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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.11.2008
COM(2008) 701 final

Proposal for a

COUNCIL REGULATION (EC) No .../..

**imposing a definitive anti-dumping duty and collecting definitely the provisional duties
imposed on imports of citric acid originating in the People's Republic of China**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 23 December 2005 (the 'basic Regulation') in the proceeding concerning imports of citric acid originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but the requirement that the measures should not be contrary to the "Community interest" means that the assessment of the wider impact of the measures forms an integral part of the investigation.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 4 September 2007, the Commission announced by a notice ('notice of initiation'), published in the Official Journal of the European Union, the initiation of an anti-dumping proceeding concerning imports into the Community of citric acid originating in the People's Republic of China.

The anti-dumping proceeding was initiated following a complaint lodged on 23 July 2007 by European Chemical Industry Council (CEFIC) on behalf of a Community producer representing a major proportion of the Community production of citric acid containing evidence of dumping and of material injury resulting there from.

On 3 June 2008, the Commission imposed, by Regulation (EC) No 488/2008, a provisional anti-dumping duty on imports into the Community of citric acid originating in the People's Republic of China.

The enclosed Commission proposal for a Council Regulation contains the definitive conclusions regarding dumping, injury, causality and Community interest.

Member States were consulted during the Anti-Dumping Committee of 14 October 2008. 12 Member States were in favour of the proposed course of action, 5 opposed and 10 abstained.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal of the European Union by 3 December 2008 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 23 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION (EC) No .../..

imposing a definitive anti-dumping duty and collecting definitely the provisional duties imposed on imports of citric acid originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ (the basic Regulation) and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

- (1) On 4 September 2007, the Commission published a notice² initiating an anti-dumping proceeding on imports into the Community of citric acid originating in the People's Republic of China ('the PRC'). On 3 June 2008, the Commission, by Regulation (EC) No 488/2008³ ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of citric acid originating in the PRC.
- (2) It is noted that the proceeding was initiated following a complaint lodged by the European Chemical Industry Council (CEFIC) ('the complainant') on behalf of a producer representing a major proportion of the total Community production of citric acid, in this case more than 25 %.
- (3) As set out in recital (14) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2006 to 30 June 2007 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2004 to the end of the IP ('period considered').

B. SUBSEQUENT PROCEDURE

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ C 205, 4.9.2007, p. 14.

³ OJ L143, 3.6.2008, p.13.

- (4) Following the imposition of provisional anti-dumping duties on imports of citric acid originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.
- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission intensified the investigation with regard to Community interest aspects. In this connection, one additional verification visit was carried out after the imposition of the provisional measures at the premises of the following user of citric acid in the EU:
- Reckitt-Benckiser Corporate Services Ltd, Slough, UK and Nowy Dwor, Poland
- In addition, as explained in detail in recital (11) below, verification visits were carried out at the premises of the following exporting producers:
- Laiwu Taihe Biochemistry Co. Ltd. ("Laiwu Taihe"), Laiwu City, Shandong Province
 - Weifang Ensign Industry Co. Ltd. ("Weifang Ensign"), Changle City, Shandong Province
- (6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of citric acid originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.
- (7) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

C. INITIATION OF THE CASE, PRODUCT CONCERNED AND LIKE PRODUCT

- (8) One exporting producer reiterated the claim that the public version of the complaint did not contain any prima facie evidence of material injury to the Community industry, preventing the interested parties from exercising their rights of defence. According to this exporting producer the case should not have been initiated due to lack of sufficient evidence included in the complaint. In this respect, it should be noted that the public version of the complaint contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding. Therefore, this argument should be rejected.
- (9) Some interested parties argued that the product concerned, as set out in recital (16) of the provisional Regulation, and the like product are not alike as stated in recital (18) of the provisional Regulation since they would not share the same physical and chemical characteristics and are not used for the same purposes. According to those interested parties the statement in recital (18) of the provisional Regulation fails to address the arguments brought forward during the investigation and is in contradiction with the adjustment made by the Commission in the undercutting calculations for de-caking certain quantities of the product concerned after arrival in the EU. It is firstly noted

that the investigation has shown that the product concerned and the like product are both used in the same basic applications, i.e. mainly for the household cleaning (auto dish wash products, detergents, water softeners) and as additives in food and beverages, but also in the personal care/cosmetics area. The claim that the product concerned would in fact not be used by certain users in the detergents, food and beverages industry because of its smell and/or colour was not further substantiated by evidence. The investigation has shown that only in one niche application, i.e. the pharmaceutical area, only the European citric acid was indeed used because of the cost of the special compliance test which is required. Since the pharmaceutical area represents only a small portion of the users' total business, running the compliance test was not considered as economically justifiable business decision. Secondly, there is no contradiction between the adjustment made in the undercutting calculation for de-caking parts of the product concerned after importation as mentioned in recital (64) of the provisional Regulation and the statement that both products are alike as it is sufficient that the product concerned and the like product share the same basic chemical, physical and technical characteristics and have the same basic uses which is the case. It is further noted that the caking as such does not happen because of specific characteristics of the Chinese product, but happens because every citric acid, regardless of its origin, due to its chemical composition shows a tendency to cake when being exposed to humidity and changes of temperature. As naturally only the product concerned is exposed over a longer period of time to humidity and changes of temperature during the shipping time to the EU, the problem mainly occurs for the product concerned, but not exclusively. Therefore, the adjustment simply takes account of the fact that the de-caking incurs additional costs mainly for the product concerned as the quantities that are affected by the caking either are de-caked (by breaking and sieving or liquefying the caked product) before further selling or are sold with a rebate. Thus, this claim should be rejected.

