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►**B** **COUNCIL IMPLEMENTING REGULATION (EU) No 875/2013**

of 2 September 2013

imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

(OJ L 244, 13.9.2013, p. 1)

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COUNCIL IMPLEMENTING REGULATION (EU) No 875/2013

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) thereof,

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 Articles 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation ('the original investigation'), imposed, by means of Regulation (EC) No 682/2007 [2], a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels currently falling within CN codes ex 2001 90 30 and ex 2005 80 00 originating in Thailand ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty ranging between 3,1 % and 12,9 %.

(2) Regulation (EC) No 954/2008 [3] amended Regulation (EC) No 682/2007 with regard to the rate of duty imposed on one company and on 'all other companies'. The amended duties range between 3,1 % and 14,3 %. Imports from two Thai exporting producers from whom undertakings had been accepted by Commission Decision 2007/424/EC [4] were exempted from the duty.

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[1] OJ L 343, 22.12.2009, p. 51.

[2] Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14).

[3] Council Regulation (EC) No 954/2008 of 25 September 2008 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 260, 30.9.2008, p. 1).

[4] Commission Decision 2007/424/EC of 18 June 2007 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain prepared or preserved sweet corn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 42).

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(3) The Council, by Regulation (EC) No 847/2009 ([1]), considered that price undertakings with fixed minimum import prices were no longer appropriate to counteract the injurious effect of dumping. Consequently, the accepted undertakings were withdrawn and the undertaking offers by 10 other Thai exporting producers were rejected.

2. **Request for an expiry review**

(4) Following the publication of a notice of impending expiry ([2]) of the definitive anti-dumping measures in force, the Commission received on 19 March 2012 a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Association Européenne des Transformateurs de Maïs Doux (AETMD) ('the complainant') on behalf of producers representing a major proportion of the total Union production of prepared or preserved sweetcorn — in this case more than 50 %.

(5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. **Initiation of an expiry review**

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, on 19 June 2012, by a notice published in the *Official Journal of the European Union* ([3]) ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Investigation**

4.1. *Review investigation period and period considered*

(7) The investigation of a continuation of dumping covered the period from 1 April 2011 to 31 March 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation of injury covered the period from 1 January 2008 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by the proceedings*

(8) The Commission officially advised the applicants, the other known Union producers, the exporting producers in Thailand, the unrelated importers, the users known to be concerned, and the representatives of the exporting country, of the initiation of

([1]) Council Regulation (EC) No 847/2009 of 15 September 2009 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 246, 18.9.2009, p. 1).
([2]) OJ C 258, 2.9.2011, p. 11.
([3]) OJ C 175, 19.6.2012, p. 22.

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the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

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

(10) In view of the apparent large number of exporting producers in Thailand and unrelated importers in the Union involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above-mentioned parties were requested to make themselves known to the Commission within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

(11) As regard to the selection of the sample of the exporting producers in Thailand, the Commission received complete information from 17 exporting producers, out of which 9 had exports to the Union during the RIP. It was decided to select a sample of 3 exporting producers whose combined exports represented 90 % of the total quantities exported to the Union by the cooperating exporting producers during the RIP.

(12) Given that only one reply has been received from an unrelated importer, sampling was not applied to unrelated importers.

(13) In view of the large number of Union producers involved in these proceedings, the notice of initiation announced that the Commission had provisionally selected a sample of Union producers for the determination of injury in accordance with Article 17 of the basic Regulation. That pre-selection had been made by using the information available to the Commission at initiation stage and was based on the producers' sales volume, production volume and geographical location in the Union. The proposed sample corresponds to the largest representative volume of production which could be reasonably investigated within the time available, representing 58 % of the total production of the Union industry. In addition, the proposed sample is representative in terms of geographical location of the companies as it covers three different Member States. Union producers have been consulted about the proposed sample on the date of publication of the notice of initiation. Given that no additional producers came forward and no comments were received on the sample, the proposed sample has been confirmed.

(14) Two interested parties claimed that the sample of Union producers has only been selected among applicants and that an effort should have been made to sample producers outside the group of applicants.

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(15) However, all known Union producers, both applicants as well as non-applicants, have been invited to cooperate. Ten Union producers, both applicants and non-applicants, have submitted sampling information. As explained in recital 13, the selected sample corresponds to the largest representative volume of production which could be reasonably investigated within the time available, representing 58 % of the total production of the Union industry. The Commission considers that the selected sample is representative in terms of geographical location, irrespective of whether the producers are applicants or not. Therefore, the claim is rejected.

(16) The Commission sought and verified all the information deemed necessary for a determination of the likelihood of continuation or recurrence of dumping, resulting injury and of the Union interest. To this end, the Commission sent questionnaires to the exporting producers and Union producers selected in the sample and to the unrelated importer. Verification visits were carried out at the premises of the following companies:

(a) Producers in the Union:

— Bonduelle Conserve International SAS, Renescure, France

— Compagnie Générale de Conserve France SA, Theix, France

— Compagnie Générale de Conserve Hungary, Debrecen, Hungary

— Conserve Italia SCA, San Lazzaro di Savena, Italy;

(b) Exporting producers in Thailand:

— Agri Sol., Ltd, Pathumthani City

— Lampang Food Products co, Ltd, Bangkok

— Sun Sweet Co., Ltd, Chiang Mai City.

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(18) The product concerned is sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30, and sweetcorn (*Zea mays var. saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00, originating in Thailand.

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(19) The investigation has shown that, despite differences in the preservations, the different types of the product concerned all share the same basic biological and chemical characteristics and are basically used for the same purposes.

(20) Two interested parties claimed that the CN codes for sweet corn do not only represent the product concerned, but include considerable quantities of canned babycorn which is not produced in the Union and which is not the like product. They suggested that the Commission include babycorn it its data.

(21) However, the investigation focused exclusively on the product under measures, which excludes babycorn, by using corresponding TARIC codes as a basis for analysis. Therefore, the claim is rejected as factually incorrect.

