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Proposal for a

**COUNCIL REGULATION**

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

## EXPLANATORY MEMORANDUM

### 1. Context of the proposal

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

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the anti-dumping proceeding concerning imports of oxalic acid originating in India and 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**

Commission Regulation (EU) No 1043/2011 imposing a provisional anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China.

- **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 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 contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Union interest. It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published no later than 20 April 2012.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

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 Union, 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:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

#### 4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

Proposal for a

## **COUNCIL REGULATION**

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

THE COUNCIL OF THE EUROPEAN UNION,

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<sup>1</sup> ('the basic Regulation'), and in particular Article 9(4) thereof,

Having regard to the proposal submitted by the European Commission (the Commission) after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

- (1) The Commission, by Regulation (EU) No 1043/2011<sup>2</sup> ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China ('the PRC'). The provisional anti-dumping duties ranged from 14.6% to 52.2%.
- (2) The proceeding was initiated as a result of a complaint lodged on 13 December 2010 by the European Chemical Industry Council (CEFIC) on behalf of Oxaquim S.A. ('the complainant'), representing a major proportion, in this case more than 25%, of the total Union production of oxalic acid.
- (3) As set out in recital (9) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2010 to 31 December 2010 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2007 to the end of the investigation period ('period considered').

1.2. Subsequent procedure

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 275, 20.10.2011, p.1

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. In particular, one exporting producer from India requested and was afforded a hearing in the presence of the Hearing Officer of the Directorate-General for Trade.
- (5) The Commission continued to seek information it deemed necessary for its definitive findings.
- (6) Recital (150) of the provisional Regulation invited Chinese companies which had not yet made themselves known but considered that an individual duty should be established for them to come forward within 10 days from publication. No Chinese company did so.
- (7) Subsequently, 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 oxalic acid originating in India and the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on this final disclosure.
- (8) The oral and written comments submitted by the interested parties were considered and were taken into account where appropriate.

### 1.3. Parties concerned by the proceeding

- (9) In the absence of any comments with regard to the parties concerned by the proceeding, recitals (3) to (8) of the provisional Regulation are hereby confirmed.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (10) The product concerned is as described in recitals (10) and (11) of the provisional Regulation, i.e. oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7), and whether or not in aqueous solution, currently falling within CN code ex 2917 11 00 and originating in India and the PRC.
- (11) There are two types of oxalic acid: unrefined oxalic acid and refined oxalic acid. Refined oxalic acid, which is produced in the PRC but not in India, is manufactured through a purification process of unrefined oxalic acid, the purpose of which is to remove iron, chlorides, metal traces and other impurities.
- (12) Oxalic acid is used in a wide range of applications, for example as a reducing and bleaching agent, in pharmaceutical synthesis and in the manufacture of chemicals.

### 2.2. Like product

- (13) The investigation has shown that oxalic acid produced and sold by the Union industry in the Union, oxalic acid produced and sold on the domestic market of India and the PRC and oxalic acid imported into the Union from India and the PRC have essentially the same basic physical and chemical characteristics and the same basic end uses.
- (14) In the absence of any comments regarding the product concerned or like product, recitals (10) to (13) of the provisional Regulation are hereby confirmed.

### 3. DUMPING

#### 3.1. India

##### 3.1.1. Preliminary remark

- (15) In recital (14) of the provisional Regulation, the Commission found that one Indian exporting producer could not be considered as a cooperating party and accordingly the findings for that company were made on facts available as set out in Article 18 of the basic Regulation.
- (16) Following the disclosure of provisional findings to this company, Star Oxochem Pvt. Ltd, it provided additional explanations and clarifications in respect of the information submitted earlier in the investigation by the company. It also requested to be heard by the Commission and by the Hearing Officer of the Directorate-General for Trade. The company argued that, given that it had submitted a questionnaire response and bearing in mind that the Commission services had visited the premises of the company and also in light of the additional explanations and clarifications now provided, it would not be appropriate if it were to continue to be treated like exporting producers who had not cooperated in any way with the investigation.
- (17) In light of the above, in particular the additional explanations and clarifications provided, the Commission's services consider that they can use part of the original information, namely data related to export prices, as they were found to be reliable. It follows from the above considerations that the provisional findings, as set out in recital (14) of the provisional Regulation, are only partially maintained and findings in respect of this company are made partially on facts available and partially on its own export prices in accordance with Articles 18(1) and 18(3) of the basic Regulation.

##### 3.1.2. Normal value

- (18) No comments have been submitted in respect of the methodology to calculate normal value for India. Accordingly, the findings in recitals (15) to (18) of the provisional Regulation are confirmed with regard to the cooperating company.
- (19) With regard to Star Oxochem, and taking into account the findings above (recitals (16)-(17)), the normal value was established on the basis of facts available pursuant to Article 18(1) of the basic Regulation. Accordingly, the normal value for this company was based on the weighted average of a representative quantity of domestic sales by the other cooperating company, Punjab Chemicals.

##### 3.1.3. Export price

(20) In the absence of any comments, the determination of the export price, as set out in recital (19) of the provisional Regulation, is confirmed with regard to Punjab Chemicals.

(21) In view of the conclusions as set out above in recitals (16)-(17), the export price for Star Oxochem is, pursuant to Article 2(8) of the basic Regulation, established on the basis of the prices actually paid or payable by independent customers for the product concerned when exported to the Union.

#### 3.1.4. Comparison

(22) In the absence of any comments with regard to the comparison of the normal value and the export prices, recitals (20) and (21) of the provisional Regulation are confirmed as far as the cooperating producer, Punjab Chemicals, is concerned.

(23) With regard to Star Oxochem, adjustments have been made in accordance to Article 2(10) of the Basic Regulation based on the verified allowances of Punjab Chemicals.

#### 3.1.5. Dumping margin

(24) With regard to the cooperating producer no comments have been made on the Commission's provisional findings. Therefore, the dumping margin, as set out in recitals (22) and (23) of the provisional Regulation are confirmed.

(25) With regard to STAR Oxochem and taking into account the above considerations, the dumping margin, expressed as a percentage of the cif Union border price, duty unpaid is 31.5%.

(26) In view of the low cooperation from India (below 80%) it was provisionally considered that the highest dumped transaction of the cooperating party was the most appropriate method for establishing the country-wide dumping margin. This transaction is not exceptional in terms of either quantity or price and is therefore considered a representative sample that leads to a reasonable and proportionate result in relation to the dumping margin established for the cooperating producer.

(27) In view of the above the considerations the findings in recitals (24) and (25) of the provisional Regulation are confirmed.

(28) On this basis the definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, for India are:

Company	Definitive dumping margin
Punjab Chemicals and Crop Protection Limited	22.8%
Star Oxochem Pvt. Ltd	31.5%
All other companies	43.6%

### 3.2. People's Republic of China

#### 3.2.1. Market Economy Treatment (MET) / Individual Treatment (IT)

- (29) As set out in the provisional Regulation, one group of Chinese companies requested MET or, failing that, IT, while another group of Chinese companies requested IT only. As set out in recitals (26) to (32) of the provisional Regulation, the claim for MET was rejected whereas both groups of companies were provisionally granted IT.
- (30) No comments have been submitted in respect of these provisional finding and recitals (26) to (32) of the provisional Regulation are hereby confirmed.

#### 3.2.2. Analogue country

- (31) No comments were received on the provisional choice of analogue country. Accordingly, recitals (33) to (34) of the provisional Regulation are confirmed.

#### 3.2.3. Normal value

- (32) It was explained in the provisional Regulation that the Commission established separate normal values for both *unrefined* and *refined* oxalic acid. While the normal value for unrefined oxalic acid was determined on the basis of the normal value established for India, the normal value for refined oxalic acid, which is not produced in India, was constructed on the basis of the manufacturing costs for Indian unrefined oxalic acid, adjusted with an uplift of 12% to take into account additional manufacturing costs, plus SG&A and profit.
- (33) Both cooperating producers from China contested the 12% uplift for additional manufacturing costs, claiming that these additional costs have never been verified by the Commission and appear to be simply a rough estimation based on a methodology that has not been disclosed to them at the time of the provisional disclosure. One of the exporting producers claimed that it had estimated the additional manufacturing cost at only 5% although it did not substantiate this claim with any supporting evidence.
- (34) It is pointed out that the uplift has been determined on the basis of information provided by the cooperating Chinese exporting producers themselves. First, it is noted that the same company which now alleges that the additional manufacturing cost is only around 5% had originally explicitly referred to additional costs of 10-15% in its MET/IT claim form. Second, during the verification visits at the companies' premises, both cooperating producers confirmed that the additional costs for manufacturing refined oxalic acid as compared to unrefined oxalic acid were in the band of 10-12%. Third, this latter level of 10-12% additional manufacturing cost was also supported by calculations of the Union industry. In view of the information provided by the cooperating producers an uplift of 12% was considered appropriate.
- (35) Therefore in the absence of any substantiated information or supporting evidence justifying a lower uplift the findings in recitals (35) to (37) of the provisional Regulation are hereby confirmed.

