Commission Implementing Regulation (EU) 2016/704 of 11 May 2016 withdrawing the acceptance of the undertaking for two exporting producers and amending Implementing Decision (EU) 2015/87 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) 2016/704

of 11 May 2016

withdrawing the acceptance of the undertaking for two exporting producers and amending Implementing Decision (EU) 2015/87 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,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) Following an anti-dumping investigation ('the original investigation'), the Council imposed a definitive anti-dumping duty on imports of citric acid ('the product concerned') currently falling within CN codes 2918 14 00 and ex 2918 15 00 originating in the People's Republic of China ('the PRC') by Regulation (EC) No 1193/2008[(2)]. The measures took the form of an ad valorem duty ranging between 6,6 % and 42,7 %.

(2) The European Commission ('the Commission') accepted price undertakings offered, inter alia, by Weifang Ensign Industry Co., Ltd (Taric additional code A882) ('Weifang') and TTCA Co., Ltd (Taric additional code A878) ('TTCA'), together with the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters ('the Chamber') by Decision 2008/899/EC[(3)].

(3) Following an expiry review and a partial interim review ('the reviews') the Commission maintained the measures and amended their level by Implementing Regulation (EU) 2015/82[(4)]. The anti-dumping duty currently in force on imports of citric acid originating in the PRC range between 15,3 % and 42,7 % ('the measures in force').

(4) Following the reviews, the Commission accepted price undertakings, inter alia, from Weifang and TTCA together with the Chamber, by Implementing Decision (EU) 2015/87[(5)].

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/704. (See end of Document for details)*

(5) The undertakings accepted from Weifang and TTCA ('the exporting producers concerned') are both based on the indexation of the minimum prices in accordance with public quotations of corn in the Union, the main raw material normally used in the production of citric acid.

(6) Following an anti-circumvention investigation, the Commission extended the measures in force to imports of citric acid consigned from Malaysia by Implementing Regulation (EU) 2016/32[6] ('the anti-circumvention investigation').

(7) The anti-circumvention investigation concluded that the measures in force were being circumvented by means of transhipment via Malaysia. In particular, the findings of the anti-circumvention investigation revealed a simultaneous surge in exports from the PRC to Malaysia and imports from Malaysia to the Union. The anti-circumvention investigation did not identify any genuine production of citric acid in Malaysia. Six Chinese exporting producers (including Weifang and TTCA) cooperated in the anti-circumvention investigation. The exports of the cooperating exporting producers in the anti-circumvention investigation covered around 69 % of the Chinese exports to Malaysia during the period 1 January 2014 until March 2015.

B. TERMS OF THE UNDERTAKING THAT HAVE BEEN BREACHED

(8) The exporting producers concerned agreed, inter alia, to immediately notify the Commission of any changes to their corporate structure which occur during the period of application of the undertaking. They also agreed that taking part in a trading system leading to a risk of circumvention is a breach of the undertaking.

C. TERMS OF THE UNDERTAKING THAT ALLOW FOR WITHDRAWAL BY THE COMMISSION IN THE ABSENCE OF A BREACH

(9) The undertaking also stipulates that the Commission may withdraw the acceptance of the undertaking at any time during its period of application if monitoring and enforcement prove to be impracticable.

D. MONITORING OF THE EXPORTING PRODUCERS CONCERNED

(10) While monitoring compliance with the undertaking, the Commission verified information submitted by the exporting producers concerned that was relevant to the undertaking. In addition, it carried out verification visits at the premises of the exporting producers concerned. With reference to the findings of the anti-circumvention investigation as referred to in recital 7, the Commission verified the export transactions to Malaysia and the risk of circumvention in general. The findings are listed in recitals 11 to 20 below.

E. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING

(11) TTCA had not reported changes in the company structure. The changes took place already in 2012 and were only communicated at the beginning of the verification visit in December 2015.

(12) The Commission assessed this finding and concluded that TTCA had breached its reporting obligation.

(13) Exports to Malaysia of the exporting producers concerned account for more than 70 % of the exports reported by all cooperating producers in the anti-circumvention investigation. Both exporting producers reported significant exports of citric acid to distributors/traders in Malaysia. During the verification visits, the exporting producers concerned could not provide evidence of the final destination of these exports and both companies argued that they do not trace their products once sold to a third country. Following the verification visits, the Commission gave ample time to both exporting producers to present evidence of the final destination.

