COMMISSION REGULATION (EU) No 377/2010

of 3 May 2010

imposing a provisional anti-dumping duty on imports of sodium gluconate originating in the People's Republic of China

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 30 June 2009, the Commission received a complaint concerning imports of dry sodium gluconate (SG) originating in the People's Republic of China (China) lodged pursuant to Article 5 of the basic Regulation by the European Chemical Industry Council (CEFIC) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of dry sodium gluconate.

(2) The complaint contained prima facie evidence of dumping and of material injury caused by such dumping which was considered sufficient to justify the opening of an anti-dumping proceeding.

(3) On 11 August 2009, a proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union* [2].

2. Parties concerned by the proceeding

(4) The Commission officially advised the exporting producers in China, importers, traders, users and associations known to be concerned, the authorities of China and the complainant Union producers of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(6) In order to allow exporting producers to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to the authorities of China. One exporting producer requested MET pursuant to Article 2(7) of the basic Regulation and another exporting producer, including two related companies, requested IT pursuant to Article 9(5) of the same Regulation.

(7) In view of the apparent high number of exporting producers in China and importers in the Union, the Commission indicated in the notice of initiation that sampling might be applied for these parties in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in China and Union importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 July 2008 to 30 June 2009).

(9) Given the limited number of responses to the sampling exercise, it was decided that sampling was not necessary for Chinese exporting producers or importers in the Union.

(10) Questionnaires were sent to all companies in China and importers in the Union who responded to the sampling exercise, to the Union producers, and to all known importers and users in the Union. Replies were received from two exporting producers or groups of exporting producers in China, two producers in the Union and four importers/users.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 188, 11.8.2009, p. 24.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest and carried out verifications at the premises of the following companies:

1. Producers in the Union:

— Jungbunzlauer (JBL), Marckolsheim, France and related sales companies,

— Roquette Italia SpA, Cassano Spinola, Italy and related sales companies;

2. Exporting producers in China:

— Shandong Kaison Biochemical Co., Ltd,

— Qingdao Kehai Biochemistry Co., Ltd;

3. Users/importers in the Union:

— Chryso SAS, Issy les Moulineaux, France,

— Henkel AG, Düsseldorf, Germany,

— CHT R. Beitlich GmbH, Tübingen, Germany.

(12) In view of the need to establish a normal value for exporting producers in China to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

— Producer in the USA: PMP — Fermentation Products Inc., Peoria, USA.

3. **Investigation period**

(13) The investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) The product concerned is dry sodium gluconate originating in China (the product concerned), with a Customs Union and Statistics (CUS) number 0023277-9 and a Chemical Abstracts Service (CAS) registry number 527-07-1 , currently falling within CN code ex 2918 16 00.

(15) Dry sodium gluconate is used mainly in the construction industry as a set retarder and concrete plasticiser and in other industries as surface treatment for metals (removal of rust, oxides and fat) and for the cleaning of bottles and industrial equipment. The product can also be used in the food and pharmaceutical industries.

2. **Like product**

(16) The investigation has shown that dry sodium gluconate produced and sold by the Union industry in the Union, dry sodium gluconate produced and sold on the domestic market in the USA, which was selected as an analogue country, dry sodium gluconate produced and sold on the domestic market in China and dry sodium gluconate produced in China and sold to the Union have essentially the same basic physical and technical characteristics.

(17) Therefore these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **Market Economy Treatment (MET)**

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in China, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which are found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(19) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market signals and without significant State interference; costs of major inputs substantially reflect market values;

2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. bankruptcy and property laws guarantee legal certainty and stability;

5. exchange rate conversions are carried out at market rates.

(20) Following the initiation of the proceeding, one Chinese exporting producer, Shandong Kaison Biochemical Co., Ltd, requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadline.

(21) The company demonstrated that it fulfilled the criteria of Article 2(7)(c) of the basic Regulation and could be granted MET.

2. **Individual treatment (IT)**

(22) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation to be granted IT.

(23) Briefly, and for ease of reference only, these criteria are set out below:

1. in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

2. export prices and quantities, and conditions and terms of sale are freely determined;

3. the majority of the shares belong to private persons. State officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

4. exchange rate conversions are carried out at the market rate; and

5. State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(24) Following the initiation of the proceeding, one Chinese exporting producer, Qingdao Kehai Biochemistry Co., Ltd requested IT pursuant to Article 9(5) of the basic Regulation and replied to the IT claim form within the given deadline.

