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COMMISSION DECISION

of 2 December 2008

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

(2008/899/EC)

(OJ L 323, 3.12.2008, p. 62)

Amended by:

Official Journal

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Commission Decision 2012/501/EU of 7 September 2012

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

(2008/899/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Community ⁽¹⁾ (the 'basic Regulation'), and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 488/2008 ⁽²⁾, the Commission imposed provisional anti-dumping duties on imports into the Community of citric acid originating in the People's Republic of China (PRC).
- (2) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Community interest. The definitive findings and conclusions of the investigation are set out in Council Regulation (EC) No 1193/2008 ⁽³⁾ imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of citric acid originating in the PRC.
- (3) The investigation confirmed the provisional findings of injurious dumping relating to imports of citric acid originating in the PRC.

B. UNDERTAKINGS

- (4) Subsequent to the adoption of provisional anti-dumping measures, six cooperating exporting producers in the PRC, namely Anhui BBKA Biochemical, RZBC, TTCA, Yixing Union Biochemical, Laiwu Taihe Biochemistry and Weifang Ensign Industry offered price undertakings in accordance with Article 8(1) of the basic Regulation. In these undertakings, the exporting producers have offered to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. Each exporting producer offered one minimum import price for all different product types in order to limit the risk of circumvention.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 143, 3.6.2008, p. 13.

⁽³⁾ See page 1 of this Official Journal.

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- (5) In addition, the offers provide for the indexation of the minimum prices given that the prices of the product concerned varied significantly, in particular prices increased considerably after the investigation period. The indexation is made in accordance with public international quotations of corn, the main raw material used by the exporting producers. However, the exporting producers offered to fix the minimum prices at least at the level of the non-injurious price even if the indexation would lead to a lower price level.
- (6) Laiwu Taihe Biochemistry, which was accorded market economy treatment, offered to calculate its minimum price based on the normal value established during the investigation.
- (7) Moreover, the exporting producers, in order to reduce the risk of price violations by means of cross-compensation of prices, firstly offered to report all non-EU sales to those customers whose organisation or structure extends beyond the EU, should the exporting producer sell to this customer in the EU. Secondly, the exporting producers agreed to respect a certain price regime in relation to those non-EU sales.
- (8) The exporting producers will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.
- (9) It is also noted that the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCC MC') is joining the six companies mentioned in recital (4), and that therefore the CCC MC will also play an active role in the monitoring of the undertakings. Thus, the Commission considers the risk of circumventing the agreed undertakings as limited.
- (10) Subsequent to the disclosure of the undertaking offers, the Community industry objected to these undertaking offers. The Community industry argued that an indexation based on corn is not appropriate as other main inputs constitute major variant components of the costs and suggested instead an indexation based on both raw material and energy costs. As concerns the Community industry's comments suggesting an indexation based also on energy, it is noted that energy is not a major cost driver. Moreover, there would be no clear source of indexation as the energy required can be produced from different sources such as coal, natural gas or electricity.

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- (11) The Community industry further argued that, because the exporting producers sell the product covered by the undertaking to multinational companies, there is a high risk of price cross-compensation i.e. the product covered by the undertaking may be sold to the same customer at artificially low prices outside the EC in order to compensate the minimum prices in the EC. In this regard it should be noted that the majority of the companies' export sales to the EC are made to traders and not to multinational companies. Notwithstanding this, and to further reduce the remaining risk of cross-compensation by some specific companies, the offers contain special cross-compensation clauses in respect of sales by the companies concerned to those EC customers whose organisation or structure extends beyond the EU. These clauses significantly reduce the risk of cross-compensation.
- (12) In view of this, the undertakings offered by the exporting producers are acceptable.
- (13) In order to enable the Commission to monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional on (i) the presentation of an undertaking invoice containing at least the elements listed in the Annex to Regulation (EC) No 1193/2008; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said company 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 no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty shall instead be payable.
- (14) To further ensure the respect of the undertakings, importers have been made aware by the above-mentioned Council Regulation that the non-fulfillment of the conditions provided for by that Regulation, or the withdrawal by the Commission of the acceptance of the undertakings, may lead to the customs debt being incurred for the relevant transactions.
- (15) In the event of a breach or withdrawal of the undertaking or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply by means of Article 8(9) of the basic Regulation,

HAS DECIDED AS FOLLOWS:

▼B*Article 1*

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

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Country	Companies	Taric additional code
People's Republic of China	COFCO Biochemical (Anhui) Co., Ltd — No 73 Daqing Road, Bengbu City 233010, Anhui Province	A874
	Manufactured by RZBC Co., Ltd — No 9 Xinghai West Road, Rizhao, Shandong Province and sold by its related sales company RZBC Imp. & Exp. Co., Ltd — No 66, Lvzhou South Road, Rizhao (Liangyou Grand View Hotel, 22nd Floor, Building A), Shandong Province	A926
	Manufactured by RZBC (Juxian) Co., Ltd — West Wing, Chengyang North Road, Ju County, Rizhao, Shandong Province and sold by its related sales company RZBC Imp. & Exp. Co., Ltd — No 66, Lvzhou South Road, Rizhao (Liangyou Grand View Hotel, 22nd Floor, Building A), Shandong Province	A927
	TTCA Co., Ltd — West, Wenhe Bridge North, Anqui City, Shandong Province	A878
	Yixing Union Biochemical Co., Ltd — Economic Development Zone Yixing City 214203, Jiangsu Province	A879
	Weifang Ensign Industry Co., Ltd, Changsheng Street No 1567, Changle, Weifang, Shandong Province	A882

▼B*Article 2*

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