- (10) In view of the above, it is definitively concluded that the product concerned and citric acid produced and sold in the analogue country, Canada, as well as the one produced and sold by the Community industry on the Community market are alike, within the meaning of Article 1(4) of the basic Regulation and recitals (15) to (17) of the provisional Regulation are hereby confirmed.

D. DUMPING

1. General

- (11) At the provisional stage of the investigation the Market Economy Treatment ("MET")/Individual Treatment ("IT") claims of all known exporting producers were investigated. Only a number of the exporting producers had been included in the sample and one company was granted individual examination. In their comments to the provisional Regulation a number of parties have claimed that this approach has some shortcomings. The matter was therefore reconsidered and, in view also of the fact that it became possible given the circumstances of the case such as for example the available resources to increase the number of companies that could reasonably be investigated, it was finally decided that sampling should not be applied. Given that every cooperating company has been granted at least IT at the provisional stage, an individual duty rate should be established for each of them. As a consequence, three companies not selected in the sample or individually examined at the provisional stage were requested to submit questionnaire replies. However, only two of these companies

submitted a questionnaire reply. The third company did not submit a questionnaire reply and was not investigated further.

2. Market Economy Treatment ("MET")

- (12) The company referred to in recital (27) of the provisional Regulation insisted that the subsidy mentioned in that recital was not for the purposes of the product concerned and that the non-payment of rents was justified by private inter-group arrangements for the setting off of profits against rent due. However, in the absence of any new elements or information concerning the issue, and in view of the distorting effects on the accounting of the practices mentioned concerning rent, the conclusions in respect of this company remain unchanged and are hereby confirmed.
- (13) Further to provisional disclosure one group of companies referred to in recital (25) of the provisional Regulation claimed that it had received loans on the basis of a detailed financial analysis of one of the banks and after having been granted a high credit rating. However, the fact that a bank formally carried out an analysis and granted a high credit rating does not eliminate the fact that the company in question gave guarantees to other companies despite having mortgaged the majority of its non-current assets, nor the fact that the loans granted to the company in question were granted by a bank found to be under State influence. Therefore, the conclusions in respect of this company remain unchanged and are confirmed.
- (14) One of the companies referred to in recital (26) of the provisional Regulation insisted that it was penalized for the fact that its majority shareholder had acquired land use rights for a good price and then correctly had them re-valued according to market price developments. However, the enormous difference between the acquisition price and later evaluations (1000-2000%) could not be explained. Therefore, in the absence of any new elements or information concerning the acquisition and subsequent revaluation of the land use rights and in view of the advantages that the company received by obtaining assets for prices significantly below market value, the conclusions in respect of this company remain unchanged and are confirmed.
- (15) In the absence of any other comments concerning MET, recitals (25) to (30) of the provisional Regulation are hereby confirmed.

3. Individual treatment ('IT')

- (16) Five companies or groups of companies that were not granted MET fulfilled all the criteria set out in Article 9(5) of the basic Regulation and were granted IT. One company which had been granted provisionally IT, failed to further cooperate and, thus, no IT was finally granted (see recitals (11) and (34)).

4. Normal value

- (17) As explained in recital (11) above, following comments to the provisional Regulation, it was decided that sampling should not be applied and the three companies not selected in the sample or individually examined at the provisional stage were requested to submit questionnaire replies. Normal value was established for one of these companies (Laiwu Taihe), which was granted MET and which submitted a questionnaire reply.

4.1. Companies or groups of companies which could be granted MET

- (18) Since the sole company which could be granted MET and which was examined individually at the provisional stage of the investigation did not submit any comments on normal value, the findings at recitals (35) to (39) of the provisional Regulation are hereby confirmed.
- (19) As for the only other company which was granted MET (Laiwu Taihe) and which was further investigated for the reasons explained at recital (11) above, it was first verified whether the company's total domestic sales of the like product were representative within the meaning of Article 2(2) of the basic Regulation. Domestic sales of the product concerned were slightly below 5% of the exports of the like product to the Community. However, such lower ratio is nonetheless of sufficient magnitude to provide for a proper comparison and the domestic prices of the like product are considered representative given also the overall domestic sales of the company in question. Therefore, they were used to determine normal value.
- (20) For each product type sold for export to the Community by Laiwu Taihe, it was established whether a directly comparable product type was sold on the domestic market. Product types were considered to be directly comparable when they were of the same product type (defined by the chemical composition), comparable granulation and packing. It was established that for only one product type sold for export to the Community a directly comparable product type was sold on the domestic market.
- (21) It was subsequently examined whether the domestic sales of this product type could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was established that there were profitable domestic sales of this product type to independent customers during the IP, and therefore in the ordinary course of trade.
- (22) Since the volume of profitable sales of this product type represented 80% or less of the total sales volume of that type, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.
- (23) As domestic prices of Laiwu Taihe could not be used in order to establish normal value for the other product types, normal value was constructed in accordance with Article 2(3) of the basic Regulation.
- (24) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) first introductory subparagraph of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the Laiwu Taihe.

4.2. Companies or groups of companies which could not be granted MET

- (25) In their comments to the provisional Regulation, some parties claimed that Canada would not be an appropriate analogue country given the fact that the USA have recently initiated an anti-dumping proceeding against citric acid originating inter alia in Canada. Thailand was therefore again brought forward as an alternative analogue country. However, the analysis showed that while anti-dumping measures on citric

acid originating in Canada were not in force during the IP, anti-dumping measures were in force during the IP on citric acid originating in Thailand. The latter measures were imposed by India and consisted in substantial anti-dumping duties of USD 374.36/tonne, which only expired in August 2007, i.e. two months after the end of the IP. Therefore, also considering the arguments already mentioned at recitals (42) to (43) of the provisional Regulation and the fact that the US investigation on citric acid originating in Canada was still ongoing at the moment of finalising this investigation, it is concluded that there is no reason why Thailand should be preferred to Canada as an analogue country.

- (26) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers mentioned in recital (11) above that were not granted MET had to be established on the basis of the prices or constructed value in the analogue country.

5. Export Price

- (27) In the case of the two companies which were further investigated for the reasons explained at recital (11) above, the export price was established following the same methodology explained at recital (45) to (47) of the provisional Regulation.
- (28) Since no companies submitted any comments on export prices, the findings contained in Recitals (45) to (47) of the provisional Regulation are hereby confirmed.

6. Comparison

- (29) In its comments to the provisional Regulation and to the definitive disclosure, one group of companies contested the deduction of a notional commission for sales via a trader in the PRC, given that the trader was an integral part of the group. It was, however, established that the trading company did indeed perform the function of an independent trader, and that the economic result of the relationship of the two companies is that of a principal and an agent. It was established that the trader was not only trading products produced by related companies, but also products produced by independent producers. Moreover, the company in question did also sell directly to non-related customers. Therefore, the claim was rejected, and pursuant to Article 2(10)(i) of the basic Regulation, an allowance based on SG&A and profit of unrelated importers was deducted.
- (30) In its comments to the provisional Regulation, one exporting producer claimed that cost for currency conversion should not be taken into account, as pursuant to Article 2(10)(j) of the basic Regulation, exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period. This claim could be accepted, and the dumping margin of the exporting producer was adjusted accordingly.
- (31) In the provisional Regulation, a deduction to the export price was made in respect of non-refundable VAT charged on export sales, pursuant to Article 2(10)(b) of the basic Regulation. One exporting producer claimed in its comments to the provisional Regulation that no such adjustment to the export price should have been made, as Article 2(10)(b) of the basic Regulation would only relate to normal value. It is acknowledged that the adjustment provided for under Article 2(10)(b) of the basic Regulation only refers to the calculation of the normal value. In fact the above-

mentioned deduction to the export price is due and should be done pursuant to Article 2(10)(k) of the basic Regulation. While examining this claim, it was found that a clerical error had been made in calculating the adjustment for the company in question, and that the same error had been made in respect of other companies. These inaccuracies were rectified and have led to slight downward corrections in the dumping margins previously calculated for these companies.

- (32) In examining the claim referred to in the previous recital, it was found that the necessary adjustment had not been made in the case of one company which was granted individual treatment. This has been rectified and results in a slight increase in the dumping margin for that company.
- (33) In the absence of any other comments in respect of comparison, and apart from the changes indicated at recitals (30), (31) and (32) above, recitals (48) to (50) of the provisional Regulation are hereby confirmed.

7. Dumping margin

- (34) In the case of the two companies which were further investigated for the reasons explained at recital (11) above, the dumping margin was established by following the same methodology explained at recital (51) of the provisional Regulation. In the case of the one company which did not submit a questionnaire reply and was not further investigated, as explained at recital (11) above, this company is considered as non-cooperating and findings are based on facts available in accordance with Article 18(1) of the basic Regulation. In this case, considering the high level of cooperation mentioned at recital (19) of the provisional Regulation, the company has been attributed the highest dumping margin found in respect of all other companies.
- (35) The dumping margins of all the companies which had already been individually investigated at the provisional stage were recalculated, to correct the inaccuracies referred to at recitals (30), (31) and (32) above. This recalculation has led to slight corrections of the dumping margins.
- (36) In the absence of any new element, the conclusions in recital (53) of the provisional Regulation, which relates to the level of cooperation, are hereby confirmed.
- (37) On this basis, the definitive dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are:

Company	Definitive dumping margin
Anhui BBKA Biochemical Co., Ltd	58,1 %
DSM Citric Acid (Wuxi) Ltd	19,1 %
RZBC Co. Ltd	59,8 %
RZBC (Juxian) Co. Ltd	59,8 %

TTCA Co., Ltd	57,1 %
Yixing Union Biochemical Co. Ltd	55,7 %
Laiwu Taihe Biochemistry Co. Ltd	6,6 %
Weifang Ensign Industry Co. Ltd	53,5 %
All other companies	59,8 %

E. INJURY

1. Community production and Community industry

- (38) Some interested parties claimed that S.A. Citrique Belge N.V. ceased production after the IP and was only trading the product concerned imported from its related company in China (DSM Wuxi), arguing, thus that Citrique Belge should not constitute part of the Community industry. This claim was however not substantiated by any evidence and from the data submitted by Citrique Belge, it follows that the company continued production.
- (39) One interested party also complained that in recital 56 of the provisional Regulation only a range of imports of Citrique Belge from its related Chinese producer during the IP was given. This party claimed that the trend of all imports of the Community industry from related and unrelated companies should be given for the whole period considered since imports constitute an important factor for the assessment of community production and consequently for the conclusion of the existence of injury. The investigation has indeed shown that during the whole period considered the imports of the Community industry were insignificant, i.e. between 1% and 6% of production – this range is given for confidentiality reasons. Therefore the argument should be rejected and recitals (55) to (58) of the provisional Regulation are hereby definitively confirmed.

2. Community consumption

- (40) As no new and substantiated information was received with regard to Community consumption recitals (59) and (60) of the provisional Regulation are hereby confirmed.

3. Imports from the country concerned

(a) Volume and market share of the imports concerned, import prices

- (41) With regard to import volumes, market share and prices, no new and substantiated information was found or received, therefore, and in the absence of any claims or arguments from any interested parties relating to volume and prices of the imports concerned, recitals (61) to (63) of the provisional Regulation are hereby confirmed.

(b) Price undercutting

- (42) During the provisional stage of the investigation, in order to compare the product concerned and the citric acid produced by the Community industry at the same level of

trade, an adjustment for the mark-up (including SG&A) of unrelated importers was made in the price undercutting calculation and, additionally, an adjustment was made for special treatment costs incurred by importers in the Community to de-cake certain volumes of the product concerned before further selling. However, due to a minor revision of the data concerning the level of trade adjustment, the weighted average price undercutting margin which was calculated and found to be 17,42% has been revised downwards to 16,54%.

- (43) After final disclosure, one Community producer claimed that the level of trade adjustments should also be made in relation to sales of the Community industry, i.e. that its sales made via traders should be taken into account. In this respect it should be noted that a level of trade adjustment was made indeed for the Community industry's sales prices before comparing them with the import prices of the product concerned.
- (44) The same Community producer also requested that the adjustment for special treatment costs to de-cake certain volumes of the product concerned should also apply to the like product. However, this request was not further substantiated with data concerning the specific costs incurred by this Community producer and, thus, it could not be accepted. In view of the above, recital (64) of the provisional Regulation is hereby confirmed.

4. Situation of the Community industry

(a) General

- (45) Some interested parties claimed that the Commission had not analysed thoroughly all injury indicators and thus, no proper and complete link between the situation of the Community industry and the Chinese imports was established. In particular, it was claimed that there had been no assessment of the positive developments of certain injury indicators. It should be noted that even though some injury indicators show a positive development which was acknowledged in recital (79) of the provisional Regulation, the overall picture points to a deterioration of the situation of the Community industry. The moderate improvement of production, production capacity, capacity utilisation, sales volume and unit price levels as well as the increased cost efficiency described in recital (76) of the provisional Regulation reflect the efforts of the Community producers to remain competitive over the period considered and to benefit from the increased consumption. However, as can be seen in recital (68) of the provisional Regulation, despite these efforts the Community industry lost 5 percentage points (i.e. the market share decreased from 54% to 49%) of its market share which was mostly taken by Chinese low-priced, dumped imports. As an aggravating factor, it is also mentioned that the Community industry could have expected to gain some of the market share held by those three Community producers of citric acid which closed down as of 2004. But on the contrary, the Community industry could neither take over customers from the three closed EC-producers, nor benefit from the increased consumption. This significant loss of market share coupled with the clearly deteriorating financial indicators, i.e. profitability, return on investment and cash flow, show that the overall situation of the Community industry deteriorated over the period considered and appeared to be at its worst during the IP. In addition, stocks' decrease can not be assessed as a positive development of the Community industry's situation in this case since it can not be considered as a meaningful indicator, given the nature of the product which does not allow long-term storage.

(b) Investments and ability to raise capital

- (46) One interested party argued that investments are not constant in this field but follow certain investments cycles. While even under normal market conditions it can certainly not be expected that important investments would be made every year, the fact that over the whole period neither of the two remaining Community producers carried out any important investment is considered as a sign that the low profitability (which turned into loss as of 2006) did not allow any important investment to be made. It is hence considered that investment is a particularly meaningful injury indicator in this case.
- (47) Finally, the Community producers' ability to raise capital should be considered. In this regard the investigation has shown that both Community producers, due to the deteriorating citric acid business environment, had difficulties to raise capital.
- (48) One interested party claimed that the complainant was at least able to raise capital for other products since it announced in February 2007 the construction of a new glucose plant. In this respect it is noted that the scope of the investigation is limited to the ability to raise capital in relation to the product in question, i.e. citric acid, which appeared to have been negatively affected by the financial situation of the Community industry.
- (49) Based on the above, the conclusion set out in recital (72) of the provisional Regulation on the Community industry's investment is confirmed.