(25) On the basis of information available, it was found that the Chinese exporting producer met all the requirements for IT as set out in Article 9(5) of the basic Regulation.

3. **Normal value**

3.1. *Analogue country*

(26) According to Article 2(7)(a) of the basic Regulation, in economies in transition, normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country).

(27) In the notice of initiation, USA was proposed as an appropriate analogue country for the purpose of establishing normal value for China. The Commission invited all interested parties to comment on this proposal.

(28) There were no comments from any interested party.

(29) Outside the EU, dry sodium gluconate is produced in very few countries, namely the USA, China and South Korea. Therefore the only possible alternative to the USA was South Korea. The Commission contacted the known companies producing dry sodium gluconate in South Korea, however, no replies were received from those producers.

(30) The producer in the USA cooperated fully with the investigation by submitting a full questionnaire response and accepting a verification visit.

(31) The Commission found that the USA met the criteria for an appropriate analogue country since the quantities sold in this market were sufficiently large and there was significant competition on the market with both domestic production and imports from other countries, i.e. China, Italy and France. In addition, the USA had no anti-dumping duty on the product concerned.

(32) In view of the above, it is therefore provisionally concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.2. *Methodology applied for the determination of normal value*

3.2.1. For the company granted MET

(33) For the company granted MET, in accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of dry sodium gluconate to independent customers were representative during the IP, i.e. whether the total volume of such sales represented at least 5 % of Chinese export sales of the product concerned to the Union.

(34) The Commission subsequently identified those product types sold domestically by the company having overall representative domestic sales that were identical or directly comparable with the types sold for export to the Union.

(35) For each type sold by the exporting producer on its domestic market and found to be directly comparable with the type of dry sodium gluconate sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total volume of the comparable product type sold for export to the Union.

(36) The Commission subsequently examined whether the domestic sales of dry sodium gluconate sold domestically in representative quantities could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the investigation period.

(37) Where the sales volume of a product type, sold at a net sales price equal to or above the cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

(38) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.

(39) Since the investigation showed that domestic sales were both representative and were made in the ordinary course of trade, the normal value was therefore based on the actual domestic price of all transactions during the investigation period.

3.2.2. For the company granted IT

(40) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for China was established on the basis of verified information received from the cooperating producer in the analogue country. The domestic sales of the US producer of the like product were found to be representative compared to the product concerned exported to the Union by the sole cooperating exporting producer in China.

(41) An examination was also made as to whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. Therefore, normal value was based on the actual domestic price per product type, calculated as a weighted average of the prices of all domestic sales made during the IP.

3.3. *Export Price*

(42) All export sales of the product concerned by the cooperating exporting producers were made directly to independent customers in the Union, and therefore the export price was established on the basis of the prices actually paid or payable for the product concerned in the IP in accordance with Article 2(8) of the basic Regulation.

3.4. *Comparison*

(43) The comparison between normal value and export price was made on an ex-factory basis.

(44) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated companies (cooperating exporting producers and the producer in the analogue country) allowances for differences in transport costs, freight and insurance costs, indirect taxation, bank charges, packing costs, credit costs and commissions were made where applicable and justified.

4. **Dumping margins**

(45) For the company granted MET the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price, as provided for in Article 2(11) and (12) of the basic Regulation.

(46) For the company granted IT, the weighted average normal value established for the analogue country was compared with the weighted average export price to the Union, as provided for in Article 2(11) of the basic Regulation.

(47) The provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

Company	Provisional dumping margin
Shandong Kaison Biochemical Co., Ltd	5,6 %
Qingdao Kehai Biochemistry Co. Ltd	51,1 %

(48) With regard to all other Chinese exporters, the Commission first established the level of cooperation. A comparison was made between the total export quantities indicated in the questionnaire replies of the cooperating exporting producers and total imports from China as derived from Eurostat import statistics.

(49) Since the level of cooperation was low, i.e. 56 %, and given the lack of suitable Eurostat price data since it included other high-priced products which could not be accurately deducted, the countrywide dumping margin was calculated by using data from the complaint updated to the IP.

(50) On this basis, the countrywide level of dumping is provisionally established at 79,2 % of the CIF Union frontier price, duty unpaid.

D. **INJURY**

1. **Definition of Union industry and Union production**

(51) The cooperating industrial groups Jungbunzlauer (JBL) and Roquette Frères (RF) accounted for 100 % of the Union production.

(52) They are therefore deemed to constitute the Union industry (UI) within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(53) As the UI is thus constituted of only two producers, all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality.

2. **Union consumption**

(54) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, plus imports into the Union as per Eurostat data. As these latter data include not only the product concerned but also some products other than sodium gluconate, appropriate adjustments were made to Eurostat figures in order to estimate reasonable import volumes of the product concerned into the Union.

(55) Consumption in the Union market increased by 12 % between 2005 and 2007. After that, it decreased by 21 % up to the IP below levels of 2005. Overall, during the period under consideration consumption decreased by 8 %.

Table 1

	2005	2006	2007	2008	IP
Union consumption (in tonnes) *Index*	100	106	112	104	91

Source: Adjusted import volumes from Eurostat and questionnaire replies.

3. **Imports into the Union from China**

3.1. *Volume and market share of imports*

(56) Chinese import volume increased significantly from around 2 300 tonnes in 2005 to around 4 000 tonnes in the IP, i.e. by 77 %, having reached a peak of ca 5 300 tonnes in 2008. The corresponding Chinese market share almost doubled from 12,8 % in 2005 to 24,8 % during the IP. It is noted that market share of the Chinese imports reached 28,6 % in 2008 just prior to the IP and dropped in the IP to 24,8 %.

Table 2

	2005	2006	2007	2008	IP
Chinese import volumes (in tonnes)	2 291	3 470	5 204	5 348	4 065
Chinese imports (tonnes) *Index*	100	152	227	234	177
Chinese market share	12,8 %	18,3 %	26 %	28,6 %	24,8 %
Chinese market share, index	100	143	203	224	194

Source: Adjusted import volumes from Eurostat.

3.2. *Unit selling price*

(57) Average Chinese import prices were EUR 482 per tonne in 2005. They steadily increased until reaching a level of EUR 524 per tonne in 2008 and then dropped in the IP to EUR 502 per tonne. Overall during the period considered they increased by 4 %.

Table 3

	2005	2006	2007	2008	IP
Chinese import prices (EUR/tonnes)	482	511	514	524	502
Index	100	106	107	109	104

Source: Adjusted import prices from Eurostat.

3.3. *Price undercutting*

(58) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the UI to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports concerned, established on a CIF basis with an appropriate adjustment for customs duties and post-importation costs. The comparison was made after deduction of rebates and discounts.

(59) Based on the above methodology, the difference between the abovementioned prices, expressed as a percentage of the UI's weighted average price (ex-works), showed a price undercutting margin ranging from 13 % to 29 %, with the higher end being attributed to non-cooperating exporting producers.

4. **Economic situation of the Union industry**

(60) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the UI included an evaluation of all economic factors having a bearing on the state of the UI during the period considered.

4.1. *Production capacity, production and capacity utilisation*

(61) The production capacity increased by 4 % in the period from 2005 to 2007, and remained at that level until the end of the period considered.

(62) Production of the product concerned increased between 2005 and 2007 before decreasing in the period up to the IP. Overall, production decreased by 12 % over the period considered. Total output during the IP was between 30 000 and 40 000 tonnes.

(63) As a result of the decrease in production volumes, the capacity utilisation decreased by 15 % over the period considered.

Table 4

	2005	2006	2007	2008	IP
Production capacity *Index*	100	100	104	104	104
Production volume *Index*	100	104	105	84	88
Capacity utilisation *Index*	100	104	101	81	85

Source: Questionnaire replies.

4.2. *Sales volume, market share and average unit prices in the Union*

(64) Sales in volume of the product concerned by the UI to unrelated customers on the Union market remained at similar levels from 2005 to 2007 and then dropped by 13 percentage points. Over the period considered the decrease in sales volumes was of 21 %.

(65) Market share of the UI decreased over the period considered, falling from 74,9 % in 2005 to 64,7 % during the IP.

