Commission Implementing Regulation (EU) 2016/32 of 14 January 2016 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/82 on imports of citric acid originating in the People's Republic of China to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not

COMMISSION IMPLEMENTING REGULATION (EU) 2016/32

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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 13 thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) The Council, following an anti-dumping investigation (‘the original investigation’), imposed a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China (‘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 % (‘the original measures’).

(2) The European Commission (‘the Commission’), by Decision 2008/899/EC[(3)] accepted the price undertakings offered by seven Chinese exporting producers or 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)], subsequently withdrew the undertaking offered by one exporting producer, i.e. Laiwu Taihe Biochemistry Co. Ltd (‘Laiwu’).

(4) By Implementing Regulation (EU) 2015/82[(5)] the Commission, following an expiry review and a partial interim review (‘previous investigations’) pursuant to Article 11(2) and (3) of the basic Regulation respectively, maintained the definitive measures and amended their level. The definitive anti-dumping duties in force on imports of citric acid originating in the PRC range between 15,3 % and 42,7 % (‘the measures in force’).

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/32. (See end of Document for details)*

1.2. **Product concerned and product under investigation**

(5) The product concerned is as defined in the original investigation, 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').

(6) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether declared as originating in Malaysia or not, currently falling within the same CN codes as the product concerned ('the product under investigation'). The TARIC codes for the product under investigation are 2918 14 00 10 and 2918 15 00 11.

(7) The investigation showed that citric acid exported from the PRC to the Union and citric acid consigned from Malaysia to the Union have the same basic physical and technical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

1.3. **Grounds for the initiation**

(8) The Commission had at its disposal sufficient prima facie evidence that the measures in force are being circumvented by imports of the product under investigation from Malaysia.

(9) The information at the Commission's disposal showed that a significant change in the pattern of trade involving exports from the People's Republic of China and Malaysia to the Union has taken place following the imposition of measures on the product concerned, as outlined in recitals 1 to 4 above, without sufficient due cause or economic justification for such a change other than the imposition of the duty.

(10) Furthermore, the Commission had at its disposal sufficient prima facie evidence that the remedial effects of the measures in force are being undermined both in terms of quantity and price.

(11) Finally, the Commission had sufficient prima facie evidence that the prices of the product under investigation are dumped in relation to the normal value previously established for the product concerned.

1.4. ***Ex-officio* initiation**

(12) Having determined, after having informed the Member States, that sufficient prima facie evidence existed for the initiation of an investigation, on 1 May 2015 the Commission initiated, on its own initiative, an investigation by Commission Implementing Regulation (EU) 2015/706[6] (the 'initiating Regulation') pursuant to Articles 13(3) and 14(5) of the basic Regulation. The Commission, by the initiating Regulation, also directed the customs authorities to register imports of citric acid consigned from Malaysia.

1.5. **Investigation**

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/32. (See end of Document for details)*

(13) The Commission officially advised the authorities of the PRC, Malaysia, the known exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. The Mission of the Republic of Malaysia to the European Union provided contact details of exporting producers in Malaysia. Exemption forms were sent to these exporting producers in Malaysia. Questionnaires were also sent to the known exporting producers in the PRC and unrelated importers in the Union.

(14) Interested parties were given the opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing Officer within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.

(15) One Malaysian company came forward claiming that it was not a producer but merely a user of citric acid and therefore it did not request an exemption. This company was informed that, should it have any related producing companies in Malaysia, they were also invited to reply to the exemption form. The Commission did not receive any reply to the exemption form from any Malaysian exporting producer. Six exporting producers in the PRC and four unrelated importers in the Union submitted replies to the questionnaire.

1.6. Reporting period and investigation period

(16) The investigation period covered the period from 1 January 2011 to 31 March 2015. Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade. More detailed data were collected for the reporting period from 1 January 2014 to 31 March 2015 in order to examine the possible undermining of the remedial effect of the measures in force in terms of prices and/or quantities and existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(17) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was made by analysing successively whether there was a change in the pattern of trade between the PRC, Malaysia and the Union; if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of prices and/or quantities of the product under investigation; and whether there was evidence of dumping in relation to the normal values previously established in the original investigation, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Degree of cooperation and determination of the trade volumes

Malaysia

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(18) None of the exporters located in Malaysia cooperated in the present investigation. Given the lack of cooperation, findings concerning exports of citric acid from Malaysia to the Union were made on the basis of facts available in accordance with Article 18(1) of the basic Regulation. In this case, Comext data was used to determine overall import volumes from Malaysia to the Union.

PRC

(19) Six producers/exporters in the PRC, which were also subject to undertakings, submitted a questionnaire reply. The exports of the cooperating companies covered around 54 % of the total Chinese exports to the Union and around 69 % of the Chinese exports to Malaysia during the reporting period.

(20) Due to lack of cooperation from Malaysia and only partial cooperation from the PRC, Comext data was used to determine total export volumes from the PRC to the Union. They were crosschecked with Chinese national statistics. Chinese national statistics were also used for the determination of the total export volumes from the PRC to Malaysia.

(21) The statistical data were counter-checked with the data submitted by the six cooperating exporting producers. The data submitted by the cooperating companies showed similar trends than the trends established in Comext on the one hand and in the Chinese national statistics on the other hand.

2.3. **Change in the pattern of trade**

Imports of citric acid into the Union

(22) During the investigation period, imports of the product concerned from the PRC to the Union first increased from 2011 to 2012 by 14 %. Subsequently in 2013, they dropped below the level of 2011 and then increased again in 2014 till the end of the reporting period. Overall, there was an increase of 5 % during the investigation period, from 201 345 tonnes in 2011, to 210 516 tonnes during the reporting period.

(23) This has to be seen in relation to the relative increase of imports from Malaysia during the same period, i.e. from 792 tonnes in 2011 to 6 837 tonnes during the reporting period, by more than eight times. The total increase in volume of imports from Malaysia between 2011 and the end of the reporting period corresponded to more than 6 000 tonnes.

(24) Table 1 shows the import quantities of citric acid from the PRC[7] and Malaysia into the Union from 1 January 2011 to the end of the reporting period.

Table 1

Import volumes from the PRC and Malaysia to the Union

	2011	2012	2013	2014	RP[a]

a Data during the reporting period was adjusted to the 12-month period.

Source: Comext statistics.

Table 1

Import volumes from the PRC and Malaysia to the Union

China (tonnes)	201 345	230 454	193 383	205 791	210 516
Index	*100*	*114*	*96*	*102*	*105*
Malaysia (tonnes)	792	1 972	4 403	6 559	6 837
Index	*100*	*249*	*556*	*828*	*863*

a Data during the reporting period was adjusted to the 12-month period.

Source: Comext statistics.

Exports from the PRC to Malaysia

(25) Likewise, as shown in table 2 below, there was a substantial relative increase of exports of citric acid from the PRC to Malaysia during the investigation period, i.e. from of 7 990 tonnes in 2011 to 13 763 tonnes in the reporting period, which is an increase of more than 70 %. This increase corresponded to roughly 6 000 tons and thus corresponded almost exactly to the increase of import volumes from Malaysia to the Union as shown in table 1. This increasing trend was also observed with regard to the six cooperating Chinese exporting producers.

Table 2

Export volumes from the PRC to Malaysia

	2011	**2012**	**2013**	**2014**	**RP**
Total exports to Malaysia in quantity (tonnes)	7 990	7 333	11 693	15 172	13 763
Total exports to Malaysia					
Index	*100*	*92*	*146*	*190*	*172*
Exports to Malaysia by cooperating Chinese exporting producers					

Source: Goodwill China Business Information Ltd, questionnaire replies.