2. **Like product**

(22) The sweetcorn produced and sold in the Union by the Union industry and the sweetcorn produced and sold in Thailand was found to have essentially the same physical and chemical characteristics and the same basic uses as the sweetcorn produced in Thailand and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

(23) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

1. **Preliminary remarks**

(24) As stated in recital 10, in view of the potentially large number of exporting producers which expressed their willingness to cooperate, sampling was foreseen in the notice of initiation. A sample of three exporting producers, representing approximately 90 % of total exports among the exporting producers that expressed their willingness to cooperate, was selected for the determination of the likelihood of a continuation or recurrence of dumping.

(25) As the combined export quantities of the three sampled exporting producers accounted for approximately 25 % of all exports from Thailand to the Union during the RIP, information from other sources such as the request for the review and available trade statistics on exports (from the Thai Customs) and on imports (from Eurostat) had to be used in order to assess the likelihood of a continuation or recurrence of dumping.

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(26) Sales to traders in Thailand, where the goods were destined for unknown export destinations, have not been included in the determination of the dumping margin.

(27) As in the original investigation, it has been found that certain exporting producers source part of their sales of the product concerned from external suppliers. For the purpose of the investigation, sales of the product concerned which have not been manufactured by the exporting producers themselves have not been taken into account when determining their respective dumping margins.

2. **Dumping of imports during the RIP**

2.1. *Determination of the Normal Value*

(28) In accordance with the first sentence of Article 2(2), of the basic Regulation, for the determination of normal value, it was first established, for each of the three exporting producers, whether their total domestic sales of the like product during the RIP were representative in comparison to their total export sales to the Union, i.e. if sales volumes of the like product intended for domestic consumption represented 5 % or more of their exports of the product concerned to the Union.

(29) The domestic sales of the like product were found to be representative for one of the three sampled companies.

(30) It was subsequently examined whether the types of the like product sold by this company and intended for domestic consumption were identical or directly comparable to the types for export to the Union. For each of the those types, it was established whether sales of the like product intended for domestic consumption were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Sales intended for domestic consumption were sufficiently representative when they represented 5 % or more of the total sales volume of the comparable type exported to the Union.

(31) It was found that, for this company, only one type of the like product was directly comparable to the type exported to the Union. Moreover, this particular type was also sold in sufficiently representative quantities on the domestic market.

(32) It was subsequently examined whether the product type for the company referred to in recital 31 was sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers for the product type concerned.

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(33) It was found that more than 80 % of the volume of sales intended for domestic consumption was profitable and, in accordance with Article 2(4), all transactions for this particular type were used for determining the normal value.

(34) For the type of the product concerned where the domestic sales were representative and made in the ordinary course of trade, normal value was established on the actual domestic price, calculated as a weighted average of all the domestic sales of that type during the RIP.

(35) For the remaining two exporting producers whose sales on the domestic market were not considered to be representative (one of which did not sell the like product for domestic consumption at all) and for the third exporting producer whose overall sales were considered to be representative but where for a number of types of the like product, the quantities sold on the domestic market were not considered to be representative, the normal value had to be constructed pursuant to Article 2(3) of the basic Regulation.

(36) The normal value was constructed by adding the cost of manufacturing for each product type exported to the Union and a reasonable amount for selling, general and administrative costs (SG & A) and for profits.

(37) In accordance with Article 2(6) of the basic Regulation, for the two exporting producers who had sales intended for domestic consumption – at quantities below or above 5 % of their respective sales quantities to the Union – the SG & A and the profit margin were taken from the respective company's sales under the ordinary course of trade on the domestic market.

(38) For the third exporting producer which did not sell the like product for domestic consumption, in accordance with Article 2(6)(a) of the basic Regulation, the SG & A and profit used for this third exporting producer constituted the weighted average of the SG & A and profit for the other two other exporting producers referred to in recital 37.

(39) Two interested parties contested the methodology used, as set out in recital 37, i.e. the use of profit for the purpose of constructing a normal value when this profit is based on domestic sales transactions at volumes below 5 % of sales quantities to the Union. It considers that, when domestic sales transactions are not considered to be in sufficient quantities to be representative, then the profit from those transactions should not be used.

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(40) However, the same methodology has been used in the original investigation, and in the absence of changed circumstances, the Commission considers that this methodology is still valid for the purpose of these proceedings.

2.2. *Determination of the export price*

(41) All sales of the sampled exporting producers were made directly to unrelated customers in the Union. The sales price was thus established in accordance with Article 2(8) of the basic Regulation, on the basis of prices paid or payable by those independent customers in the Union.

2.3. *Comparison and adjustments*

(42) The comparison between the normal value and the export price was made on an ex-works basis. In order to ensure a fair comparison, account was taken of differences which affect price comparability in accordance with Article 2(10) of the basic Regulation.

(43) Allowances for differences in transport costs, insurance costs, handling and loading costs, commissions and bank charges were granted when applicable and duly justified.

(44) Moreover, in accordance with Article 2(10)(d) of the basic Regulation and pursuant to the methodology applied in the original investigation, allowances were made for differences in the level of trade for those exporting producers whose sales on the domestic market carries its own brand, but whose sales to the Union is under a retailers brand. The adjustment level – calculated in the form of a reduction of the profit margin used when constructing the normal value as referred to in recital 33 — has been estimated on the basis of the relationship of the profit margins obtained by the Union industry on their own branded products and on all products. The profit margin was hence reduced by between 20 % and 50 %.

(45) Two interested parties considered that the domestic market in Thailand and the Union market cannot be compared, as the size of the market differs and the fact that Thai producers sell under their own brand on the domestic market.

(46) It is first recalled that in recital 22 it was established that sweet corn sold on the Thai domestic market and sweet corn sold for export to the Union market are alike within the meaning of Article 1(4) of the basic Regulation.

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(47) Second, due to the differences in the level of trade, an adjustment to the profit margin – a downward adjustment by between 20 % and 50 % of the profit margin generated from domestic, own-brand sales – was made. This also follows the methodology used in the original investigation.

2.4. *Dumping during the RIP*

(48) On the basis of the above, the dumping margins expressed as a percentage of the free-at-Union-frontier price, before duty, were found to be between 8 % and 44 %.