(66) Average sales prices to unrelated customers in the Union market decreased by 12 % over the period considered. From 2006 to 2008 average sales prices stayed at similar levels but then dropped by 9 % during the IP.

Table 5

	2005	2006	2007	2008	IP
Sales volumes *Index*	100	104	99	86	79
Market share of UI	74,9 %	73,4 %	66,5 %	61,4 %	64,7 %
Index	100	98	89	82	86
Average prices *Index*	100	97	97	97	88

Source: Questionnaire replies.

4.3. *Stocks*

(67) During the period considered stocks decreased by 37 %. At the end of the IP, the stock level was between 1 000 and 5 000 tonnes.

Table 6

	2005	2006	2007	2008	IP
Stocks *Index*	100	92	120	92	63

Source: Questionnaire replies.

4.4. *Profitability, investments, return on investments and cash flow*

(68) The sales of the UI of the like product in the Union market were profitable during the period considered but profitability fell dramatically from 2005 to the IP.

(69) Although investments continued over the period between 2005 and 2007, with a decrease in 2006, they fell drastically in 2008 and during the IP. Over the period considered investments decreased by 76 %.

(70) In a similar trend, return on investments from the production and sale of the product concerned was stable from 2005 to 2007 but decreased in 2008 and during the IP.

(71) As with the other financial indicators, the cash flow generated by the UI fell by 51 % over the period considered.

Table 7

	2005	2006	2007	2008	IP
Profitability *Index*	100	90	86	52	19
Investments *Index*	100	61	140	16	24
Returns on investments *Index*	100	100	100	60	21
Cash flow *Index*	100	92	20	106	49

Source: Questionnaire replies.

4.5. *Employment, productivity and wages*

(72) Employment slightly increased from 2005 to 2007 and then decreased in 2008 and the IP. Over the period considered employment decreased by 13 %.

(73) Wages decreased by 6 % in 2006 but returned to the 2005 levels in 2007 and then increased in 2008 and during the IP. Over the period considered wages increased by 10 %.

(74) Productivity per employee remained stable along the period considered, increasing by 1 % from 2005 to the IP.

Table 8

	2005	2006	2007	2008	IP
Employment *Index*	100	99	104	85	87
Wages *Index*	100	94	100	104	110
Productivity *Index*	100	104	101	99	101

Source: Questionnaire replies.

4.6. *Growth*

(75) While Union consumption decreased by 9 % over the period considered, the sales volume of the UI decreased by 21 %. This led to a loss of market share by the UI during the period considered of 10 percentage points.

4.7. *Magnitude of the margin of dumping*

(76) The dumping margins for China, specified above in the dumping section, are significant. Given the volumes and the prices of the dumped imports, the impact of the margins of dumping cannot be considered to be negligible.

5. **Conclusion on injury**

(77) Most injury indicators pertaining to the UI developed negatively during the period considered. The indicators related to the financial performance of the UI, including return on investments, cash flow and profitability, also developed negatively during the period considered.

(78) The investigation also showed that low-priced Chinese imports were undercutting Union industry prices by up to 29 % during the IP. The UI suffered a decrease in sales volumes and a drop in market share.

(79) In the light of the foregoing, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSALITY

1. **Introduction**

(80) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, the European Commission has examined whether the dumped imports of dry sodium gluconate originating in China have caused injury to the UI to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time have injured the UI, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(81) Over the period considered low-priced dumped imports from China increased in terms of volume by 77 %, which resulted in an increase of Union market share by Chinese imports of 94 % in the same period. The decrease in imports from China between 2008 and the IP including the loss of market share is not considered significant in comparison to the overall situation observed during the period considered.

(82) This increase in imports from China over the period considered coincided with a downward trend in most injury indicators of the UI. The UI suffered a decrease in its sales, both in terms of volumes and of values, on the Union market, resulting in a loss of market share of 10 percentage points over the period considered as mentioned above at recital 65. Price undercutting by the dumped Chinese imports prevented the UI to keep their price levels in the Union market. This lead to a significant decrease in profitability below levels which would allow for necessary investments.