#### 3.2.4. Export price

(36) Both exporting producers from the PRC were granted IT, therefore their export prices were based on the prices actually paid or payable by the first independent customer in the Union in accordance with Article 2(8) of the basic Regulation.

(37) In the absence of comments with regard to the export price, recital (38) of the provisional Regulation is hereby confirmed.

#### 3.2.5. Comparison

(38) One of the cooperating producers claimed that the SG&A expenses of its related trader and commissions should not be removed from the export price as an adjustment under Article 2(10)(i) of the basic Regulation. The producer stated that the direct selling costs of their related trader had already been removed from the export price in order to arrive at an ex-works price to compare with the normal value on the same basis.

(39) The producer argued that their related trader was a wholly owned subsidiary and, in view of the export profit distribution strategy within the group, did not charge any commission. Furthermore, according to the company, the remaining SG&A expenses represented the combined costs of operating the company and were not expenses directly related to sales and should therefore not be removed from the export price.

(40) Article 2(10)(i) of the basic Regulation states that commissions are to be understood to include the mark-up received by a trader if the functions of such a trader are similar to those of an agent working on a commission basis. It is therefore irrelevant whether a commission was actually paid or not. What is relevant is whether the trader re-sold the goods with a mark-up and whether the functions of the trader were similar to those of an agent.

(41) Evidence on file, obtained before and during the inspection of the trading company, shows that the trader during the IP sold oxalic acid produced by the related producer to a customer in the EU. At the same time the producer was also exporting directly to the same customer in the EU. The related trader therefore duplicated the effort of the producer with different staff in a different office in a different city, thereby incurring its own costs that are reflected in their export price.

(42) It is also clear from evidence on file that the trading company purchased the exported goods from the related exporting producer and re-sold them, with a mark-up, in its own name, after having itself concluded price negotiations with the final independent customer.

(43) Evidence was also collected regarding the trading company performing the functions of an agent. This evidence firstly shows that the producer sold significant volumes of the product concerned directly to the EU as well as exporting to the EU via their related trading company. Only about one-third of sales to the EU were made via this related company. The trader also re-sold oxalic acid from other unrelated producers. Evidence on file shows that over half of the trader's purchases of oxalic acid were from unrelated suppliers and less than half of their purchases came from their related producer.

(44) The trader could thus not be considered as the internal export sales department of the producing exporter despite its relationship with the exporting producer.

- (45) It is also clear from evidence submitted and verified that the trader only pays for the goods supplied from the related exporting producer once the customer in the EU has paid the trader. The financial risk therefore remains with the producer and not the trader.
- (46) It was therefore considered that the trader was carrying out functions similar to those of an agent working on a commission basis. Accordingly, the claim that no adjustments should be made for commission under 2(10)(i) is rejected.
- (47) Also the claim that SG&A expenses should not be taken into account as they do not include direct selling expenses cannot be accepted. Such overhead costs have an impact on the cost structure of the company and therefore affect the export price. Therefore, a portion of these costs was removed from the export price to allow for a fair comparison of normal value and export price, ex-works. This claim is rejected.
- (48) The commission has been established on the basis of the profit margin of an unrelated EU importer rather than on the actual mark-up of the trader, which was significantly higher. This methodology was deemed more appropriate as the actual mark-up would have been based on internal transfer prices not reflecting actual market conditions.
- (49) In the absence of any further comments with regard to the comparison of the normal value and the export price, recitals (39) to (44) of the provisional Regulation are hereby confirmed.