3. **Development of imports should measures be repealed**

3.1. *Production capacity of the exporting producers*

(49) The production of sweetcorn is dependent on the access of freshly harvested corn that is delivered to the canning factory directly after harvest. The freshly harvested corn should be canned within 24 hours after harvest and thus the capacity to produce the product concerned is directly linked to the availability of freshly harvested corn.

(50) In Thailand, the harvest season is around 9-10 months a year, encompassing 2 harvests per year. When assessing the available technical capacity to manufacture, season-related raw material constraints must be included in the analysis.

(51) The three exporting producers that were included in the sample had a combined technical capacity of between 130 000 - 150 000 tonnes. The actual utilisation rate of available technical capacity varied between 50 % – 80 %.

(52) Several interested parties argued that, while acknowledging the methodology used in curtailing the technical capacity with accessibility of raw materials, the available spare capacity was exaggerated.

(53) As already stressed in recital 50, technical capacity cannot be fully utilized due to the seasonal unavailability of freshly harvested sweet corn. Still, the investigation has shown that capacity utilisation figures of 80 % and above are achieved by some sampled producers, while for other sampled producers the capacity utilisation was much lower. Since all producers have a comparable access to raw materials, this lower capacity utilisation cannot only be explained by the seasonal unavailability of freshly harvested sweet corn.

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(54) According to information provided by the Thai Food Processors Association, the total export quantity of Thailand to the rest of the world steadily increased by around 20 % during the period considered, reaching a volume of 150 000 – 200 000 tonnes during the RIP. This shows that the quantities of available sweet corn can and effectively do increase steadily when additional quantities are needed by exporting producers. In this respect, it is noted that the total production of yellow corn ranged from 4,1 million – 4,5 million tonnes in Thailand during the period considered. While it is acknowledged that the production cannot be switched from yellow corn to sweet corn on a 1:1 basis, the sheer magnitude of the difference in production volumes makes it clear that even a small shift in the production quantities from yellow corn to sweetcorn can have a substantial impact on the total sweetcorn production in Thailand.

(55) On this basis, it was established that the three sampled producers could produce an additional quantity of around 40 000 – 60 000 tonnes per year ('effective spare capacity'), which is around 2 to 3 times the total exports from Thailand of the product concerned to the Union.

(56) The effective spare capacity of the sampled producers alone can therefore be considered significant. In addition, there are another 15 known producers of the product concerned in Thailand, which similarly have access to the vast production of sweet corn in Thailand.

(57) From information collected from other sources, i.e.

— information collected from exporting producers' internet presentations,

— information collected in relation to the sampling exercise, and

— information collected under the data-base set up under Article 14(6) of the basic Regulation,

it can be concluded that at least two major exporting producers, one of which cooperated in the review investigation but was not selected for the sample (and hence did not supply any detailed information in this regard), have a combined capacity of between 50 000-100 000 tonnes.

(58) Finally, there is no evidence to suggest that the level of consumption on the Thai domestic market or third country markets would increase and thus absorb increased production if the spare capacity of the Thai producers is used. In particular, the Thai domestic market is tiny, and on average only accounted for 1 % - 2 % of total sales of all sampled Thai producers. This confirms that any additional production of sweet corn will be exported outside Thailand.

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3.2. *Attractiveness of the Union market*

(59) When comparing the export prices of the product concerned to the Union with the prices charged for the like product on the domestic market, two facts have emerged: on the domestic market the prices are relatively high (due to own-brand sales) and the volumes are relatively small as compared to the export sales. On this basis, there is no apparent risk of trade diversion from sales on the domestic market to sales to the Union should measures be repealed.

(60) When comparing the export prices of the product concerned to the Union with the prices charged for the like product on third country markets, it emerges that for the 3 sampled exporting producers prices to the Union are – on average – 14 % higher.

(61) Trade Statistics from the Thai Customs also confirms this finding. After conversion of the logistical weight (can + corn + liquid) reported into canned net weight (corn + liquid) following the methodology in the application for the review, the prices per kg charged to the Union are – on average – 5 % higher than to third countries.

(62) While several parties have expressed doubts that a price difference of 5 % or 14 % is significant enough to result in a trade diversion to the Union, the investigation has shown that this is indeed likely in the sweetcorn market. In these proceedings, one Thai company (Karn Corn) previously obtained a duty rate which is 8 % - 10 % lower than that of most other Thai exporters. This advantage of 8 % - 10 % was, however, sufficient to increase their share in Thai exports to the Union by seven times between the IP of the original investigation and the RIP of the current investigation.

(63) In addition, despite the anti-dumping duty of 3,1 % in force, Karn Corn more than doubled their export quantities to the Union since the imposition of the anti-dumping duties. This shows the attractiveness of the Union market compared to other markets, even in the case of a small price differential.

(64) To conclude, whereas the risk for trade diversion from the domestic market to the Union market is rather limited due to the existence of own-brand sales on the former, there is a significant risk for trade diversion from sales to third countries to the Union market due to the higher prices prevailing on the latter.

(65) Several interested parties argued that the prices on the Union market are comparably less attractive when compared with prices in other countries such as Japan. Thus, the risk for trade diversion should measures be repealed would be exaggerated.

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(66) It is recalled that sales to third countries are treated as a group and the conclusion drawn in recital 63 is based on prices to all third countries *on average*. It is fully acknowledged that, within this group to third countries, there are countries where export prices are higher, and there are other third countries which carry lower export prices. Obviously, the lower the export price, the higher the risk for trade diversion should measures lapse.

(67) Moreover, one interested party argued that contractual links with importers in third countries will not make an easy switch between customers in different countries.

(68) While contractual links between exporting producers in Thailand and importers in various third countries may exist and are upheld in the short term, there is no evidence to suggest that those contractual obligations could not be phased out as to enable sales to markets with higher prices such as the Union market.

(69) Finally, interested parties claimed that exports to some third countries such as South Korea cannot be compared, as the product mix (e.g. size of cans) and sales conditions (e.g. shipping terms) may be different.

