Commission Implementing Regulation (EU) 2016/1160 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1160

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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 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) Following an anti-dumping investigation under Article 5 of the basic Regulation, by Regulation (EC) No 435/2004[(2)], the Council imposed a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('the PRC') and Indonesia. The original measures were subsequently subject to different review investigations[(3)]. As a result, the rate of the duty for an individually named Indonesian producer is 0,24 EUR/kg with a residual duty rate of 0,27 EUR/kg imposed on imports of the product concerned produced by other Indonesian producers, whereas the rate of the duty for the PRC ranges between 0 and 0,23 EUR/kg for individually named Chinese producers with a residual duty rate of 0,26 EUR/kg imposed on imports of the product concerned produced by other Chinese producers ('the measures in force').

(2) The measures in force apply to all imports of sodium cyclamate originating in the PRC and Indonesia, with the exception of imports of sodium cyclamate produced by the Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited. A zero duty rate was originally determined for these companies, as no dumping was found[(4)].

(3) In line with the WTO Appellate Body report in case Mexico — Definitive Anti-dumping Measures on Beef and Rice ('the WTO Appellate Body report'), the Chinese exporting producers Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited were not examined in the subsequent reviews

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of the measures as imposed by Regulation (EC) No 435/2004 and are not subject to the measures in force.

1.2. **Initiation of an expiry review**

(4) Following the publication of a Notice of impending expiry of the anti-dumping measures in force[5], the Commission received on 6 March 2015 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by Productos Aditivos S.A., the sole Union producer of sodium cyclamate, thus representing 100 % of the total Union production.

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

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 6 June 2015, by a notice published in the *Official Journal of the European Union*[6] (the Notice of Initiation), the initiation of an expiry review under Article 11(2) of the basic Regulation.

(7) On 12 August 2015 the Commission also initiated an investigation under Article 5 of the basic Regulation with regard to imports of the same product manufactured and exported to the Union by Fang Da Food Additive (Shenzhen) Limited and Fang Da Food Additive (Yan Quan) Limited (both companies referred to as 'Fang Da') ('the parallel Article 5 investigation')[7]. Imports from Fang Da are not subject to this expiry review investigation.

1.3. **Interested parties**

(8) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission specifically informed the complainant, known exporting producers, the authorities of the PRC and Indonesia, known importers, suppliers, users, and traders known to be concerned about the initiation of the investigation and invited them to participate.

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

1.3.1. *Analogue country producers*

(10) In the Notice of Initiation, in relation to imports from the PRC, the Commission informed interested parties that it envisaged Indonesia as a market economy third country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation.

(11) However, in view of the available statistical data (see recital (32) below), the Commission also informed the authorities of the United States of America (the 'US') about the initiation of the investigation and invited them to provide names and identities

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of sodium cyclamate producers in the US, if any. No sodium cyclamate producers in the US were subsequently identified. There were no indications on the file pointing towards possible production of sodium cyclamate in other third countries.

1.3.2. *Sampling*

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

— Sampling of Union producers

(13) In its Notice of Initiation, the Commission stated that Productos Aditivos S.A. is the sole Union producer of sodium cyclamate in the Union, thus representing 100 % of the total Union production. Consequently, the sampling was not necessary.

— Sampling of importers

(14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(15) Since only one unrelated importer came forward with the requested information, it was not necessary to sample unrelated importers.

— Sampling of exporting producers in the PRC and Indonesia

(16) In view of the limited number of known exporting producers in the countries concerned, sampling of exporting producers was not foreseen.

1.3.3. *Questionnaire replies and verification visits*

(17) The Commission sent questionnaires to the sole Union producer, all known exporting producers in the PRC and Indonesia, one Union unrelated importer and one Union user, which expressed an interest in the investigation.

(18) A questionnaire reply was received from the sole Union producer and a partial reply from one Union user. No questionnaire replies were received from unrelated importers in the Union and from exporting producers in the PRC and Indonesia.

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

Union producer

— Productos Aditivos S.A., Barcelona, Spain.

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

(20) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 April 2014 to 31 March 2015 (‘the review investigation period’). The examination of the trends relevant for the assessment of the likelihood of

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a continuation or recurrence of injury covered the period from 1 January 2011 to the end of the review investigation period ('the period considered').

1.5. **Disclosure**

(21) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the definitive anti-dumping measures in force. The parties were also granted a period within which they could make representations subsequent to this disclosure. No party submitted any comments after the disclosure.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(22) The product concerned is sodium cyclamate originating in the People's Republic of China and Indonesia ('the countries concerned'), currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10) ('the product concerned').

(23) Sodium cyclamate is a commodity product used as a food additive and is widely used as a sweetener by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.

(24) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. The content of the impurities, determined by the Union legislation, defines the quality of sodium cyclamate. Sodium cyclamate can be found in two different forms: hydrated (HC), with 15 % of moisture; and anhydrous (AC), with a content of up to 1 % of moisture. These two forms of sodium cyclamate have the same main characteristics and uses; it only varies in degree of sweetness; the HC type is less sweet due to the water content. Prices vary due to the same reason. The AC type is more expensive than the HC form. Both forms should be therefore considered as one product for the purposes of this proceeding.

2.2. **Like product**

(25) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold by the exporting producers on the domestic market of the PRC and Indonesia;

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

(26) The Commission therefore concluded that those products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3.1. **The PRC**

3.1.1. *Preliminary remarks*

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

(28) Although there were significant imports of the product concerned during the review investigation period, none of the Chinese exporting producers subject to measures cooperated in this investigation. Therefore, the findings in relation to the likelihood of a continuation or recurrence of dumping set out below were based on statistical data as well as data contained in the expiry review request.

3.1.2. *Dumping during the review investigation period*

3.1.2.1. Analogue country

(29) Pursuant to Article 2(7)(a) of the basic Regulation, due care was taken in identifying a market economy third country for establishing prices or constructed value to determine normal value.

(30) In the Notice of Initiation, the Commission informed interested parties that it envisaged Indonesia as an appropriate analogue country and invited interested parties to comment. No comments were received. The Commission sought cooperation from producers in Indonesia. Letters and relevant questionnaires were sent to all known Indonesian exporting producers.

(31) One Indonesian exporting producer came forward and provided a very incomplete questionnaire reply. The Commission received no reply to the subsequent letter requesting the company to complete its reply. The totality of data received was so incomplete that it could not be used to determine the normal value. As a result, the Indonesian exporting producer could no longer be considered as cooperating. Consequently, no cooperation from Indonesia could be obtained.

(32) According to the information available to the Commission, there is only production of the product concerned in the Union and in the two countries concerned. However, Eurostat statistics suggested limited quantities of exports of the product concerned from the United States of America ('US') to the Union during the period considered. As sodium cyclamate is prohibited for use in the US this was probably a matter of misclassification but the Commission nevertheless contacted the US authorities to identify possible producers of the product concerned in the US, if any. No indications of the existence of such producers were subsequently received.

(33) Consequently, no cooperation was obtained from any potential analogue country producer.

3.1.2.2. Normal value

(34) In accordance with Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the prices in an appropriate market economy third country