#### 3.2.6. Dumping margins

##### *For the cooperating exporting producers*

- (50) One group of exporting producers claimed that individual dumping margins should be established separately for unrefined and refined oxalic acid. They argued that although dumping margins were established on the basis of a comparison of the weighted average normal value with the weighted average export price of the product concerned type by type, one common dumping margin for both types of oxalic acid was established. They claimed that it would be more appropriate to establish a dumping margin for each type of oxalic acid as the group consists of two producing companies of which one produces refined oxalic acid while the other produces unrefined oxalic acid.
- (51) Unrefined oxalic acid can be substituted by refined oxalic acid. Both types of oxalic acid are included under the same CN code and the different types cannot easily be distinguished from each other. The purity of the oxalic acid is the same, the difference is in the levels of other products in the remaining 'waste' product. As they both fall within the definition of the product concerned, one dumping margin has been established in line with usual practice. Given the significant price difference between the two types and the difficulties involved in distinguishing them from each other individual dumping margins for refined and unrefined oxalic acid would lead to an increased risk of circumvention. The claim to have individual dumping margins for refined and unrefined oxalic acid, is rejected and the dumping margins as established in recitals (45) and (46) of the provisional Regulation are confirmed.

- (52) Finally, the same exporting producer group questioned the different dumping margins established for the two groups of exporting producers from the PRC and requested clarification of the calculation methodology and the classification of refined and unrefined oxalic acid, given the difference in the dumping margins found between the two groups of exporters.
- (53) The same methodology has been used in respect of both groups of exporting producers from the PRC and the weighted average export price of the product concerned includes both refined and unrefined oxalic acid. The explanation as to the different dumping margins rests therefore simply on the relative weight of exports of the respective types, considering that refined oxalic acid is normally sold at a higher price than unrefined.
- (54) The definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Company	Definitive dumping margin
Shandong Fengyuan Chemicals Stock Co., Ltd and Shandong Fengyuan Uranus Advanced material Co., Ltd	37.7%
Yuanping Changyuan Chemicals Co., Ltd	14.6%

*For all other non-cooperating exporting producers*

- (55) In the absence of other comments with regard to the dumping margins, recitals (47) to (48) of the provisional Regulation are hereby confirmed.
- (56) On this basis the country-wide level of dumping is definitely established at 52.2% of the CIF Union frontier price, duty unpaid, and recital (49) of the provisional Regulation is hereby confirmed.

4. INJURY

4.1. Union production and Union industry

- (57) An exporting producer submitted that the reference to two Union producers constituting the Union industry in recitals (50) and (51) of the provisional Regulation (the complainant and a second non-cooperating producer) did not properly reflect the situation regarding macro economic indicators. It was also argued that data regarding the non-cooperating producer as well as the data from a third Union producer having stopped the production of OA should be disregarded and not be included in some macro indicators (see recitals (72), (74) and (78) of the provisional Regulation). First, it is hereby confirmed that contrary to what was stated in recitals (50) and (51) of the provisional Regulation, there were in fact three producers of the product concerned in the Union during the period considered constituting the Union industry within the meaning of Article 4(1) of the basic Regulation, which thus represent 100% of the Union production. Second, the claim that figures pertaining to the non cooperating

producer and the third Union producer having ceased its operation in 2008 should be disregarded is rejected, as it is correct to include all known figures related to the period considered for the purpose of the injury analysis in order to achieved the best informed representation of the economic situation of the Union industry as prescribed in Article 4(1) of the basic Reeregulation.

- (58) The same exporting producer also argued that the reasons for which this third producer has ceased its production of the like product were not properly examined during the investigation. However, this matter was examined during the investigation and the company simply invoked the fact that it had stopped the production of the like product for "internal reasons" without giving any further explanations. In addition, one exporting producer concurred with this explanation and claimed that the decision to stop the production was not due to the alleged dumping practices from exporting producers in China, thus contradicting the information which was made available by the complainant in the non-confidential version of the complaint, in which it is stated that "[the company] ceased production, once and for all, closing the factory because of aggressive dumping from China and India". However, the exporting producer did not provide any different information with regard to the alleged production figures related to this third Union producer. Therefore, this issue does not devalue the fact that the data related to that third EU producer could be used in the current investigation.
- (59) Another exporting producer argued that the minimum threshold for the standing at initiation was not properly disclosed and in fact was not met. As mentioned in recital (2) of the provisional Regulation, the complainant represented more than 25% of the total Union production of oxalic acid and no producer expressing opposition has come forward prior to the initiation of the investigation. An information note was made available in the non-confidential file summarising the results of the standing examination at initiation stage. Furthermore, the injury analysis made pursuant to Article 4(1) of the basic Regulation covered a major proportion of the Union Industry.
- (60) In the absence of any further comments concerning the definition of the Union production and the Union industry, recitals (50) and (51) of the provisional Regulation are hereby confirmed subject to the clarification in recital (57) above.