(c) Profitability and return on investment

- (50) One interested party claimed that the findings set out in recital (73) of the provisional Regulation could not be reconciled with the accounts of both Community producers in particular none of the accounts would show the mentioned extraordinary restructuring cost. In this respect, it is noted that, throughout the period considered, the extraordinary result of one Community producer has to a large extent been affected by restructuring efforts, which was presented in the accounts either as a cost or a revenue depending on whether it concerns the addition or the release of a provision and by royalties paid to the mother company in Switzerland. Therefore, it was deemed more appropriate to use the operating result as a basis for the injury analysis rather than the net profit.
- (51) The same party claimed that the fine for anti-competitive behaviour that was imposed in 2005 on both mother companies of the Community producers could have influenced the profit situation of the Community industry. Any effects stemming from the fine (both the adding and releasing of provisions) have been recorded under extraordinary result. As mentioned in the previous recital, the operating result has been used as an injury indicator in this proceeding. Therefore, the fine that was imposed on the Community producers, could not have affected the profit situation used in the injury analysis. In addition, it should be noted that Community industry was loss making as of 2006 until the end of IP. Therefore, the trends as presented in the provisional Regulation are hereby definitively confirmed.
- (52) Several interested parties pointed to some inconsistency between the trend concerning profitability and the return on investment. Indeed, in contrast to profitability which

was established by expressing the operating profit on sales of the like product to unrelated customers as a percentage of the turnover of these sales, return on investment was calculated as the net profit in percentage of net book value of investments. In order to be consistent in the calculation of all injury indicators, the calculation of return on investment was revised, based on the operating profit in percentage of the net book value of investments. The revised figures are as follows:

	2004	2005	2006	IP
Return on total investments (index)	100	148	-147	-207

- (53) The corrected figures however follow the same trend and therefore do not alter the conclusion drawn in recital 74 of the provisional Regulation, which is hereby confirmed.

5. Conclusion on injury

- (54) In the absence of any new and substantiated information or argument concerning production, sales volume, market shares, unit sales price, stocks, cash flow, employment, productivity, wages and magnitude of the dumping margin, the findings in recitals (66) to (71), (73) and (75) to (78) of the provisional Regulation are hereby definitely confirmed. In addition, the corrected figures given for return on investment leave unaffected the trends as set out in recital (73) to (74) of the provisional Regulation. Therefore, considering the clearly deteriorating financial indicators, such as profitability, return on investment and cash flow coupled with the significant loss of market share, the conclusion laid down in recital 81 of the provisional Regulation that that the Community industry suffered material injury is definitively confirmed.

F. CAUSATION

1. Effect of the dumped imports

- (55) As mentioned in recital (42) above, it is definitively concluded that during the IP, the average prices of imports from the PRC undercut the average Community industry prices. Following a minor revision in the calculations, the average undercutting margin was found to be 16,54%. This slight downwards revision cannot affect the conclusions on the effect of the dumped imports set out in recitals (83) to (85) of the provisional Regulation, which are hereby confirmed.

2. Effect of other factors

(a) Self-inflicted injury

- (56) Some importers claimed that the Community industry self-inflicted the injury as it followed a 'price-over-volume' strategy, i.e. to serve only the high-end segment of the market, abstaining from producing and selling the low-end product. According to the same importers the consequence was that the Community industry could not benefit from the increased demand of low-end citric acid, and thereby lost market share and deteriorated its financial performance. The investigation however showed that both, the product concerned and the like product are basically used in the same applications and compete mainly in the same segments (see recital (9), with the exception of one

niche market representing a small portion of the European citric acid market share, which was supplied so far solely by the Community industry. The investigation has indeed established that the Community industry was present in the low-end segment of the market. Therefore, this argument should be rejected.

- (57) Moreover, some interested parties considered the lack of any investment during the period considered and in particular during the years when the Community industry achieved better results, i.e. 2004-2005, as a factor which contributed to the market share loss and consequently to the deterioration of its situation. The investigation showed the Community industry did not operate at full capacity and that its capacity utilisation was stable throughout the period considered. Therefore, some production increase would have been possible in case of stronger demand without further investments. Moreover, given that the profitability of the Community industry was insufficient, i.e. below target profit, throughout the period considered and even turned into negative, it is considered to be an economically justifiable business decision not to invest significant amounts in the production of the like product. This argument is therefore not convincing and should be rejected.

(b) Rise in the costs of raw materials, rising energy prices

- (58) Almost all interested parties reiterated their claims that any injury found would be due to the reform of the sugar market and the consequent abolition of the production refunds in 2006 and/or the rising energy prices.
- (59) One interested party claimed that in the annual report of one Community producer relating to 2007, it was stated that the raw material availability was limited due to the European sugar regime which resulted in higher cost. In this respect, it is noted that the mentioned Community producer does not use sugar as main raw material, but molasses and as explained in recital (89) of the provisional Regulation was thus never subject to production refunds. The cost increase for molasses was however not substantial, but corresponding to the increase of world market prices for sugar. As concerns the situation of the other Community producer which was described in detail in recitals (90) to (94) of the provisional Regulation, no new or substantiated information or argument was received. The overall conclusion laid down in recital (93) that the reform of the sugar market had no considerable impact on the cost situation of the Community industry is hereby confirmed.
- (60) The same interested party claimed that there would indeed be a link between sugar prices and biofuel production as this was acknowledged in a study of the Commission on "The causes of the Food Price Crisis"⁴. In this respect it is noted that the Commission, as already stated in recital (98) of the provisional Regulation, had access to the cost data of both Community producers and was therefore in a position to analyse the concrete cost of raw materials for both Community producers concerning the production of citric acid. Any link between sugar prices and biofuel production has therefore been investigated and taken into account in assessing the impact of EU sugar market reform and the increasing biofuel production. Based on this, it could be

⁴ European Commission "The Causes of the Food Price Crisis: Sugar", 20 May 2008, http://ec.europa.eu/agriculture/analysis/perspevct/foodprice/sugar_en.pdf.

concluded and is hereby definitively confirmed that these factors had no considerable impact on the injury found and suffered by the Community industry.

- (61) In addition, it has to be stated that any cost increase concerning molasses, sugar or glucose or energy which was acknowledged in the provisional Regulation (see recitals (93) and (96)) are not the source of the injury of the Community industry as in a normal market situation, the Community industry could have passed on these increased costs at least to a certain extent to its customers. However, the investigation showed the increasing presence of dumped imports which undercut the prices of the Community industry significantly. Thus, as stated in recital (84) of the provisional Regulation there was a price depression and the Community industry could only pass on a fraction of its own cost increases to its customers, which led to the deterioration of its financial situation and a further loss of market share.
- (62) Finally, it has to be mentioned that the investigation has shown that the Chinese costs of production of citric acid had also increased. These increased costs were however not translated into higher sales prices, but on the contrary, unit sales prices even decreased by 6 percentage points during the period considered as shown in recital (63) of the provisional Regulation.
- (63) On the basis of the above, the claims should be rejected and recitals (88) to (99) are hereby definitively confirmed.

(c) Price cartel of Community industry

- (64) Some interested parties reiterated their claims that the loss of market share for the European producers was self-inflicted because of the citric acid cartel (1991-1995) in which both the complainant and the other European producer participated and which was claimed to be the reason of the boost of Chinese citric acid imports. This allegation was not further substantiated and, therefore, did not alter the conclusion drawn in recital (100) of the provisional Regulation that the big boost of the dumped imports happened several years after the cartel ceased to exist.
- (65) On the basis of the above, it is definitively concluded that the consequences of the anti-competitive practices in which the Community industry took part did not contribute to the material injury suffered by the Community industry.

(d) Currency fluctuations

- (66) Some interested parties reiterated their claims that the drop in prices of Chinese citric acid during the IP was largely due to the unfavourable exchange rate from the USD to EUR, the fact that prices for citric acid are generally expressed in USD on world markets and the difficulty to adjust prices, which are generally negotiated annually, to the new currency situation.
- (67) It is recalled that in recital (104) of the provisional Regulation, the impact of any currency fluctuation is considered to be not significant because even if the devaluation of the USD against the EUR between 2004 and the IP which amounted to 4,97%, after a fine-tuning of provisional calculations, would have been fully disregarded there would still be undercutting of over 10%.

- (68) Consequently, it is definitively confirmed that the appreciation of the Euro in respect of the USD was not such as to break the causal link between the established injury to the Community industry and the imports concerned and the claim should, therefore, be rejected.

3. Conclusion on causation

- (69) In the absence of any further new and substantiated information or argument, recitals (82) to (110) of the provisional Regulation are hereby confirmed.
- (70) In the light of the above, the provisional finding of existence of causal link between the material injury suffered by the Community industry and the dumped Chinese imports is confirmed.

G. COMMUNITY INTEREST

1. Developments after the investigation period

- (71) Comments relating to the need to take into consideration certain important post-IP developments have been received both from certain Community industry producers as well as from the cooperating exporting producers and importers. It is noted that in accordance with Article 6(1) of the basic Regulation, information concerning dumping and injury relating to a period subsequent to the investigation period shall, normally, not be taken into account. However, in view of the statement made in recitals (119) and (129) of the provisional Regulation, it was exceptionally considered necessary to collect data and information related to the period after June 2007 until July 2008.
- (72) Some interested parties claimed that the imposition of measures would be unnecessary as the profitability of the Community industry attained high levels post-IP due to significantly increased prices and that the market had regulated itself. During the IP, there was evidence of dumping and injury and this injury was caused to a significant degree by the price depression stemming from the dumped imports. Import statistics show an average increase of Chinese sales prices of only 12 % after the IP. Compared to the undercutting level of 16,54% found during the IP, this increase is clearly not sufficient as it would not allow the Community industry to increase its sales price to a sustainable level without risking to lose more customers in the absence of anti-dumping measures. Concerning the price level of the Community industry, it was found that the Community industry managed to increase its prices moderately as of the first quarter of 2008 which appeared to have improved the financial situation of the Community industry. These price increases are, nevertheless, in a close timely correlation with the initiation of this proceeding and it thus appears that the situation of the Community industry may have improved because of the potential anti-dumping measures on imports from the PRC. It was hence concluded that there was no self-regulation of the market, or the self-regulation was insufficient to render the imposition of measures unnecessary. The argument should be thus rejected.

