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

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2081

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re-imposing a definitive anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and produced by Yuanping Changyuan Chemicals Co. Ltd

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 9(4) thereof,

Whereas:

A. PROCEDURE

(1) On 18 April 2012, by Council Implementing Regulation (EU) No 325/2012[(2)] (‘the contested regulation’), the Council imposed a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China in the range of 14,6 % to 52,2 % following an anti-dumping investigation under Article 5 of the Council Regulation (EC) No 1225/2009[(3)].

(2) By judgment of 20 May 2015[(4)], the General Court annulled the contested regulation, in so far as Yuanping Changyuan Chemicals Co. Ltd, a cooperating Chinese exporting producer, is concerned. The General Court ruled that the Council's reasoning concerning two matters on the determination of the injury elimination level did not comply with Article 296 of the Treaty of the Functioning of the European Union.

(3) Following the General Court's judgment, the Commission published a Notice informing that it had decided to resume the anti-dumping investigation concerning oxalic acid for the purposes of implementing the judgment in regard to Yuanping Changyuan Chemicals Co. Ltd

B. IMPLEMENTATION

1. Customs duty for the calculation of the injury elimination level (injury margin)

(4) As stated in recitals 66 and 83 of the contested regulation, Yuanping Changyuan Chemicals Co. Ltd had claimed that the Commission had failed to include fully an allowance of 6,5 % corresponding to the normal customs duty in the injury margin calculation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/2081. (See end of Document for details)*

(5) The Commission had found in the original investigation that the claim was warranted and it had revised the calculations with regard to the injury margin as follows: the final weighted average import price was calculated by adding, to the weighted average CIF Union border export price of Yuanping Changyuan Chemicals Co. Ltd, for the two types of oxalic acid (refined and unrefined) first, 6,5 % for customs duties, and then, a fixed amount of 10 EUR/tonne for post-importation costs.

(6) The result was a reduction of the Yuanping Changyuan Chemicals Co. Ltd's injury margin to 18,7 %. However, as already indicated in recitals 83 and 87 of the contested regulation, the reduced injury margin remained above the dumping margin established for Yuanping Changyuan Chemicals Co. Ltd (14,6 %), which is the basis for the anti-dumping duty imposed.

2. **Profit margin for the calculation of the injury elimination level (injury margin)**

(7) As stated in recitals 142 and 143 of Commission Regulation (EU) No 1043/2011[(5)] imposing provisional measures in the case at hand, and as confirmed by the contested regulation, the profit used for the calculation of the injury elimination level was 8 % of turnover, which was considered being the profit that the Union industry could reasonably have expected to achieve under normal conditions of competition in the absence of injurious dumping. The considerations for the use of this figure are discussed as follows.

(8) In the investigation leading to the contested regulation it was established that during the period considered the Union industry was either loss-making or making a very limited profit. That level of profits was insufficient to maintain the production in the medium term. In addition, during the period considered in the original investigation there were significant amounts of imports, at price levels that on average were lower than the prices found to be dumped in the original investigation period. These low priced imports had a negative impact on the economic performance of the Union industry. Therefore, the levels of profit actually realised by the Union industry during the period considered could not be considered as a profit that the Union industry could reasonably expect to achieve under normal conditions of competition.

(9) Furthermore, during the original investigation, the Commission did not collect any data regarding Union industry's profit for a period before the period considered. Consequently, no profit data relating to the Union industry for a period immediately before the period considered, that could be used as a reasonable profit margin for the calculation of the injury margin, was available. Following disclosure, Yuanping argued that the Commission services should have used information falling outside the period considered in order to make a proper assessment for establishing the target profit.

(10) This claim was not accepted. The EU Courts have recognised the Commission a wide discretion as regards the period to be taken into account for the purpose of determining injury[(6)]. The Commission, at the beginning of the original investigation, set out a period to collect data for the assessment of injury, i.e. the period considered,

(1 January 2007 to 31 December 2010), and it did not collect data falling outside that period. Furthermore, as explained in recital 23 below, within the scope of this resumption of the investigation, the Commission has to rely only on the information that was available during the original investigation.

(11) The Commission therefore analysed the target profit proposed by the complainant in the investigation leading to the contested regulation. In the complaint, a target profit margin of 10 % for the calculation of the injury margin was proposed. In this respect, the Commission noted that the profit margin used by the Council in a previous investigation concerning imports of oxalic acid from India and the People's Republic of China in 1991 was 10 %[7]. The complainant justified the figure by arguing that such a level of profitability could be achieved if it produced at full capacity utilisation. However, the profit margin proposed by the complainant does not relate to actual data on profit achieved in the absence of dumped imports under normal conditions of competition, but to a theoretical situation of full capacity utilisation. Given that the complainant did not demonstrate that the full capacity utilisation on which it based the proposed target profit was, or could be, achieved under normal market conditions in the absence of the dumped imports the claimed target profit could not be used for this reason.

(12) Under these circumstances the Commission examined the profit margin established in other investigations concerning the chemical sector, which are as well capital intensive industries like the oxalic acid industry and having similar a production process.

(13) In regard to profit margins used in previous investigations in the chemical sector[8] (including the profit margin used in the previous investigation on oxalic acid) it was found that, on average, a profit margin of around 8 % had been considered constituting a reasonable profit that the Union industry could achieve under normal market conditions in the absence of injurious dumping.

(14) In addition, the Commission examined the profit margin used in investigations concerning other sectors which, like the chemical sector, are capital intensive. In this regard, the Commission found that the profit margin used in those investigations[9], were consistent with the average profit margin found for the chemical sector, including oxalic acid.

(15) On the basis of the considerations referred to above, and absent actual data on profitability levels that could be achieved by the Union industry during the investigation period under normal conditions, and in the absence of injurious dumping, the Commission found it appropriate to establish such reasonable profit margin on the basis of the average profit margin established in anti-dumping investigations for other chemical industries, and other industries with similar characteristics, such as being capital intensive. On this basis, the Commission concluded that 8 % was a profit margin that the Union industry could reasonably expect to realise under normal conditions of competition, namely in the absence of dumped imports, and this profit margin should therefore be used for the calculation of the injury elimination level.

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C. DISCLOSURE

(16) The Commission disclosed the facts and considerations referred to above on 29 June 2016. Yuanping Changyuan Chemicals Co. Ltd and the Union industry were given an opportunity to comment on them.

(17) Comments were received within the prescribed deadlines and were duly taken into consideration. In addition, on 11 August 2016 a hearing was held between the Commission services and Yuanping.

(18) As a result of the comments received from interested parties, some changes were made with respect to the original disclosure document of 29 June 2016. Therefore, the Commission disclosed again the above facts and considerations to interested parties on 24 August 2016.

(19) Following disclosure, Oxaquim claimed that it was unclear whether Yuanping's claim referred to in recital 4 above had been fully or only partially warranted. In this respect, the Commission confirmed that the claim had been warranted in full. In fact, as explained in detail in recitals 5 and 6 above, the revised calculation performed by the Commission in the original investigation fully reflected the comments made by Yuanping at the time of the original investigation.

(20) For its part, Yuanping alleged that in implementing the Court judgment, the Commission conducted a post hoc analysis in order to justify the findings of the original investigation. According to Yuanping this was evidenced by the fact that the Commission relied on Council Implementing Regulation (EU) No 1138/2011[(10)], which was published after the assessment of the target profit in the current proceeding. Yuanping claimed that such a post hoc analysis could not be used to justify the original findings. This claim was not correct and it was rejected for the following reasons.

(21) Firstly, with regard to the cases relied on for the assessment of the target profit (out of which only a few of them have been referenced in the regulation), Yuanping claim is factually incorrect. The target profit in all these cases, including the regulation referred to above by Yuanping, had been either provisionally or definitively established prior to the determination of the target profit in the original investigation.

(22) Secondly, in order to implement the judgment of the Court in accordance with Article 266 TFEU, the Commission must provide with a statement of reasons in accordance with Article 296 TFEU, for those findings made in the original investigation and for which the Court found that the statement of reasons was insufficient. In doing so, the Commission has to rely on the information that was available at the time of the original investigation.

(23) Accordingly, the Commission motivated those findings, e.g. the use of 8 % as target profit, using only information that it had previously relied upon during the original investigation.

(24) In addition, all the information presented by the Commission in this regulation was already in the case file of the original investigation and/or was publicly available