(83) Based on the above, it is provisionally concluded that the low-priced dumped imports from China which significantly undercut the prices of the UI during the period considered have had a determining role in the injury suffered by the Union industry, which is reflected in its poor financial situation and in the deterioration of other injury indicators during the period considered, as well as in loss of market share.

3. **Effect of other factors**

3.1. *Imports from other third countries*

(84) The imports from third countries not concerned by this investigation decreased by 23 % over the period considered resulting in a loss of market share of 2 percentage points over the period considered. The prices of these imports increased by 102 % during the period considered.

(85) The trends in import volumes and prices from other third countries over the period considered were as follows:

Table 9

Other third countries	2005	2006	2007	2008	IP
Total other imports in volume (tonnes)	2 210	1 566	1 502	1 867	1 709
Index	100	71	68	84	77
Average price other imports (EUR/tonne)	914	1 275	1 305	1 680	1 844
Index	100	140	143	184	202

Source: Adjusted Eurostat data

(86) Import volumes from other third countries decreased by 23 % over the period considered, while import prices doubled during the same period. Import prices from other third countries were significantly above the UI's sales prices during the entire period considered. On this basis, it is provisionally concluded that imports from other third countries did not break the causal link between the dumping found and the material injury caused to the UI by the dumped imports from China.

3.2. *Export performance of the Union industry*

(87) During the period considered export sales by the UI decreased by 10 % and prices increased by 8 %.

(88) In view of the above, it is considered that the UI's export sales to other third countries could not break the causal link between the dumped imports from China and the material injury suffered by it.

3.3. *Captive use*

(89) During the period considered captive use by the UI increased by 56 %, as shown in the following table:

Table 10

	2005	2006	2007	2008	IP
Captive use *Index*	100	126	115	148	156

Source: Questionnaire replies

(90) However, it is noted that the UI still had a spare capacity ranging between 10 000 and 20 000 tonnes. This means that a shift to captive use can be seen as a business response against dumped imports from China, as it may be more lucrative to produce downstream products given the low price levels of sodium gluconate. The fact that considerable spare capacity for sodium gluconate is still available indicates that the UI does not seek to definitively shift production to the downstream products and that the production of downstream products may be seen as a measure in defence of the dumped imports.

(91) Therefore it is considered that the increase in captive use did not break the causal link between the dumped imports from China and the material injury suffered by the UI.

3.4. *Development of EU consumption*

(92) It is noted that EU consumption decreased by 9 % during the period considered, and this may be seen as a consequence of the ongoing economic downturn. It was therefore examined whether the decrease in consumption could have had an effect on the injurious situation of the UI.

(93) However, the UI sales volume decreased to a much larger extent, i.e. by 21 % while Chinese imports increased by 77 % during the same period. Concerning market share, the same trends can be observed. The UI lost about 10 percentage points of their market share while the Chinese imports almost doubled theirs, from 12,8 % in 2005 to 24,9 % in the IP.

(94) Considering the above, it is provisionally concluded that the decrease in the EU consumption cannot be considered by itself as a cause for breaking the causal link between the dumped imports from China and the material injury suffered by the UI.

4. **Conclusion on causation**

(95) The above analysis has demonstrated that there was a substantial increase in volume and market share of the dumped imports originating in China over the period considered together with significant price undercutting. This increase in market share of the low-priced imports from China coincided with a drop in the market share of the UI which, together with the downward pressure on prices, resulted in a deterioration of the situation of the UI during the period considered. On the other hand, the examination of the other factors which could have injured the UI revealed that none of these could have had a significant negative impact.

(96) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the UI from the injurious effect of the dumped imports, it is provisionally concluded that the imports from China have caused material injury to the UI within the meaning of Article 3(6) of the basic Regulation.

F. **UNION INTEREST**

1. **Preliminary remark**

(97) In accordance with Article 21 of the basic Regulation, the European Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Union interest to adopt anti-dumping measures in this particular case. The determination of the Union interest was based on an appreciation of all the various interests involved, i.e. those of the UI, the importers and the users of the product concerned.

2. **Union industry**

2.1. *Effects of the imposition or non-imposition of measures on the Union industry*

(98) As explained above, due to the dumped imports, injury has occurred in the form of a significant decrease in sales volume and prices, which in turn resulted in a deterioration of the situation of the UI. It is expected that, following the imposition of anti-dumping duties, volumes and prices of dry sodium gluconate sold by the UI would increase and this would consequently enable the UI to reach an acceptable level of profitability.