#### 4.2. Determination of the relevant Union market

- (61) An exporting producer submitted that captive use of oxalic acid should not be considered in the determination of some injury indicators and in any case the same consistent approach should be applied to all injury indicators. However, the separation made between the captive and the free markets was explained in recitals (52), (53) and (55) of the provisional Regulation and in line with the basic Regulation, the focus of the analysis was primarily on the free market, even though, both the use in the free and the captive markets were included for the determination of some injury indicators as indicated in recital (55). Indeed, some injury indicators can only be examined in regard to the use of the like product in the free market as, given the very nature of captive sales, such indicators can be distorted by the relationship between the seller and buyer. Therefore, this claim is rejected.
- (62) In the absence of any other comments concerning the determination of the relevant Union market, recitals (52) to (55) of the provisional Regulation are hereby confirmed.

#### 4.3. Union consumption

(63) In the absence of any comments concerning the Union consumption, recitals (56) to (58) of the provisional Regulation are hereby confirmed.

#### 5. Imports from the countries concerned

##### 5.1. Cumulative assessment of the effects of the imports concerned

(64) In the absence of any comments concerning the cumulative assessment of the effects of the imports concerned, recitals (59) to (62) of the provisional Regulation are hereby confirmed.

##### 5.2. Volume and market share of dumped imports from the countries concerned

(65) In the absence of any comments concerning the volume and the market share of the imports from the countries concerned, recitals (63) and (64) of the provisional Regulation are hereby confirmed.

##### 5.3. Price of dumped imports and price undercutting

(66) As mentioned in recital (144) of the provisional regulation, in the injury margin calculation, the average import prices of the cooperating exporting producers in the PRC and India have been duly adjusted for importation costs and customs duties. An exporting producer argued however that the Commission failed to include fully an allowance of 6.5% corresponding to the normal customs duty in the injury margin calculation. This claim was found to be warranted and the injury margins calculations were corrected accordingly for this exporting producer, as well as for the other cooperating exporting producers. However, this had no impact on the proposed definitive measures as indicated in recital (87) below.

(67) In the absence of any other comments concerning the price of dumped imports and price undercutting, recitals (65) to (68) of the provisional Regulation are hereby confirmed.

#### 6. ECONOMIC Situation of the Union industry

(68) As mentioned in recital (57) above, an exporting producer submitted that the figures related to a third Union producer which ceased the production of oxalic acid in 2008 should not have been included in some macro indicators (see recitals (72), (74) and (78) of the provisional Regulation). However there are in fact three producers of the like product in the Union constituting the Union industry within the meaning of Article 4(1) of the basic Regulation, representing 100% of the Union production throughout the whole period considered, even though one producer stopped producing oxalic acid before the IP. The claim that figures pertaining to the third Union producer having ceased its operation in 2008 should be disregarded is rejected, as it is correct to include all production figures related to the period considered for the purpose of determining the economic situation of the Union industry.

(69) The same exporting producer argued that notwithstanding the alleged error mentioned in recital (66) above, the figures related to the number of employees, total yearly wages and average labour costs per employee in Table 6 of the provisional Regulation

did not tally. However, the exporting producer did not refer to the correct figure when stating that average wages rose by 21%, in fact, the right figure is 19%.

- (70) With regard to the economic crisis recitals (95) to (97) of the provisional Regulation clearly show that imports from the countries concerned continued to gain market share despite the decline in consumption and had a negative impact on various injury indicators such as sales volumes, employment, production capacity and market share.
- (71) In the absence of any comments regarding recitals (69) to (94) of the provisional Regulation, these recitals are hereby confirmed.

#### 7. Conclusion on injury

- (72) An exporting producer argued that contrary to the provisional findings, the Union industry did not suffer material injury. It was claimed that, overall, the negative trends regarding the Union industry were due to the effects of the economic crisis in 2008 and the erroneous inclusion of the information related to the third Union producer having ceased its production in 2008, which contributed to give a vitiated representation of the injury situation. However, as mentioned above the inclusion of the third producer was considered to be correct and market share of the countries concerned continued to increase despite the crisis.
- (73) Therefore, recitals (94) to (98) of the provisional Regulation concluding that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation are hereby confirmed.

#### 8. CAUSATION

- (74) One exporting producer stated that the inclusion of data related to a third Union producer having ceased its production of oxalic acid in 2008 was distorting the provisional conclusions regarding the causal link analysis, which should be based on current producers only. Similarly to the injury analysis above, it was found that conversely, not to include this third producer would distort the conclusions in relation to the like product. However, as mentioned in recital (57) above, relevant data for this company should also be included in the analysis of the situation of the Union industry and this claim is therefore rejected.
- (75) One exporting producer argued that as the import volume of the dumped imports increased at the same time as the profitability situation of the Union industry has improved, the dumped imports could not be the main cause of injury. However, this minor improvement regarding profitability does not devalue the conclusion that the overall profitability remained very low and under the normal profit of 8%. Furthermore, despite the fact that consumption increased substantially in 2008 and again during the IP the Union industry lost 9% market share against the Chinese imports during the period considered.
- (76) Another exporting producer argued that based on the information available, the Union industry achieved in the IP, a profit which was very close to the target profit of 8%. As the information regarding profits relates to only one Union producer, the precise profit levels cannot be published. However, as stated in recital (88) of the provisional regulation, the complainant made a small profit in the IP, after having made a loss in

2009. The assumptions that the exporting producer used to conclude that the profit in the IP was allegedly close to the target profit were in fact not correct as they did not include the relevant financial and production data of the complainant, which for confidential reasons could not be disclosed. The profit level of the complainant has been thoroughly verified, including during an on-spot verification visit and therefore, allegations that the profit achieved in the IP was very close to the target profit were found to be incorrect.

(77) In the absence of any other comments concerning causation, recitals (99) to (122) of the provisional Regulation are hereby confirmed.

## 9. UNION INTEREST

(78) Two importers argued that the measures could lead to shortages of oxalic acid in the EU. Allegedly, the Union industry cannot meet the demand in the EU for oxalic acid.

(79) The investigation revealed that during the IP, the complainant had spare capacities. Furthermore, the complainant stated that currently it is increasing its production, even though, as the production of the product concerned is based on chemical reactions, increasing capacity utilisation requires some time. However, based on the EU consumption data and the total EU capacity, it can be considered that the complainant is capable of meeting total Union demand for unrefined oxalic acid once it is producing close to full capacity. With regard to refined oxalic acid it is recalled that most of the refined oxalic acid is used in the production of products that are subsequently exported, the users could operate under the inward processing regime. In addition, the main Chinese exporter of refined oxalic acid is the one with the lowest proposed duty (14.6%).

(80) In addition, the complainant argued that the global oxalic market (unrefined) is dominated by the Chinese producers which are setting the price level for this product. Currently the Chinese producers are more preoccupied with their domestic market and it cannot be excluded that in the absence of measures and the probable disappearance of the only remaining EU producer of unrefined oxalic acid, users in the EU would face security of supply problems potentially with chronic shortages and oligopolistic prices.

(81) Another importer/user operating in a different downstream market segment than the previous one alleged that the existence of provisional measures had a negative impact on the profitability of its own products for which oxalic acid is the main raw material, without however, providing any further details. The company was invited to attend a hearing to further develop these concerns and provide evidence, but did not react. Therefore, these allegations could not be verified.

(82) In the absence of any other comments concerning the Union interest, recitals (123) to (139) of the provisional Regulation are hereby confirmed.

## 10. DEFINITIVE ANTI-DUMPING MEASURES

### 10.1. Injury elimination level

(83) As mentioned above in recital (66) an exporting producer argued that the Commission failed to include an allowance of 6.5% corresponding to the normal customs duty in

the injury margin calculation. This claim was found to be partially correct as for some imports that were delivered to the EU customer on a duty paid basis, the duty had been underestimated. Therefore the injury margins were corrected accordingly, without however having, any significant impact on the proposed definitive measures (see recital (87) below).

- (84) In view of the conclusions reached with regard to Star Oxochem, an injury margin was also established for this exporting producer on the basis of the same calculation methodology as laid down in recitals (142) to (144) of the provisional Regulation.
- (85) In the absence of comments on the injury elimination level, recitals (145) to (148) of the provisional Regulation are confirmed.

#### 10.2. Form and level of the duties

- (86) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since for all the exporting producers concerned the injury margins were found to be higher than the dumping margins.