(70) It is recalled that the outcome of the comparisons in recitals 58, 59 and 60 are indicators of differences in export prices to *all third countries*. The impact of any issue concerning Thai exports to a small number of markets on the overall comparison is therefore by nature limited. In addition, since Thai export data is recorded on an FOB basis, the impact of any difference in shipping terms or shipping cost is limited to the cost of domestic freight inside Thailand and can therefore only be insignificant.

(71) In the absence of any evidence suggesting that the average price to all third countries is not comparable with the export price to the Union, the conclusion drawn in recital 63 is valid.

4. **Conclusion on the likelihood of continuation or recurrence of dumping**

(72) It appears likely that, should the measure be repealed, the relatively higher price level on the Union market will attract significant volumes of the product concerned that are currently sold at lower prices to third countries.

(73) The exporting producers of Thailand have continued their dumping practised during the RIP.

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(74) Moreover, the available spare capacity in Thailand and the fact that prices in the Union market are considerably higher than on third country markets brings to the conclusion that there is a risk of an increase in the exports of the product concerned should measures be repealed.

(75) To conclude, there is a strong likelihood of the continuation of dumping should measures be repealed.

D. DEFINITION OF THE UNION INDUSTRY

(76) During the RIP, the like product was manufactured by approximately 20 producers in the Union. The output of those producers (established on the basis of the information collected from the cooperating producers and for the other Union producers on the data from the review request) is therefore deemed to constitute the Union production within the meaning of Article 4(1) of the basic Regulation.

(77) As explained in recital 13, due to the large number of Union producers, a sample was selected. For the purpose of the injury analysis, the injury indicators have been established at the following two levels:

— the macroeconomic elements (production, capacity, sales volume, market share, growth, employment, productivity, average unit prices and magnitude of dumping margins and recovery from the effects of past dumping) were assessed, at the level of the whole Union production, on the basis of the information collected from the cooperating producers and, for the other Union producers, an estimate based on the data from the review request was used.

— the analysis of microeconomic elements (stocks, wages, profitability, return on investments, cash flow, ability to raise capital and investments) was carried out for the sampled Union producers on the basis of their information.

E. SITUATION ON THE UNION MARKET

1. Union consumption

(78) Union consumption was established on the basis of the sales volumes of the Union industry's own production destined for the Union market, the import volumes data on the Union market obtained from the 14.6 database and, concerning the other Union producers, from information available from the request.

(79) Throughout the period considered, the consumption in the Union has increased by 9 %. While from 2008 to 2009 it decreased by 5 %, in 2010 and in 2011 it increased respectively by 6 and 9 percentage points (i.e. compared to the previous year). Then it more or less stabilised during the RIP at a level of around 350 000 tonnes.

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	2008	2009	2010	2011	RIP
Total Union consumption (tonnes)	318 413	301 594	320 027	351 279	347 533
Index (2008 = 100)	*100*	*95*	*101*	*110*	*109*

2. **Imports from the country concerned**

(a) *Volume*

(80) The volume of imports of the product concerned from the country concerned into the Union decreased by 43 %, from around 38 000 tonnes in 2008 to around 22 000 tonnes in the RIP. It decreased by 15 % in 2009, by a further 20 percentage points in 2010 and another 11 percentage points in 2011, before slightly increasing again by 3 percentage points in the RIP.

	2008	2009	2010	2011	RIP
Volume of imports from Thailand	38 443	32 616	24 941	20 710	21 856
Index (2008 = 100)	*100*	*85*	*65*	*54*	*57*
Market share of imports from Thailand (%)	12	11	8	6	6
Price imports from Thailand (EUR /tonne)	835	887	806	775	807
Index (2008 = 100)	*100*	*106*	*96*	*93*	*97*

Source: 14.6 database

(b) *Market share*

(81) The corresponding market share held by Thai exporters on the Union market in the country concerned gradually decreased by around 50 % or 6 percentage points during the period considered, from 12 % in 2008 to 6 % in the RIP. In detail, the Thai market share decreased from 12 % in 2008 to 11 % in 2009 to 8 % in 2010 and to 6 % in 2011/RIP.

(c) *Prices*

(i) Price evolution

(82) Between 2008 and the RIP, the average price of imports of the product concerned originating in the country concerned declined by 3 %, from EUR 835/tonne in 2008 to EUR 807/tonne in the RIP. Specifically, prices increased by 6 % in 2008 before decreasing by 10 percentage points in 2010 and by a further 3 percentage points in 2011. From 2011 to the RIP, those prices increased again by 4 percentage points.

(ii) Price undercutting

(83) A price comparison for similar product types was made between the exporting producers' and the Union industry's selling prices in the Union. To this end, the Union industry's ex-works prices net of all rebates and taxes were compared with the CIF Union frontier prices of exporting producers of the country concerned, duly adjusted for conventional duties, unloading and customs clearance costs. The comparison showed that during the RIP the prices of the product concerned originating in the country

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concerned sold in the Union were overall higher than the Union industry's prices. Also, based on import statistics (14.6 database), there was no undercutting margin for any Thai imports into the Union (for both cooperating exporters as well as non-cooperators, regardless of the product mix).

3. **Situation of the Union industry**

(84) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

(85) This market is, inter alia, characterised by two sales channels, i.e. sales under the producer's own brand and sales under retailer's brand. Sales under the first channel, as compared to the second channel, will usually trigger higher selling costs intended in particular for marketing and advertising, and will also command higher selling prices.

(86) The investigation evidenced that all imports from the cooperating Thai exporters pertained to the second channel, i.e. the retailer's brand channel. Therefore, it was considered appropriate to distinguish, in the injury analysis, between the Union industry's sales under its own brand and under the retailer's brand wherever relevant, as dumped imports compete in the first place with the Union industry's like products sold under the retailer's brand. This distinction was made in particular for the determination of sales volumes, sales prices and profitability. However, for the sake of completeness, totals (including both own brand and retailer's brand) are also shown and commented on in the tables below. During the RIP, the Union industry's sales under the retailer's brand accounted for around 70 % of the total Union industry's sales volume and around 60 % of their sales value.

(87) Given that in the Union sweetcorn is only processed during the summer months, a number of injury indicators are virtually identical for 2011 and the RIP (1 April 2011 to 30 March 2012). This applies in particular to production and production capacity.

3.1. *Macroeconomic elements*

(a) Production

(88) From a level of around 372 000 tonnes in 2008, the Union industry's production decreased by 8 % during the period considered. Specifically, it declined by 25 % in 2009 and by 13 percentage points in 2010 and it increased again by 31 percentage points in 2011/RIP.

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	2008	2009	2010	2011	RIP
Production (tonnes)	371 764	279 265	231 790	344 015	343 873
Index (2008 = 100)	*100*	*75*	*62*	*93*	*92*

(b) Capacity and capacity utilisation rates

(89) Production capacity was around 488 000 tonnes in 2008, 2009 and 2010 and it decreased by 9 % in 2011/RIP. The decrease was due to the fact that one of the sampled Union producers closed one of its plants.

	2008	2009	2010	2011	RIP
Production capacity (tonnes)	488 453	488 453	488 453	444 055	444 055
Index (2008 = 100)	*100*	*100*	*100*	*91*	*91*
Capacity utilisation (%)	76	57	47	77	77
Index (2008 = 100)	*100*	*75*	*62*	*102*	*102*

Source: Investigation

(90) Capacity utilisation was 76 % in 2008. It declined to 57 % in 2009 and further to 47 % in 2010 before picking up to 77 % in 2011/RIP. Over the whole period considered, capacity utilisation was stable because the decreasing production was in line with the decreasing production capacity.

(c) Sales volume

(91) The sales of the Union industry of its production intended for the retailer's brand on the Union market to unrelated customers first decreased by 6 % in 2009, before increasing by 17 percentage points in 2010 and further by 24 percentage points in 2011. From 2011 to the RIP, those sales decreased again by 4 percentage points. Altogether, between 2008 and the RIP, those sales increased by around 31 %.

	2008	2009	2010	2011	RIP
Union Sales volume (retailer's brand) to unrelated customers (tonnes)	161 544	151 058	179 562	218 876	212 425
Index (2008 = 100)	*100*	*94*	*111*	*135*	*131*
Union Sales volume (own and retailer's brand) to unrelated customers (tonnes)	262 902	248 995	280 586	318 237	312 623
Index (2008 = 100)	*100*	*95*	*107*	*121*	*119*

Source: Investigation

▼B

(92) The total (both own and retailer's brand) Union industry's sales of its production on the Union market to unrelated customers followed more or less a similar pattern, although less pronounced. They first decreased by 5 % in 2009, before increasing by 12 percentage points in 2010 and further by 14 percentage points in 2011. From 2011 to the RIP those sales decreased again by 2 percentage points. Altogether, between 2008 and the RIP, those sales increased by around 19 %.

(d) Market share

(93) The market share held by the Union industry was 83 % in 2008 and 2009. It increased to 88 % in 2010 and to 91 % in 2011 before decreasing slightly to 90 % in the RIP. Altogether, the market share held by the Union industry over the period considered increased by 7 percentage points.

	2008	2009	2010	2011	RIP
Market share of the Union industry (own and retailer's brand) (%)	83	83	88	91	90
Index (2008 = 100)	*100*	*100*	*106*	*110*	*109*

Source: Investigation

(e) Growth

(94) Between 2008 and the RIP, when the Union consumption increased by 9 %, the volume of sales intended for the retailer's brand of the Union industry on the Union market increased by 31 %, whilst the volume of Union industry's sales intended for both own and retailer's brand on the Union's market increased by 19 %. Between 2008 and the RIP, the Union industry gained around 7 percentage points of market share, whereas dumped imports lost around 6 percentage points of market share. It is thus concluded that the Union industry was able to benefit from a growing market.

(f) Employment

(95) The employment level of the Union industry first decreased by 17 % between 2008 and 2009, then declined by 5 percentage points in 2010 and increased by 11 percentage points in 2011/RIP. Overall, employment of the Union industry declined by 11 % over the period considered, i.e. from around 2 300 persons to around 2 000 persons.

	2008	2009	2010	2011	RIP
Employment (persons)	2 278	1 896	1 786	2 038	2 035
Index (2008 = 100)	*100*	*83*	*78*	*89*	*89*

Source: Investigation

▼B

(g) Productivity

(96) Productivity of the Union industry's workforce, measured as output (tonnes) per person employed per year, starting from a level of 163 tonnes per employee, first decreased by 10 % in 2009 and further by 10 percentage points in 2010, subsequently increased by 23 percentage points in 2011 and by 1 percentage point in the RIP. Altogether, productivity of the Union industry increased by 4 % over the period considered. This development reflects the fact that the drop in workforce was sharper than that of production.

	2008	2009	2010	2011	RIP
Productivity (tonne per employee)	163	147	130	169	169
Index (2008 = 100)	*100*	*90*	*80*	*103*	*104*

Source: Investigation

(h) Factors affecting sales prices

(97) Unit prices for Union industry's sales of retailer's brand products to unrelated customers increased by 7 % in 2009 and decreased by 8 percentage points in 2010 and further by 5 percentage points in 2011. From 2011 to the RIP they increased by 3 percentage points. Altogether, those prices decreased by 3 % over the period considered from a level of EUR 1 073/tonne to EUR 1 041/tonne in the RIP.

	2008	2009	2010	2011	RIP
Unit price in the Union market (retailer's brand) (EUR/tonne)	1 073	1 152	1 057	1 008	1 041
Index (2008 = 100)	*100*	*107*	*99*	*94*	*97*
Unit price in the Union market (own and retailer's brand) (EUR/tonne)	1 248	1 305	1 219	1 182	1 215
Index (2008 = 100)	*100*	*105*	*98*	*95*	*97*

Source: Investigation

(98) Total (both own and retailer's brand) Union industry's sales prices on the Union market to unrelated customers followed more or less a similar pattern. They increased by 5 % in 2009 and decreased by 7 percentage points in 2010 and further by 3 percentage points in 2011. From 2011 to the RIP they increased by 2 percentage points. Altogether, those prices decreased by 3 % over the period considered from a level of EUR 1 248/tonne to EUR 1 215/tonne in the RIP.

(i) Magnitude of dumping margin

(99) The investigation has established a continuation of dumping and the magnitude of the actual margins of dumping (i.e. up to 44 %) cannot be considered to be negligible.

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(j) Recovery from past dumping

(100) The macro-indicators examined above and the micro-indicators examined below show that, although the anti-dumping measures have partially achieved their intended result of removing injury suffered by the Union producers, the industry is still in a vulnerable and fragile situation. Indeed the performance on the retailer-branded segment which is in direct competition with the Thai imports is poor in terms of profitability. Sales prices of the Union industry in this market segment decreased by 3 % over the period considered, whereas production costs increased by about 10 % over the same period. Clearly, the Union industry has not been in a position to recover its costs which resulted in significant losses. Given the importance of the retailer's brand in the Union industry's sweetcorn business (representing 70 % of its total sales volume and 60 % of its total sales value) this has weighted on the overall profitability. Thus, no actual recovery from the past dumping could be established and it is considered that the Union industry remains vulnerable to the injurious effects of any dumped imports in the Union market.

3.2. *Microeconomic elements*

(a) Stocks

(101) The level of closing stocks of the Union industry has been continuously decreasing over the period considered. It decreased by 2 % in 2009, by 27 percentage points in 2010, by 2 percentage points in 2011 and further by 24 percentage points during the RIP. However, it should be noted that the level of inventories is not a meaningful indicator of injury for this particular industry. The high level of inventories at the end of each year is linked to the fact that the harvest and the canning typically end in October each year. Stocks are therefore goods awaiting dispatching during the period from November to July.

	2008	2009	2010	2011	RIP
Closing stock (tonnes)	193 834	189 741	136 703	133 884	88 108
Index (2008 = 100)	*100*	*98*	*71*	*69*	*45*

Source: Investigation

(b) Wages

(102) Between 2008 and the RIP, labour costs decreased by 7 %. Specifically, they decreased by 16 % in 2009, by a further 1 percentage point in 2010 and increased by 10 percentage points during 2011/RIP. The overall decrease over the period considered was driven by the decrease in employment.

	2008	2009	2010	2011	RIP
Annual labour cost (EUR)	34 343 788	28 850 250	28 370 188	31 952 596	31 923 505

▼B

	2008	2009	2010	2011	RIP
Index (2008 = 100)	*100*	*84*	*83*	*93*	*93*

Source: Investigation

(c) Profitability and return on investments

(103) During the period considered, the profitability of the Union industry's sales of products intended for retailer's brand, expressed as a percentage of net sales, declined from a profit of 5,6 % in 2008 to a loss of 5,4 % in the RIP.

	2008	2009	2010	2011	RIP
Profitability of Union (retailer's brand) (% of net sales)	5,6	9,6	–3,3	–8,2	–5,4
Index (2008 = 100)	*100*	*169*	*–59*	*–145*	*–95*
Profitability of Union (own and retailer's brand) (% of net sales)	8,5	10,8	0,7	–0,5	1,6
Index (2008 = 100)	*100*	*127*	*8*	*–6*	*19*
ROI (own and retailer's brand) (profit in % of the net book value of investment)	24,3	40,4	2,9	–3,0	4,4
Index (2008 = 100)	*100*	*166*	*12*	*–13*	*18*

Source: Investigation

(104) The profitability of the Union industry's sales of products intended for both own brand and retailer's brand also declined from 8,5 % in 2008 to 1,6 % in the RIP. The decline is thus less steep than for sales under retailer's brand alone. The decrease in profitability is explained by the fact that sales prices over the period considered decreased by 3 % whereas production costs (predominantly unprocessed sweetcorn and cans) increased by 5 % over the same period. Clearly, the Union industry has not been in a position to pass on the increased production cost to its customers.

(105) The return on investments ('ROI'), expressed as the profit (for both own and retailer's brand) as a percentage of the net book value of investments, broadly followed the profitability trend. It declined from a level of around 24,3 % in 2008 to 4,4 % in the RIP, thus decreasing by 82 % over the period considered.

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(d) Cash flow and ability to raise capital

(106) The net cash flow from operating activities stood at around EUR 27 000 in 2008. It increased to around EUR 23 million in 2009 and to around EUR 58 million in 2010 before decreasing again to around EUR 8 million in 2011. From 2011 to the RIP it increased to around EUR 11 million. None of the cooperating Union producers indicated that they experienced difficulties to raise capital.

	2008	2009	2010	2011	RIP
Cash flow (own and retailer's brand) (EUR)	26 698	23 239 572	58 654 064	7 845 330	11 077 815
Index (2008 = 100)	*100*	*87 047*	*219 698*	*29 386*	*41 494*

Source: Investigation

(e) Investments

(107) The Union industry's annual investments in the production of the like product increased by 45 % from 2008 to 2009, decreased by 34 percentage points from 2009 to 2010, increased by 57 percentage points in 2011 and finally decreased by 4 percentage points from 2011 to the RIP. All in all, over the period considered, investment increased by 64 %, which was intended for the maintenance and renewal of existing equipment and not for capacity increase purposes.

	2008	2009	2010	2011	RIP
Net investments (EUR)	6 590 078	9 545 749	7 329 354	11 093 136	10 802 751
Index (2008 = 100)	*100*	*145*	*111*	*168*	*164*

Source: Investigation

4. **Conclusion on injury**

(108) A number of indicators developed negatively between 2008 and the RIP. Return on investment declined, production volumes decreased by 8 %, production capacity decreased by 9 %, and employment decreased by 11 %. With respect to lower production levels, it is noted that crop yields in 2008 was better than expected and led to higher output for the Union industry in the same year. During the same period, imports from Thailand (which are primarily invoiced in USD) became more attractive because of a weaker USD. This increase in both Union and Thai sweetcorn supply coincided with the economic and financial crisis in the Union which had an impact on consumption. As a result, the increased Union production could not be entirely sold on the Union market. This led to a reduced production level and de-stocking in the following years but cannot explain fully the injury suffered.

