Council Implementing Regulation (EU) No 307/2014 of 24 March 2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant of Article 11(3) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 307/2014

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THE COUNCIL OF THE EUROPEAN UNION,

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 11(3) thereof,

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

Whereas:

1. **PROCEDURE**

1. **Measures in force**

(1) Following an investigation ('the original investigation'), the Council, by Regulation (EC) No 682/2007[(2)], imposed 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 measures took the form of an *ad valorem* duty ranging between 3,1 % and 12,9 %.

(2) By Regulation (EC) No 954/2008[(3)], the Council amended the measures in force with regard to one exporting producer and consequently the rate applicable to 'all other companies', thereafter ranging between 3,1 % and 14,3 %.

(3) Following an expiry review pursuant to Article 11(2) of the basic Regulation ('the expiry review') the Council, by Implementing Regulation (EU) No 875/2013[(4)], maintained the duty ranging between 3,1 % and 14,3 %.

2. **Request for a review**

(4) The European Commission ('the Commission') received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. This request

was lodged by River Kwai International Food Industry Co. Ltd ('the applicant'), an exporting producer from Thailand.

(5) The request was limited in scope to the examination of dumping as far as the applicant was concerned.

(6) In its request, the applicant provided *prima facie* evidence that, as far as the dumping by the applicant is concerned, the circumstances on the basis of which the measures in force were imposed have changed and that these changes were of a lasting nature.

(7) In particular, the applicant claimed that the changed circumstances relate to changes in the product range it commercialises which have a direct impact on the cost of production thereof. A comparison of its domestic prices with its export prices to the Union indicated that the dumping margin appeared to be lower than the current level of measures.

3. Initiation of a partial interim review

(8) The Commission determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review limited to the examination of dumping as far as the applicant is concerned. On this basis, it announced by a notice published in the *Official Journal of the European Union*[(5)] on 14 February 2013 ('the notice of initiation'), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation.

4. Review investigation period

(9) The investigation of dumping covered the period from 1 July 2011 to 31 December 2012 ('the review investigation period' or 'RIP').

5. Parties concerned by the investigation

(10) The Commission officially advised the applicant, representatives of the exporting country, as well as the association of Union producers (Association Européenne des Transformateurs de Maïs Doux 'AETMD') of the initiation of the interim review.

(11) 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.

(12) The written comments submitted by AETMD were considered and, where appropriate, taken into account.

(13) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

(14) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out a verification visit at the premises of the applicant in Thailand in Bangkok and Kanchanaburi.

2. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(15) The product under this review is the same as that defined in the original investigation and in the expiry review, namely 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.

2. Like product

(16) As established in the original investigation and confirmed in the expiry review, sweetcorn produced and sold in the Union and sweetcorn produced and sold in Thailand was found to have essentially the same physical and chemical characteristics and the same basic uses as 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.

3. DUMPING

1. Determination of Normal Value

(17) In accordance with the first sentence of Article 2(2) of the basic Regulation, the Commission first established whether the applicant's total domestic sales of the like product during the RIP were representative. The domestic sales are representative if the total domestic sales volume of the like product represented at least 5 % of the total export sales volume of the product concerned to the Union during the RIP.

(18) Total domestic sales of the like product were found to be representative.

(19) The Commission subsequently identified the product types sold domestically that were identical or directly comparable with the types sold for export to the Union.

(20) For each of those product types, the Commission established whether domestic sales were sufficiently representative in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the total volume of export sales to the Union of the identical or comparable product type.

(21) The Commission established that, for all the product types sold for export to the Union, the applicant's domestic sales were made in representative quantities.

(22) Next, the Commission defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales for the calculation of the normal value in accordance with Article 2(4) of the basic Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 307/2014. (See end of Document for details)*

(23) The normal value is based on the actual domestic price per product type irrespective of whether the sales are profitable or not, if:

— the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type, and

— the weighted average sales price of that product type is equal to or higher than the unit cost of production.

(24) The Commission's analysis of domestic sales showed that more than 90 % of domestic sales were profitable and that the weighted average sales price was higher than the unit cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the RIP.

2. **Determination of the Export price**

(25) All sales by the applicant for export to the Union were made directly to unrelated customers in the Union or Thailand. The export price is therefore established on the basis of prices paid or payable, in accordance with Article 2(8) of the basic Regulation.

3. **Comparison**

(26) The Commission compared the normal value and the export price on an ex-works basis.

(27) Where justified, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(28) Adjustments for differences in transport costs, insurance costs, handling and loading costs, packaging, commissions, credit costs and bank charges were granted when applicable and duly justified.

(29) The applicant claimed an allowance under Article 2(10)(d) of the basic Regulation for a difference in brand value when sold under own brand on the domestic market and when sold under own brand on the Union market. Allegedly, the brand value of the applicant's own brand is higher on the Thai market than on the Union market. To justify its claim the applicant made reference to the adjustment made in the original investigation and in the expiry review.

(30) However, the applicant's situation in this interim review differs from the situation of other exporting producers for which the adjustment was granted in the original investigation and the expiry review. The adjustment made in the original investigation and in the expiry review specifically refers to exporting producers whose sales on the domestic market are carrying their own brand whereas sales to the Union are sold under retailer's brand. In this interim review, the applicant's sales on both the domestic market and the Union market carry its own brand. Moreover, the adjustments made in the original investigation and the expiry review were made to the profit

margin when constructing the normal value in accordance with Article 2(6) of the basic Regulation. However, in this interim review, the normal value is based on applicant's actual domestic prices.

(31) Concerning the alleged lack of brand value when selling to the Union market, the importer of the product concerned carrying the applicant's brand is specialised in imports of branded food products, in particular from Asia. The applicant failed to clarify or provide evidence why sales to that particular importer would carry a lower value than the brand value on the applicant's domestic market. Consequently, the Commission concluded that the applicant has not demonstrated that the alleged difference in brand value has an impact on prices or price comparability.

(32) The applicant also claimed the same adjustment under Article 2(10)(k) of the basic Regulation. However, since the applicant has not demonstrated that the alleged difference has an impact on prices or price comparability, the allowance could not be accepted under this provision either.

(33) The claim for an allowance under Article 2(10)(d) and (k) is therefore rejected.

(34) With reference to Article 2(10)(b) of the basic Regulation, the applicant also claimed an allowance for a government-paid export tax rebate. An amount is paid to the applicant by the government when the product concerned is sold for export, including to the Union market.

(35) The applicant could demonstrate that an amount equivalent to less than 0,5 % of the invoice value is paid to the applicant for exports to the Union market. However, in accordance with Article 2(10)(b) of the basic Regulation, an adjustment is to be made to the normal value if the conditions set in that Article are met, and not to the export price as claimed by the applicant. Furthermore, the investigation showed that no direct link could be established between the payment received by the applicant in respect of the product concerned when exported to the Union and import charges for the raw materials physically incorporated therein.

(36) The applicant also claimed the same adjustment under Article 2(10)(k). However, since it failed to demonstrate any link between the export tax rebate and the pricing of the exported product concerned, the claim could not be accepted.

(37) The claim for an allowance for export tax rebate under Article 2(10)(b) and (k) is therefore rejected.

4. Dumping during the RIP

(38) The weighted average normal value of each type of the product concerned exported to the Union was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

(39) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was found to be 3,6 %.