- (87) On the basis of the above, the dumping and injury margins established are as follows:

Company/group name	Injury margin (%)	Dumping margin (%)	Provisional duty (%)	Proposed duty (%)
India				
<b>Punjab Chemicals and Crop Protection Limited (PCCPL)</b>	<b>38,9</b>	<b>22,8</b>	22,8	<b>22,8</b>
<b>Star Oxochem Pvt. Ltd</b>	<b>32,3</b>	<b>31,5</b>	43,6	<b>31,5</b>
<b>All other companies</b>	<b>47,9</b>	<b>43,6</b>	43,6	<b>43,6</b>
PRC				
<b>Shandong Fengyuan Chemicals Stock Co., Ltd and Shandong Fengyuan Uranus Advanced Material Co., Ltd</b>	<b>53,3</b>	<b>37,7</b>	37,7	<b>37,7</b>
<b>Yuanping Changyuan Chemicals Co., Ltd</b>	<b>18,7</b>	<b>14,6</b>	14,6	<b>14,6</b>
<b>All other companies</b>	<b>63,5</b>	<b>52,2</b>	52,2	<b>52,2</b>

- (88) The individual company's anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in India and the PRC and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including

entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to ‘all other companies’.

- (89) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission<sup>3</sup> forthwith with all the relevant information, in particular any modification in the company’s activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (90) 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 oxalic acid originating in the PRC and India. They were also granted a period of time within which they could make representations subsequent to the final disclosure.
- (91) The comments submitted by the interested parties were duly considered. None of the comments was such as to alter the findings of the investigation.
- (92) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

### 10.3. Definitive collection of provisional duties

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

### 11. undertakings

- (94) One exporting producer in India and two exporting producers in the People's Republic of China offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (95) The product concerned has shown in the last years a considerable volatility in prices and therefore it is not suitable for a fixed price undertaking. In order to overcome this

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<sup>3</sup> European Commission  
Directorate-General for Trade  
Directorate H, Office: N105 04/092  
B - 1049 Brussels

problem, the Indian exporting producer offered an indexation clause without, however, determining the respective minimum price (MIP). In this respect it is noted that no direct link between the fluctuation of prices and that of the main raw material could be established and, thus, indexation is not considered appropriate. In addition, the level of cooperation of this company throughout the investigation and the accuracy of the data it had provided was not ideal. Accordingly, the Commission was not satisfied that an undertaking from this company could be effectively monitored.

- (96) Moreover, in relation to the exporting producers in the PRC, the investigation established that there are different types of the product concerned which are not easily distinguishable and have considerable differences in prices. The single MIP for all product types offered by one of the Chinese exporting producers would therefore not eliminate the injurious effect of dumping. Furthermore, both exporting producers concerned in the PRC are producers of different types of other chemical products and may sell these products to common customers in the European Union via related trading companies. This would create a serious risk of cross-compensation and would render extremely difficult to monitor effectively the undertaking. The different MIPs proposed by the other Chinese exporting producer would also render the monitoring impracticable due to the complexity of distinction between the various product types. On the basis of the above, it was concluded that the undertaking offers cannot be accepted.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, currently falling within CN code ex 2917 11 00 (TARIC code 2917 11 00 91) and originating in India and the People's Republic of China.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies below shall be as follows:

<b>Country</b>	<b>Company</b>	<b>Anti-dumping duty rate</b>  <b>%</b>	<b>TARIC additional code</b>
<b>India</b>	Punjab Chemicals and Crop Protection Limited	<b>22.8</b>	<b>B230</b>
	Star Oxochem Pvt. Ltd	<b>31.5</b>	<b>B270</b>
	All other companies	<b>43.6</b>	<b>B999</b>
<b>PRC</b>	Shandong Fengyuan Chemicals Stock Co., Ltd; Shandong Fengyuan	<b>37.7</b>	<b>B231</b>

	Uranus Advanced Material Co., Ltd.		
	Yuanping Changyuan Chemicals Co., Ltd	<b>14.6</b>	<b>B232</b>
	All other companies	<b>52.2</b>	<b>B999</b>

3. The application of the individual duty rate specified for the companies listed in paragraph 2 of this Article shall be conditional upon presentation to the customs authority of the Member States of a valid commercial invoice, which shall conform with the requirements set out in Annex. If no such invoice is presented, the duty applicable to all other companies shall apply.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EU) No 1043/2011 imposing a provisional anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released.

#### *Article 3*

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 valid commercial invoice referred to in Article 1(4) of this Regulation must include a declaration signed by an official of the entity, in the following format:

- (1) The name and function of the official of the entity which has issued the commercial invoice.
- (2) The following declaration: “I, the undersigned, certify that the “volume” of oxalic acid sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.”

Date and signature