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(109) The profitability of the Union industry's sales of sweetcorn (both own and retailer's brand) decreased significantly over the period considered. The retailer-branded segment, where the Union industry has to face competition from Thai imports, is clearly loss-making (profitability declined from a profit of more than 5 % in 2008 to a loss of more than 5 % during the RIP). The Union producers decreased their sales prices on the Union market by 3 % and managed to re-gain market share at the expense of their profitability. The industry needs the retailer-branded sales as there is no sufficient demand for own brand and given that the retailer-branded sales represent around 60 % of the total sales value, the overall profitability decreased from 8,5 % to 1,6 % over the period considered.

(110) Some indicators suggest that thanks to the measures in place the industry regained its position. The volume of Thai imports and their corresponding market share nearly halved, from 12 % in 2008 to only 6 % in the RIP. The Union industry's market share increased from 83 % in 2008 to 90 % in the RIP. Moreover, during the RIP, the average prices of the Thai imports did not undercut those of the Union industry, but at the same time they have prevented the Union industry from passing on cost increases to customers. Also other indicators marked positive development. Capacity utilisation increased by 2 % over the period considered and was rather high at 77 % during the RIP. The volume of the Union industry's retailer-branded sales, which are in direct competition with Thai imports, increased by 31 % and total sales for both segments combined increased by 19 %. Investment increased by 64 %. Those factors suggest that the industry was able to recover. However, it was not able to reach satisfactory profitability levels to maintain a substantial market share on a market where only the Union industry and Thai imports compete (imports from other third countries are dispersed and insignificant).

(111) The competition situation on the Union market is indeed delicate. On the one hand, for one part of the market – the own-branded segment – the Union industry does not face outside competition. The negotiating power of brand owners vis-à-vis retailers is strong. Indeed, they are price-setters. The market is also consolidated with the four sampled producers holding 54 % of the market share. On the other hand, the retailers have the upper hand in the segment of private brands. Due to outside competition and competition within the Union, prices are constantly under pressure. As a result, it is more difficult for Union producers to pass on production cost increases (predominantly sweetcorn or cans) to their customers (production costs of the Union industry have increased by 5 % over the period considered) due to the price pressure exercised by Thai imports.

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(112) Clearly, the Union industry has been able to increase its market share by favouring volumes over prices. However, it cannot be ignored that for a majority of its sweetcorn business (the retailer's brand) it has not been able to recover its costs. Therefore, it can be concluded that the situation of the Union industry is still vulnerable and fragile.

(113) Several parties have commented that the Union industry has recovered given that a number of indicators have improved and, in particular, in view of the Union industry's high market share and the negative undercutting.

(114) It is recognised that the injury picture of the Union industry is mixed. The anti-dumping measures have partially achieved their objective by removing some of the injury suffered by the Union industry as a consequence of dumped imports from Thailand. However, on balance, in particular taking into account the low and decreasing profitability, the situation of the Union industry is still fragile.

(115) Negative undercutting and a strong market share of the Union industry do not automatically point to lack of injury. The situation of continued dumped imports from Thailand (with dumping margins of up to 44 %) has resulted in price suppression on the Union market. The Union industry, in an attempt to regain lost market share, has kept prices down which has resulted in a deterioration of profitability.

(116) One interested party claimed that the injury assessment should be based on the Union industry's overall performance and not on the performance of one segment of the market.

(117) In line with the original investigation, the injury assessment has been based on the Union industry's overall performance (own brand + retailer's brand) as well as, for a number of injury indicators (profitability, sales volume and sales prices) on the retailer's brand. There are no changed circumstances which would justify a deviation from this methodology, which remains valid for assessing the situation of the Union industry. As mentioned in recitals 84 and 85, the sweetcorn market is still characterised by two sales channels and all imports from the cooperating Thai exporters pertained to the retailer's brand channel. In addition, even if only the Union industry's overall performance were taken into account, in view of the low and decreasing profitability, it would not alter the conclusion that the Union industry is in a fragile situation. Based on the above considerations, the claim is rejected.

(118) Two interested parties claimed that the inability of the Union industry may well result from competition within the Union.

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(119) However, the situation on the Union market with regard to competition is not fundamentally different from the situation in the period considered in the original investigation (two sales channels, around 20 Union producers). Nevertheless, in 2002, before Thai exports started to enter the Union market at dumped prices, the Union industry achieved a profit level of more than 20 % overall (own brand + retailer's brand) and 17 % on the retailer's brand. This demonstrates that competition in the Union is not preventing the Union industry from achieving healthy profit margins. It is rather the continued presence of dumped imports and the resulting price suppression that prevents the Union industry from increasing its prices.

F. **LIKELIHOOD OF RECURRENCE OF INJURY**

(120) On the basis of the above-mentioned trends, it appears that the anti-dumping measures have partially achieved their intended result of removing injury suffered by the Union producers. On the other hand, as evidenced by the negative development of a number of injury indicators, the industry is still in a vulnerable and fragile situation.

(121) As mentioned above, Thai exporters do have the spare capacity to increase their exports very rapidly. In addition, Thai trade statistics confirm that Thailand has exported around 140 000 tonnes to third countries in 2011, which is about 7 times the Thai export volume to the Union. Given the more lucrative prices on the Union market compared to some third country markets, it is likely that significant quantities currently exported to those countries will be re-directed to the Union market in the event of the anti-dumping measures being allowed to lapse. Such an abrupt development was already observed in the original investigation, when the market share of Union imports from Thailand nearly doubled in only three years, i.e. from 6,8 % in 2002 to 12,7 % in 2005.

(122) Therefore, on the basis of the above, it can be concluded that there is a likelihood of recurrence of injury in the event of the measures being repealed.

(123) Several interested parties have expressed doubts about the conclusion of likelihood of recurrence of injury. It is claimed in particular that a 5 % price difference between the Union and third country markets is too small to re-direct sweetcorn exports to the Union market. This argument is already addressed in recital 61. In addition, it is claimed that sweetcorn is not a commodity which could easily be switched between markets. This argument has however not been substantiated, and does not correspond to the findings of this investigation.