2. Interest of the Community industry

- (73) In the absence of any new and substantiated information or argument with regard to the interest of the Community industry, the conclusion made in recitals (112) to (115)

of the provisional Regulation regarding the interest of the Community industry are hereby confirmed.

3. Competition and security of supply

- (74) Most interested parties reiterated their claim that the imposition of measures would significantly reduce competition in the European market and create a duopolistic market situation. It is considered, however, that in view of the strong market position that the Chinese exporting producers obtained over the last years, the imposition of measures would not drive them out of the Community market, but merely restore a level playing field allowing the Community industry and the Chinese exporting producers to compete on equal terms. Moreover, a reasonable price increase on the Community market could indeed attract more imports from other third countries with own production, such as Israel and South America which were likely less interested in exporting to a market with depressed prices.
- (75) On the other hand, should anti-dumping measures not be imposed, it cannot be excluded that the Community industry would have to cease its manufacturing activities for this particular business, leading to the opposite scenario, i.e. a dominant position of the Chinese imports.
- (76) Most interested parties also claimed that should Chinese imports stop due to the imposition of measures the security of supply would be at stake because the Community industry cannot satisfy the demand on the EU market even if both producers would produce at 100% of their capacity. This would be aggravated by the fact that the demand of citric acid is predicted to even increase with the effects of Regulation 648/2004 of the European Parliament and of the Council on detergents ("detergent Regulation")⁵. In this Regulation, the Commission undertakes to conduct a review regarding the use of phosphates in detergents and based on the results, to submit a proposal for appropriate action. Following this obligation, the Commission submitted a report, but did not propose any action yet. However, even if phosphates would be completely banned from the detergents' industry, their main substitutes are zeolites and to a smaller extent only citric acid.
- (77) Furthermore, several facts contradict the assumption that Chinese imports would indeed stop.
- Import statistics showed that the Chinese imports increased by 17 % during the twelve months following the IP, whereas after the imposition of provisional measures they remained at a substantial level, appearing sufficient to guarantee the security of supply in the EU.
 - The investigation showed some overcapacity of some exporting producers in China which is an indication that Chinese imports in the EU market will not stop, in particular if the USA would impose measures against PRC, in the framework of the US anti-dumping investigation.
- (78) In addition, the Community industry announced to take appropriate measures in order to increase its production capacity. The complainant announced to increase its

⁵ OJ L 104, 8.4.2004, p. 1-35.

production capacity significantly. According to the press release issued in July 2008, those additional capacities should be fully available as of mid 2009 with the first increase already available in January 2009. This should indeed contribute to satisfy the demand in the EU. It is further noted that the other Community producer announced in August 2008, that it would close its production site in China by the first quarter of 2009 and that it will focus on its production site in the Community.

- (79) Moreover, a more attractive price level in the EU market would probably also increase imports from third countries and with those alternative sources, supply appears to be better secured as if users would only depend on Chinese citric acid. During the 12 months following the IP, imports from Israel for example have increased by 30%.
- (80) It therefore appears that the imposition of measures would not drive the Chinese exporting producers out of the market, but would rather restore a level playing field which secures alternative sources of supply.

3. Interest of unrelated importers

- (81) Some interested parties claimed that due to sampling, the Commission only received the results for the largest importers in Europe, thus lacking information of the effects of duties on the overwhelming majority of small and medium sized importers. However, no party raised any objection against the selected sample and, therefore, the sample is considered to be representative for all importers.
- (82) Given that citric acid, on average, constitutes only 1% of the importers' total revenue, it is expected that the effects of an anti-dumping duty will be diluted in the companies' overall results.
- (83) In the absence of any further comments from importers, the conclusions made in recitals (116) to (120) of the provisional Regulation are hereby confirmed.

4. Interest of users

- (84) After the provisional stage, the Commission intensified the investigation as regards the possible impact of measures on users. To this end, additional information was requested from the users and national associations and an additional verification visit was carried out at one Community user's premises.
- (85) The information received confirms the provisional finding, based on users' questionnaire incomplete responses as mentioned in recitals (121) to (122) of the provisional Regulation, that the effect of citric acid in the total cost of production of the users is relatively moderate. While the share of citric acid in the users' cost of production naturally depends on the product, it was found to range generally between less than 1% and 20%. The additional information mentioned above has also confirmed the provisional findings that a duty at the level of the underselling margin would have a very limited effect on the cost of production of the cooperating users. After the definitive disclosure, two of the main industrial users of citric acid argued that citric acid represents a high proportion in certain of their products and, thus, the effect of the duties would be significant for them. Firstly, it should be noted that both users produce a wide range of products in which citric acid is used in different proportions. Secondly, based on the data submitted, it could not be proved that those

users sold predominantly those products in which the cost of citric acid were more important. Finally, the argument was not further substantiated by any additional data. Therefore, this argument could not be accepted.

