),
- Point 29 (Directive 2000/25/EC of the European Parliament and of the Council),
- Point 31 (Directive 2009/64/EC of the European Parliament and of the Council);

C. Chapter XIX (General provisions in the technical barriers to trade):

- Point 3e (Directive 94/11/EC of the European Parliament and of the Council).

ANNEX V

LIST REFERRED TO IN ARTICLE 6(2) OF THE DECISION

The indent referred to in Article 6(2) shall be inserted in the following locations in Annex XVI (Procurement) to the EEA Agreement:

- Point 2 (Directive 2004/18/EC of the European Parliament and of the Council),
- Point 4 (Directive 2004/17/EC of the European Parliament and of the Council),
- Point 5c (Directive 2009/81/EC of the European Parliament and of the Council).

ANNEX VI

LIST REFERRED TO IN ARTICLE 6(3) OF THE DECISION

The indent referred to in Article 6(3) shall be inserted in the following location in Annex XX (Environment) to the EEA Agreement:

- Point 21ar (Directive 2001/81/EC of the European Parliament and of the Council).
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ANNEX VII

LIST REFERRED TO IN ARTICLE 6(4) OF THE DECISION

The indent referred to in Article 6(4) shall be inserted in the following location in Annex IV (Energy) to the EEA Agreement:

- Point 41 (Directive 2009/28/EC of the European Parliament and of the Council).

ANNEX VIII

PART I

LIST REFERRED TO IN ARTICLE 6(5) OF THE DECISION

The indent referred to in Article 6(5) shall be inserted in the following locations in the Annexes to the EEA Agreement:

In Annex I (Veterinary and phytosanitary matters), Chapter I (Veterinary issues):

- Part 1.1, point 4 (Council Directive 97/78/EC),
- Part 3.1, point 1a (Council Directive 2003/85/EC),
- Part 3.1, point 9a (Council Directive 2000/75/EC),
- Part 4.1, point 1 (Council Directive 64/432/EEC),
- Part 4.1, point 2 (Council Directive 91/68/EEC),
- Part 5.1, point 6a (Council Directive 2002/99/EC),
- Part 7.1, point 2 (Council Directive 96/23/EC),
- Part 7.1, point 8a (Directive 2003/99/EC of the European Parliament and of the Council),
- Part 8.1, point 2 (Council Directive 2009/156/EC);

In Annex II (Technical regulations, standards, testing and certification), Chapter XII (Foodstuffs):

- Point 18 (Directive 2000/13/EC of the European Parliament and of the Council),
- Point 47 (Council Directive 89/108/EEC).

PART II

OTHER ADAPTATIONS REQUIRED BY REASON OF ACCESSION

The text of adaptation (b) in point 4 (Council Directive 97/78/EC) of Part 1.1 of Chapter I of Annex I to the EEA Agreement is replaced by the following:

- ‘29. The territory of the Republic of Iceland.
- 30. The territory of the Kingdom of Norway, except Svalbard.’

ANNEX IX

LIST REFERRED TO IN ARTICLE 6(6) OF THE DECISION

The indent referred to in Article 6(6) shall be inserted in the following locations in Chapter XV (Dangerous substances) of Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement:

- Point 1 (Council Directive 67/548/EEC),
- Point 12r (Directive 1999/45/EC of the European Parliament and of the Council).

ANNEX X

LIST REFERRED TO IN ARTICLE 6(7) OF THE DECISION

The indent referred to in Article 6(7) shall be inserted in the following locations in Annex XIII (Transport) to the EEA Agreement:

- Point 13 (Council Directive 92/106/EEC),
- Point 18a (Directive 1999/62/EC of the European Parliament and of the Council),
- Point 24c (Council Directive 1999/37/EC),
- Point 24f (Directive 2006/126/EC of the European Parliament and of the Council),
- Point 36a (Directive 2003/59/EC of the European Parliament and of the Council),
- Point 46a (Council Directive 91/672/EEC),
- Point 47a (Directive 2006/87/EC of the European Parliament and of the Council).

ANNEX XI

LIST REFERRED TO IN ARTICLE 6(8) OF THE DECISION

The indent referred to in Article 6(8) shall be inserted in the following location in Annex IX (Financial services) to the EEA Agreement:

- Point 1 (Directive 2009/138/EC of the European Parliament and of the Council).