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(124) Although the likelihood of recurrence of injury is a prospective assessment, it is based on the facts mentioned in recital 121. Therefore, the claim is rejected.

G. UNION INTEREST

(125) In accordance with Article 21 of the basic Regulation it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant of Article 21(2) of the basic Regulation.

1. **Interest of the Union industry**

(126) As mentioned above, the Union industry is still in a somewhat fragile and vulnerable situation. It would use the relief of a continuation of the measures to increase its sales prices (in particular for the retailer's brand) in order to recover its increased production costs. This would allow the industry to improve its financial situation.

2. **Interest of the retailers and consumers**

(127) Cooperation has been sought from more than 40 importers/retailers and two consumer/trading organisations. Only one retailer has cooperated. Its imports represented a small fraction of the total imports from Thailand during the RIP. The share of its sweetcorn-related turnover was negligible compared to its total turnover. In addition, the re-sales of sweetcorn generated a very high profit during the RIP. Those factors suggest that retailers would not be disproportionately affected, even if measures were to be extended.

(128) At the same time, a number of trade associations made submissions and attended a hearing. They claim that anti-dumping measures should be discontinued due to the low and decreasing market share of Thai imports coinciding with the high and increasing market share of the Union industry.

(129) As far as consumers are concerned, the average spending in sweetcorn per household is very limited, up to EUR 5 per year. Taking into account the moderate level of the current measures, the effects of the continued imposition of measures would likely be negligible for consumers.

(130) In light of the above and given the overall low degree of cooperation, it is therefore considered that the situation of retailers and of consumers in the Union is unlikely to be substantially affected by the proposed measures.

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3. **Risk of supply shortages/competition on the Union market**

(131) It should first be recalled that the aim of anti-dumping measures is not to stop access into the Union for imports on which the measures are imposed, but to eliminate the impact of distorted market conditions arising from the continued presence of dumped imports.

(132) The consumption in the Union increased by 9 % during the RIP, reaching around 350 000 tonnes. The Union industry's capacity has continuously exceeded Union's demand over the period considered, reaching a level of around 440 000 tonnes in the RIP. There is sufficient competition between Union producers. Operating at a capacity utilisation rate of 77 % during the RIP, it appears that the Union industry has the spare capacity to increase its production further in the event of increased demand. Imports from other third countries, in particular the United States and the People's Republic of China, can also satisfy part of the demand. As mentioned above, it should be pointed out that the anti-dumping measures are not intended to stop the imports from Thailand into the Union. Taking into account the low level of the measures, it is expected that the Thai imports will continue to account for a certain share on the Union market.

(133) Given the above considerations, it cannot be concluded that maintaining the anti-dumping measures would likely result in a shortage of supply on the Union market or a restriction of competition on the Union market.

4. **Conclusion on Union interest**

(134) Based on the above, it appears that the negative effects of continuation of measures would be limited and in any case not disproportionate to the benefits of the prolongation of measures for the Union industry.

H. **ANTI-DUMPING MEASURES**

(135) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

(136) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain prepared or preserved sweetcorn in kernels originating in Thailand should be maintained. It is recalled that those measures consist of an *ad valorem* duty at different rates.

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(137) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by those companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured 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 those rates and shall be subject to the duty rate applicable to 'all other companies'.

(138) Any claim requesting the application of those 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 ([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 instance, 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,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30 (TARIC code 2001 90 30 10) and sweetcorn (*Zea mays var. saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00 (TARIC code 2005 80 00 10), originating in Thailand.

2. The rate of the definitive 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	Anti-Dumping duty (%)	TARIC Additional Code
▼M1		
River Kwai International Food Industry Co., Ltd, 99 Moo 1 Thanamtuen Khaupoon Road Kaengsian, Muang, Kanchanaburi 71000 Thailand	3,6	A791

▼B

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

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

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Article 2

Article 1(2) may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 12,9 % where any new exporting producer in Thailand provides sufficient evidence to the Commission that:

(a) it did not export to the Union the product described in Article 1(1) during the review investigation period (1 April 2011 to 30 March 2012);

(b) it is not related to any of the exporters or producers in Thailand which are subject to the measures imposed by this Regulation; and

(c) it has actually exported to the Union the product concerned after the review investigation period or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

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.

▼B

ANNEX

List of the cooperating manufacturers referred to in Article 1(2) under TARIC additional code A793

Name	Address
Agro-On (Thailand) Co., Ltd	50/499-500 Moo 6 Baan Mai, Pakkret, Monthaburi 11120, Thailand
B.N.H. Canning Co., Ltd	425/6-7 Sathorn Place Bldg., Klongtonnesai, Kongsan Bangkok 10600, Thailand
Boonsith Enterprise Co., Ltd	7/4 M.2, Soi Chomthong 13, Chomthong Rd., Chomthong, Bangkok 10150, Thailand
Erawan Food Public Company Limited	Panjathani Tower 16th floor, 127/21 Nonsee Rd., Chongnonsee, Yannawa, Bangkok 10120, Thailand
Great Oriental Food Products Co., Ltd	888/127 Panuch Village Soi Thanaphol 2, Samsen-Nok, Huaykwang, Bangkok 10310, Thailand
Lampang Food Products Co., Ltd	22K Building, Soi Sukhumvit 35, Klongton Nua, Wattana, Bangkok 10110, Thailand
O.V. International Import-Export Co., Ltd	121/320 Soi Ekachai 66/6, Bangborn, Bangkok 10500, Thailand
Pan Inter Foods Co., Ltd	400 Sunphavuth Rd, Bangna, Bangkok 10260, Thailand
Siam Food Products Public Co., Ltd	3195/14 Rama IV Road, Vibulthani Tower 1, 9th Fl., Klong Toey, Bangkok, 10110 Thailand
Viriyah Food Processing Co., Ltd	100/48 Vongvanij B Bldg, 18th Fl, Praram 9 Rd., Huay Kwang, Bangkok 10310 Thailand
Vita Food Factory (1989) Ltd	89 Arunammarin Rd., Banyikhan, Bangplad, Bangkok 10700, Thailand