(14) The documentation subsequently submitted was not sufficient to establish the final destination of all exports to Malaysia.

(15) The Commission refers to the findings of the anti-circumvention investigation as referred to in recital 7, in particular the absence of genuine production in Malaysia and the simultaneous surge in exports from the PRC to Malaysia and imports from Malaysia to the Union. As the majority of exports to Malaysia were made by the exporting producers concerned, the Commission concluded that both of them had taken part in a trading system leading to a risk of circumvention.

(16) In addition, statistical information available for both exporting producers concerned showed that their exports to traders/distributors in Malaysia dropped significantly after the initiation of the anti-circumvention investigation.

(17) The Commission assessed this change in pattern of trade. It concluded that there was no other reason for this change in pattern of trade than the initiation of the anti-circumvention investigation, thus confirming the existence of a risk of circumvention.

(18) The Commission also assessed the intractability of exports of both exporting producers to other third countries. It concluded that there is a risk of circumvention, like for Malaysia, in particular as the exporting producers admitted that they do not trace the final destination of their exports.

(19) The Commission assessed all findings and concluded that TTCA and Weifang had entered into trading system leading to a risk of circumvention. Therefore, a breach of the undertaking had occurred.

(20) Furthermore, in light of the findings of the anti-circumvention investigation, the Commission also concluded that the trade pattern and the intractability of export transactions render the monitoring of the undertaking of TTCA and Weifang impracticable as it cannot be monitored that sales form the exporting producers concerned to third countries will not enter into free circulation in the Union.

F. CONCLUSION

(21) The findings of breaches of the undertaking and its impracticability established for TTCA and Weifang justify the withdrawal of the acceptance of the

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/704. (See end of Document for details)*

undertaking for the two exporting producers concerned pursuant to Article 8(7) and (9) of the basic Regulation and pursuant to the terms of the undertaking.

G. WRITTEN SUBMISSIONS AND HEARINGS

(22) Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic Regulation.

(23) The Chamber together with TTCA and Weifang reiterated a proposal for an action plan for an improved implementation of the undertaking, which was submitted after the verification visits mentioned in recital 10 above. The plan provided for an additional monitoring mechanism under which all undertaking companies would provide the Commission regularly with an extended report on the third country sales, and the Chamber would apply early warning measures to prevent transhipments. However, this new mechanism would make the monitoring impractical. In any event, the proposed mechanism concerns the future implementation of the undertaking and does not remedy former breaches and incompliance.

(24) Weifang and TTCA in their written submissions disputed the direct correlation of the changes in the exported quantities to Malaysia and the transhipments, as the change in exported quantity reflects only the changes in exogenous factors, i.e. decrease in the demand on the market. They argued that the conclusion of the Commission on the change in the pattern of trade is not substantiated by evidence and remains only a presumption. The anti-circumvention investigation, as referred to in recital 7, concluded that the measures in force were being circumvented by means of transhipment via Malaysia. The anti-circumvention investigation established that a significant change in the pattern of trade involving exports from the PRC and Malaysia to the Union has taken place following the imposition of measures on the product concerned in December 2008, without sufficient due cause or economic justification for such a change other than the imposition of the measures. Based on statistical data and the data provided by the companies, as referred to in recital 15, the majority of exports to Malaysia were made by the exporting producers concerned during the period 2011-2015. Consequently, the arguments of TTCA and Weifang cannot be accepted.

(25) Weifang and TTCA do not admit their responsibility to trace their sales to unrelated traders in third countries. In fact, the companies themselves admitted that having recourse to independent traders in third countries creates an impracticability to trace the re-sales due to the nature of the goods and the market. Such considerations confirm the high risk of circumvention of the measures via transhipments which make the undertaking impracticable.

(26) TTCA claimed to have been negligent, but not intentionally breaching the undertaking when not having informed the Commission of some changes in its corporate structure. The company argued that it had communicated to the Commission the changes on two occasions: during the expiry review as well as during the anti-circumvention investigation. TTCA claimed that the changes did not have any negative impact on the implementation of the undertaking. The Commission cannot accept these arguments since the company has not respected a clear reporting obligation set out in the