ANNEX XII

LIST REFERRED TO IN ARTICLE 6(9) OF THE DECISION

The indent referred to in Article 6(9) shall be inserted in the following locations in Annex XXII (Company law) to the EEA Agreement:

- Point 1 (Directive 2009/101/EC of the European Parliament and of the Council),
- Point 2 (Directive 2012/30/EU of the European Parliament and of the Council),
- Point 3 (Directive 2011/35/EU of the European Parliament and of the Council),
- Point 4 (Fourth Council Directive 78/660/EEC),
- Second indent (Seventh Council Directive 83/349/EEC) of point 4 (Fourth Council Directive 78/660/EEC),
- Point 9 (Directive 2009/102/EC of the European Parliament and of the Council).

ANNEX XIII

LIST REFERRED TO IN ARTICLE 6(10) OF THE DECISION

The indent referred to in Article 6(10) shall be inserted in the following locations in Annex VII (Recognition of professional qualifications) to the EEA Agreement:

- Point 1 (Directive 2005/36/EC of the European Parliament and of the Council),
 - Point 2 (Council Directive 77/249/EEC),
 - Point 2a (Directive 98/5/EC of the European Parliament and of the Council),
 - Point 4 (Council Directive 74/557/EEC).
-

ANNEX XIV

LIST REFERRED TO IN ARTICLE 6(11) OF THE DECISION

The indent referred to in Article 6(11) shall be inserted in the following locations in Annex II (Technical regulations, standards, testing and certification), Chapter XII (Foodstuffs), to the EEA Agreement:

- Point 54w (Commission Directive 1999/21/EC),
 - **Point 54zzzv (Commission Directive 2006/141/EC).**
-

EFTA SURVEILLANCE AUTHORITY DECISION**No 302/14/COL****of 16 July 2014****amending for the ninety-ninth time the procedural and substantive rules in the field of State aid
by modifying certain State aid Guidelines [2015/95]**

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Surveillance and Court Agreement'), in particular to Articles 5(2)(b) and 24 thereof and Article 1 in Part I of Protocol 3 thereof,

Whereas:

Under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary.

On 21 May 2014, the European Commission adopted a communication amending the communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines ⁽¹⁾. The objectives of the amendments are to align the transparency provisions across the different State aid Guidelines and to simplify the current provisions.

This Communication is of relevance to the European Economic Area.

The uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to point II under the heading 'GENERAL' of Annex XV to the EEA Agreement, the Authority, after consultation with the European Commission, is to adopt new rules, corresponding to those adopted by the European Commission.

HAVING consulted the European Commission,

HAVING consulted the EFTA States by a letter dated 30 June 2014 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

The substantive rules in the field of State aid shall be amended as follows.

Article 2

This Decision replaces the following paragraphs:

- on the Guidelines for the application of State aid rules in relation to rapid deployment of broadband network ⁽²⁾, the first two sentences of paragraph 74(j),

⁽¹⁾ OJ C 198, 27.6.2014, p. 30.

⁽²⁾ Not yet published in the OJ. Available at: <http://www.eftasurv.int/media/state-aid-guidelines/Part-IV—Application-of-state-aid-rules-in-relation-to-rapid-deployment-of-broadband-networks.pdf>

- on the Guidelines on regional State aid for 2014-2020 ⁽¹⁾, paragraph 135,
- on the Guidelines on State aid for films and other audiovisual works ⁽²⁾, paragraph 51(7),
- on the Guidelines on State aid to airports and airlines ⁽³⁾, paragraphs 162 and 163;

by:

EFTA States shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:

- the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it,
- the identity of the granting authority(ies),
- the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at statistical region level 2) (*) and the principal economic sector in which the beneficiary has its activity (at NACE group level) (**).

Such a requirement can be waived with respect to individual aid awards below EUR 500 000. For schemes in the form of tax advantage, the information on individual aid amounts (***) can be provided in the following ranges (in EUR million): (0,5-1); (1-2); (2-5); (5-10); (10-30); (30 and more).

Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions (****). EFTA States will not be required to publish the abovementioned information before 1 July 2016 (*****).

(*) The term “Statistical region” is used instead of the acronym “NUTS” in the corresponding Commission Guidelines. NUTS is derived from the title “Nomenclature of Territorial Units for Statistics” according to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1). This regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the Statistical Office of the European Union, Eurostat, and the National Institutes of the candidate countries and EFTA have agreed that statistical regions would be established similar to the NUTS classification.

(**) With the exception of business secrets and other confidential information in duly justified cases and subject to the Authority’s agreement (See the Authority Guidelines on professional secrecy in State aid decisions (OJ L 154, 8.6.2006, p. 27 and EEA Supplement No 29, 8.6.2006, p. 1)).

(***) The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

(****) This information shall be published within six months from the date of granting (or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due). In case of unlawful aid, EFTA States will be required to ensure the publication of this information *ex post*, at least within six months from the date of the Authority decision. The information should be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

(*****) Publication of information on aid awards granted before 1 July 2016, and for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.

Article 3

1. This Decision modifies the Guidelines on regional State aid for 2014-2020 and monitoring conditions imposed on regional State aid schemes, as follows:

- paragraph 169, of the Guidelines on regional State aid for 2014-2020, including a monitoring condition, is deleted,
- Annex IV, of the Guidelines on regional State aid for 2014-2020, is deleted.

⁽¹⁾ Not yet published in the OJ. Available at: <http://www.eftasurv.int/media/state-aid-guidelines/Part-III—Guidelines-on-regional-State-Aid-for-2014-2020.pdf>

⁽²⁾ Not yet published in the OJ. Available at: http://www.eftasurv.int/media/state-aid-guidelines/Part_IV_-_State_aid_for_films_and_other_audiovisual_works.pdf

⁽³⁾ Not yet published in the OJ. Available at: <http://www.eftasurv.int/media/state-aid-guidelines/Part-IV—Aviation-Guidelines.pdf>

2. For those regional State aid schemes already approved in line with the Guidelines on regional State aid for 2014-2020, including the monitoring condition laid down in paragraph 169 of the aforementioned Guidelines, the monitoring condition is waived. Accordingly, paragraph 65 of the Decision 225/14/COL, dated 18 June 2014, on regionally differentiated social security contributions 2014-2020, is deleted.

Article 4

This Decision modifies the Guidelines on State aid to promote risk finance investments ⁽¹⁾ as follows:

— in paragraph 166(v):

for: 'Such a requirement can be waived with respect to SMEs which have not carried out any commercial sale in any market and for investments below EUR 200 000 into a final beneficiary undertaking.'

read: 'Such a requirement can be waived with respect to SMEs which have not carried out any commercial sale in any market and for investments below EUR 500 000 into a final beneficiary undertaking',

— in paragraph 166(vi):

for: 'the amount of the fiscal advantage received, where the latter exceeds EUR 200 000. Such amount can be provided in ranges of EUR 2 million.'

read: 'the amount of the fiscal advantage received, where the latter exceeds EUR 500 000. Such amount can be provided in the following ranges (in EUR million): (0,5-1); (1-2); (2-5); (5-10); (10-30); (30 and more).',

— and at the end of paragraph 166, the following text is inserted:

'EFTA States will not be required to provide the abovementioned information before 1 July 2016 (*).'

(*) Publication of information on aid awards granted before 1 July 2016, and for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.'

Article 5

This Decision inserts the following text:

'In the case of aid schemes excluded from the scope of a block exemption Regulation exclusively on the ground of their large budget, the Authority will assess their compatibility solely on the basis of the evaluation plan.'

- at the end of paragraph 49, of the Guidelines for the application of State aid rules in relation to rapid deployment of broadband network,
- at the end of paragraph 138, of the Guidelines on regional State aid for 2014-2020,
- at the end of paragraph 167, of the of the Guidelines on State aid to airports and airlines,
- at the end of paragraph 172, of the Guidelines on State aid to promote risk finance investments.

Article 6

Only the English version is authentic.

Done at Brussels, 16 July 2014.

For the EFTA Surveillance Authority

Oda Helen SLETNES

President

Helga JÓNSDÓTTIR

College Member

⁽¹⁾ Not yet published in the OJ. Available at [http://www.eftasurv.int/media/state-aid-guidelines/Part-III—State%20aid-to-promote-risk-finance-investments-\(Applicable-from-1-July-2014\).pdf](http://www.eftasurv.int/media/state-aid-guidelines/Part-III—State%20aid-to-promote-risk-finance-investments-(Applicable-from-1-July-2014).pdf)

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1263/96 of 1 July 1996 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92**

(Official Journal of the European Communities L 163 of 2 July 1996)

On page 21, Annex, point A 'Products intended for human consumption listed in Annex II to the Treaty', Oils and fats, AUSTRIA:

for: 'Steierisches Kürbiskernöl (PGI)',

read: 'Steirisches Kürbiskernöl (PGI)'.

Corrigendum to Commission Regulation (EU) No 1361/2014 of 18 December 2014 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standards 3 and 13 and International Accounting Standard 40

(Official Journal of the European Union L 365 of 19 December 2014)

On page 121, Article 2:

for: 'Article 2

Each company shall apply the amendments referred to in Article 1(1), at the latest, as from the commencement date of its first financial year starting on or after [set the first day of the month following the date of entry into force of this Regulation].',

read: 'Article 2

Each company shall apply the amendments referred to in Article 1(1), at the latest, as from the commencement date of its first financial year starting on or after 1 January 2015.'