5. Conclusion on Community interest

- (86) The above additional analysis concerning the interest of the importers and the users in the Community has not altered the provisional conclusions in this respect. Even if in certain cases the burden would need to be fully borne by the importer/user, any negative financial impact on the latter would in any event be not significant. On this basis, it is considered that the conclusions regarding the Community interest as set out in the provisional Regulation are not altered. In the absence of any other comments, they are therefore definitively confirmed.

H. DEFINITIVE MEASURES

1. Injury elimination level

- (87) Several interested parties contested the profit margin level provisionally used and claimed the 9% profit is excessive, arguing that the Community industry during the period considered never actually achieved this profit level. It is acknowledged that indeed only one Community producer achieved this profit level in the absence of dumping, i.e. in 2001, whereas the other did not. The methodology used to determine the injury elimination level was thus re-examined and it was deemed more appropriate to use as profit margin the weighted average profit margin that was achieved by both European producers in 2001, i.e. 6%.
- (88) On the basis of the above, it is concluded that the Community industry could reasonably expect to achieve a pre-tax profit margin of 6% in the absence of dumped imports and this profit margin was used in the definitive findings.
- (89) The Chinese import prices were compared, for the IP, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the profit margin, as now revised. The difference resulting from this comparison, when expressed as a percentage of the total CIF value, amounted to a range from 8,3% to 42,7 % for each company, i.e. less than the dumping margin found, except for one company.

2. Definitive measures

- (90) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In all but one case, the duty rate should accordingly be set at the level of the injury found.
- (91) On the basis of the above, the definitive duties should be as follows:

<u>Exporting producer</u>	<u>Proposed anti-dumping duty</u>

Anhui BBKA Biochemical Co., Ltd	35,7 %
DSM Citric Acid (Wuxi) Ltd	8,3 %
RZBC Co.	36,8 %
RZBC (Juxian) Co. Ltd.	36,8 %
TTCA Co., Ltd	42,7 %
Yixing Union Biochemical	32,6 %
Laiwu Taihe Biochemistry Co. Ltd	6,6 %
Weifang Ensign Industry Co. Ltd	33,8 %
All other companies	42,7 %

3. Form of the measures

- (92) During the course of the investigation, six exporting producers in the PRC offered acceptable price undertakings in accordance with Article 8(1) of the basic Regulation.
- (93) The Commission, by Decision [INSERT]⁶, accepted these undertaking offers. The Council recognises that the undertaking offers eliminate the injurious effect of dumping and limits to a sufficient degree the risk of circumvention.
- (94) 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 on (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 Community; 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.
- (95) 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.
- (96) 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 [INSERT] and [INSERT] even if an undertaking offered by the

manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

- (97) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.
- (98) For the reasons stated above, the undertakings offered by the exporting producers are therefore considered acceptable by the Commission and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.
- (99) In the event of a breach or withdrawal of the undertakings, or in case of withdrawal of acceptance of the undertakings by the Commission, the anti-dumping duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation.

I. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (100) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive duty rates are lower than the provisional duty rates, amounts provisionally secured in excess of the definitive rate of anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of citric acid and of trisodium citrate dihydrate 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 rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

Company	Anti-Dumping duty (%)	TARIC Additional Code
Anhui BBKA Biochemical Co., Ltd - N° 73, Daqing Road, Bengbu City 233010, Anhui Province, PRC	35,7	A874
DSM Citric Acid (Wuxi) Ltd - West Side of Jincheng Bridge, Wuxi 214024, Jiangsu province, PRC	8,3	A875
RZBC Co., Ltd - N° 9 Xinghai West Road, Rizhao, Shandong Province, PRC	36,8	A876

RZBC (Juxian) Co. Ltd, West Wing, Chenyang North Road, Ju County, Rizhao, Shandong Province, PRC	36,8	A877
TTCA Co., Ltd. – West, Wenhe Bridge North, Anqiu City, Shandong Province, PRC	42,7	A878
Yixing Union Biochemical Co., Ltd – Economic Development Zone Yixing City 214203, Jiangsu Province, PRC	32,6	A879
Laiwu Taihe Biochemistry Co. Ltd, No. 106 Luzhong Large East Street, Laiwu, Shandong Province, PRC	6,6	A880
Weifang Ensign Industry Co. Ltd, The West End, Limin Road, Changle City, Shandong Province, PRC	33,8	A882
All other companies	42,7	A999

3. Notwithstanding the first paragraph, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.
4. Unless otherwise specified, the 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 the Commission Decision [2008/.../EC], as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:
 - they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and
 - 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 of this Regulation; and
 - 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:
 - 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

- when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

The amounts secured by way of provisional anti-dumping duty pursuant to Commission Regulation (EC) No 488/2008 on imports of citric acid originating in the People's Republic of China shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the amount of the definitive duty shall be released.

Article 4

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, [...]

For the Council
The President
[...]

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the companies' sales to the Community 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 Community 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 tonnes
 - the applicable payment terms
 - the applicable delivery terms
 - total discounts and rebates
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying 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 Community 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 [Decision 2008/XXXX/EC]. I declare that the information provided in this invoice is complete and correct.”