(99) It is considered that the imposition of measures would restore fair competition on the market. It should be noted that the decrease in profits of the UI is the result of its difficulty in competing with the dumped, low-priced imports originating in China. The imposition of anti-dumping measures is likely to put the UI in the position to regain at least part of its lost market share with a consequent positive impact on profitability.

(100) If measures are not imposed, a further deterioration in the situation of the UI is probable. The price-depressive effect of the dumped imports would continue to foil all efforts made by the UI to regain a sufficiently profitable level. Not taking measures would put at risk the long-term presence of the UI.

(101) In conclusion, it is expected that measures would be effective in giving the Union industry the opportunity to recover from the injurious dumping found during the investigation.

3. **Importers/traders**

(102) Questionnaires were sent to five importers. None of them cooperated with the investigation.

(103) In these circumstances, it is provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a material impact on importers/traders.

4. **Users**

(104) Questionnaires were sent to 23 users. However, only four users cooperated in the investigation, out of which only three were using and directly importing the product concerned from China. The direct imports of these three cooperating users accounted for 10 % of the total imports of dry sodium gluconate from China during the IP. The fourth cooperating user was not using the product concerned imported from China.

(105) These four users, located in Germany, France and the UK, are active in the chemical industry, producing a wide variety of products, some using sodium gluconate as a raw material. On average, sodium gluconate does not represent a significant part of the input cost. In general, the maximum effect of the anti-dumping duty proposed, assuming that price increases cannot be passed on to the final customer, was estimated to be very low. It should also be noted that the turnover of these companies for products using sodium gluconate was less than 5 % of their total turnover.

(106) In light of the above, it is provisionally concluded that, on the basis of the information provided, the effect of the anti-dumping measures, if any, will most likely not have a material impact on users.

5. **Conclusion on Union interest**

(107) Given the above, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case.

G. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(108) In view of the conclusions reached with regard to dumping, resulting injury, causation and Union interest, provisional measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

(109) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the UI.

(110) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the UI to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union. The pre-tax profit margin claimed in the complaint was considered reasonable and used for this purpose.

(111) On this basis, a non-injurious price was calculated for the UI for the like product. The non-injurious price was obtained by adding the abovementioned profit margin to the cost of production.

(112) The necessary price increase was then determined on the basis of a comparison of the adjusted weighted average import price, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the UI on the Union market. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

(113) Concerning the calculation of the countrywide injury elimination level for all other exporting producers in China, it should be recalled that the level of cooperation was low. Therefore this injury margin was calculated using data from the complaint updated to the IP.

2. **Provisional measures**

(114) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping measures should be imposed on imports originating in China at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

(115) The proposed anti-dumping duties are the following:

Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
Shandong Kaison Biochemical Co., Ltd	29,9 %	5,6 %	5,6 %
Qingdao Kehai Biochemistry Co. Ltd	27,3 %	51,1 %	27,3 %
All other companies	53,4 %	79,2 %	53,4 %

(116) The individual company 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 the country concerned 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'.

(117) Any claim requesting the application of these individual company 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 [1] forthwith with all 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 accordingly be amended by updating the list of companies benefiting from individual duty rates.

[1] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

(118) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

3. **Special monitoring**

(119) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:

(120) The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(121) Should the exports by the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide duty.

H. **FINAL PROVISION**

(122) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of dry sodium gluconate with a Customs Union and Statistics (CUS) number 0023277-9 and a Chemical Abstracts Service (CAS) registry number 527-07-1, currently falling within CN code ex 2918 16 00 (TARIC code 2918 16 00 10) and originating in the People's Republic of China.

2. The rate of anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

Company	Duty	TARIC additional codes
Shandong Kaison Biochemical Co., Ltd	5,6 %	A972
Qingdao Kehai Biochemistry Co. Ltd	27,3 %	A973
All other companies	53,4 %	A999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 1 month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within 1 month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of 6 months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 May 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

1. The name and function of the official of the entity issuing the commercial invoice.

2. The following declaration:

'I, the undersigned, certify that the (volume) of dry sodium gluconate sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.

Date and signature'