Commission Implementing Regulation (EU) 2016/1159 of 15 July 2016 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and produced by Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1159

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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 9(4) 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.

(2) Since then, these measures were first extended for an additional period of five years in June 2010[(3)], and, in May 2012 following a partial interim review, the duty level of one Chinese exporting producer was amended[(4)]. As a result, the rate of the duty applicable for Indonesia ranged from 0,24 EUR/kg to 0,27 EUR/kg, and for the PRC from 0,23 EUR/kg to 0,26 EUR/kg (‘the measures in force’).

(3) The measures in force applied 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 (Regulation (EC) No 435/2004).

(4) In line with the WTO Appellate Body report in case Mexico — Definitive Anti-dumping Measures on Beef and Rice (‘the WTO Appellate Body report’)[(5)], 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.

(5) An earlier investigation limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited was initiated on 17 February 2011[6]. Following a withdrawal of the complaint, the proceeding was terminated by Commission decision of 5 April 2012[7] without imposing measures.

(6) A second expiry review of the measures in force was initiated in June 2015[8] under Article 11(2) of the basic Regulation.

1.2. **Initiation of the investigation**

(7) On 12 August 2015, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of sodium cyclamate originating in the People's Republic of China ('PRC'), limited to Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited, two companies belonging to the same group (both companies referred to as 'the exporting producers concerned' or 'Fang Da'), on the basis of Article 5 of the basic Regulation. A Notice of Initiation was published in the *Official Journal of the European Union*[9] ('the Notice of Initiation').

(8) The Commission initiated the investigation following a complaint lodged on 30 June 2015 by Productos Aditivos S.A. ('the complainant' or 'the Union producer'), the sole producer of sodium cyclamate in the Union, thus representing 100 % of the total Union production. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

(9) Following disclosure, Fang Da claimed that the evidence on injury contained in the complaint was deficient, and that the opening of one investigation after another against Fang Da was abusive. It also stated that this illustrates that the initiation of the present case under Article 5 of the basic Regulation is not appropriate. They also sought clarification of the trends of certain indicators in the open file.

(10) As already explained in recital (8), the Commission considers that the complaint contained sufficient evidence to justify the initiation of the investigation which alone is the criterion for the decision on the initiation, not the existence or outcome of past investigations. In fact, the specific injury analysis of the complaint has shown that there is sufficient evidence pointing to a significant penetration of the EU market by imports from Fang Da made at prices which substantially undercut and undersell the Union industry's own prices. In addition, not all factors must show deterioration in order for material injury to be established. Furthermore, the existence of other factors which may have an impact on the situation of the Union industry does not necessarily imply that the effect of dumped imports on this industry is not material. Accordingly, the initiation of the investigation is legally valid. Regarding the comments on the possible inconsistency of three indicators in the open file, it is explained by the substantial difference in magnitude of the volumes involved in these calculations

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and the result of the rounding of the confidential figures used (upward or downward, depending of the year).

(11) It was also legally possible to initiate the investigation under Article 5 of the basic Regulation even if it concerned one company, as confirmed by case-law[10].

1.3. **Subsequent procedure**

(12) The Commission did not impose provisional anti-dumping measures in this investigation in order to align the timing of the definitive findings of this proceeding with the expiry review mentioned in recital (6).

1.4. **Interested parties**

(13) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the two exporting producers concerned and the Chinese authorities, known importers, suppliers, users and traders known to be concerned about the initiation of the investigation and invited them to participate.

(14) 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.

1.5. **Analogue country producers**

(15) The Commission also informed producers in Indonesia about the initiation and invited them to participate. In the Notice of Initiation, the Commission informed interested parties that it envisaged Indonesia as a third market economy country ('analogue country') within the meaning of Article 2(7)(a) of the basic Regulation. There were no indications on the file pointing towards possible production of sodium cyclamate in other third countries.

1.6. **Sampling**

(16) In the Notice of Initiation, the Commission stated that it might sample importers concerned in accordance with Article 17 of the basic Regulation.

(17) 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.

(18) Three unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number of the importers, the Commission decided that sampling was not necessary.

1.7. **Market economy treatment ('MET') claim forms**

(19) For the purposes of Article 2(7)(b) of the basic Regulation, the Commission sent MET claim forms to the two exporting producers concerned in the PRC.

1.8. **Replies to the questionnaire**

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(20) The Commission sent questionnaires to the sole Union producer, the two Chinese exporting producers concerned and the three unrelated importers.

(21) Questionnaire replies were received from the sole Union producer, one of the two Chinese exporting producers concerned (including two of its related export sales offices in Hong Kong) and from two unrelated importers. The second Chinese exporting producer concerned had stopped production and sales of the product concerned prior to the investigation period, and was therefore not concerned by the questionnaire for the investigation period.

1.9. Verification visits

(22) The Commission sought and verified all the information deemed necessary for a determination 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

Importers

— DKSH GmbH, Hamburg, Germany

— Emilio Peña S.A., Torrente (Valencia), Spain

Exporting producers in the PRC

— Fang Da Food Additive (Yang Quan) Limited, Yang Quan, the PRC

Export sales office (related to Fang Da) in Hong Kong

— Zhong Hua Fang Da Ltd., Hong Kong

1.10. Investigation period and period considered

(23) The investigation of dumping and injury covered the period from 1 April 2014 to 31 March 2015 (‘the investigation period’). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period (‘the period considered’).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(24) The product concerned is sodium cyclamate originating in the People's Republic of China and produced by the two exporting producers concerned, currently falling within CN code ex 2929 90 00 (TARIC code 2929 90 00 10) (‘the product concerned’).

(25) 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.

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(26) 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

(27) 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 producer on the domestic market of the People's Republic of China;

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

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

3. DUMPING

3.1. Preliminary remarks

(29) One of the exporting producers concerned, Fang Da Food Additive (Shen Zhen) Limited, ceased production of the product concerned in 2012. Therefore, only Fang Da Food Additive (Yang Quan) Limited submitted a MET claim form and a questionnaire reply.

(30) Officials of the Commission visited Fang Da Food Additive (Shen Zhen) Limited to verify that the company had ceased production and sales of the product concerned, which was indeed found to be so. Therefore, the dumping analysis was based on the data submitted by Fang Da Food Additive (Yang Quan).

(31) However, seen the relation between the two companies, belonging to the Fang Da group and owned by the same parent company, the findings are applicable to both companies, which constitute the Fang Da group.

3.2. Market Economy Treatment (‘MET’)

(32) The Commission assessed the MET claim of the exporting producer and also carried out a verification visit at its premises.

(33) In accordance with Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting