Commission Implementing Regulation (EU) 2019/1996 of 28 November 2019 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1996

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and 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 under 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) Council 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.

(3) The Council, by Regulation (EC) No 847/2009[(5)], 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 Consequently, the accepted undertakings were withdrawn and the undertaking offers by 10 other Thai exporting producers were rejected.

(4) By Regulation (EU) No 875/2013[(6)], the Council re-imposed the definitive anti-dumping measures on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review (the 'previous expiry review').

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1996. (See end of Document for details)*

(5) By Regulation (EU) No 307/2014[7], following a partial interim review the Council amended the anti-dumping duty set by Regulation (EU) No 875/2013 for River Kwai International Food Industry Co., Ltd.

(6) Following the European Court Justice, judgments of 14 December 2017 and 28 March 2019, in cases T-460/14 and C-144/18 P respectively, the Commission reopened[8] on 29 August 2019 the anti-dumping investigation concerning imports of certain prepared or preserved sweetcorn in kernels originating in Thailand that led to the adoption of Regulation (EU) No 307/2014. That investigation was reopened only in so far as it concerns River Kwai International Food Industry Co. Ltd. and resumed it at the point at which the irregularity occurred.

1.2. **Request for an expiry review**

(7) Following the publication of a notice of impending expiry[9] of the anti-dumping measures in force, the Commission received a request for a review pursuant to Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation').

(8) The request for review was lodged on 13 June 2018 by the Association Européenne des Transformateurs de Maïs Doux ('AETMD' or 'the applicant') on behalf of Union producers representing more than 50 % of the total Union production of certain prepared or preserved sweetcorn in kernels.

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

1.3. **Initiation of an expiry review**

(10) Having determined that sufficient evidence existed for the initiation of an expiry review, and after consulting the Committee established by Article 15(1) of the basic Regulation, the Commission initiated an expiry review regarding imports into the Union of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand ('Thailand' or 'the country concerned'). On 12 September 2018, it published a Notice of Initiation in the *Official Journal of the European Union*[10] ('the Notice of Initiation').

1.4. **Review investigation period and period considered**

(11) The investigation of continuation or recurrence of dumping covered the period from 1 July 2017 to 30 June 2018 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

(12) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission

specifically informed the applicants, known Union producers, the known producers in Thailand and the authorities of Thailand, known importers, users and traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(13) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. **Sampling**

(14) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.6.1. *Sampling of Union producers*

(15) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers.

(16) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three Union producers on the basis of the largest production volumes in 2017 and invited the interested parties to comment.

(17) Following the comments received, the Commission replaced one company from the provisional sample by the next largest Union producer. That company demonstrated it did not have the necessary resources to cooperate in this review. The final sample of Union producers accounted for more than 60 % of the total estimated Union production volume. No other comments were received. The Commission concluded that the sample was representative of the Union industry.

1.6.2. *Sampling of importers*

(18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. Only one unrelated importer provided the required information.

(19) Sampling of importers was therefore not necessary.

1.6.3. *Sampling of producers in Thailand*

(20) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in Thailand to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Kingdom of Thailand to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(21) Three producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary. All three producers exported the product under review to the Union during the review investigation period, and are

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therefore exporting producers. They account for about 80 % of all Thai exports to the Union.

1.7. **Replies to the questionnaire**

(22) Copies of the questionnaires were made available on DG Trade's website when the case was initiated. The Commission sent letters to the three sampled Union producers, to the unrelated importer and to the three exporting producers which provided the required information, requesting them to complete the questionnaire intended for them.

(23) Questionnaire replies were received from the three Union producers and the three cooperating producers in the country concerned.

(24) No questionnaire reply was received from the unrelated importer.

1.8. **Verification**

(25) The Commission sought and verified with cooperating parties all the information deemed necessary for the determination of a likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

— Bonduelle SA, Renescure, France

— Conserve Italia SCA, San Lazzaro di Savena, Italy

— Groupe d'aucy, Theix, France

Exporting producers in Thailand

— Karn Corn Co. Ltd, Kanchanaburi, Thailand

— River Kwai International Food Industrial Company Limited ('RKI'), Kanchanaburi, Thailand

— Siam Del Monte Co. Limited, Bangkok, Thailand.

2. **PRODUCT UNDER REVIEW AND LIKE PRODUCT**

2.1. **Product under review**

(26) The product under review is the same as in the original investigation and previous expiry review namely sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling under 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 under CN code ex 2005 80 00 (TARIC code 2005 80 00 10) ('sweetcorn') originating in Thailand ('the product under review').

(27) The investigation has shown that, despite differences in the preservations, the different types of the product under review all share the same basic biological and chemical characteristics and are used for the same purpose.

2.2. **Like product**

(28) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic biological and chemical characteristics as well as the same basic uses:

— the product under review,

— the product produced and sold on the domestic market of Thailand, and

— the product produced and sold in the Union by the Union industry.

(29) Those products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

3.1. **Thailand**

3.1.1. *Preliminary remarks*

(30) During the review investigation period, imports of certain prepared or preserved sweetcorn in kernels from Thailand continued albeit at lower levels than in the investigation period of the original investigation (that is from 1 January 2005 to 31 December 2005). According to Eurostat, imports of sweetcorn from Thailand accounted for about 3,9 % of the Union market in the review investigation period, compared to 12,7 % market share during the original investigation and 6 % during the previous expiry review. In absolute terms, imports from Thailand amounted to 13 643 tonnes in the review investigation period. This followed a decrease in imports from 41 973 tonnes in the original investigation to 21 856 tonnes during the previous expiry review.

3.1.2. *Dumping during the review investigation period*

3.1.2.1. *Normal value*

(31) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the review investigation period.

(32) On this basis, the total domestic sales by only one exporting producer, of the like product, on the domestic market, were representative.

(33) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales.