Council Implementing Regulation (EU) No 135/2014 of 11 February 2014 repealing the anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 135/2014

of 11 February 2014

repealing the anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

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 Articles 11(2), 11(6) and 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) The Council, following an anti-dumping investigation ('the original investigation'), imposed by Regulation (EC) No 1331/2007[(2)] a definitive anti-dumping duty on imports of 1-cyanoguanidine (dicyandiamide) originating in the People's Republic of China ('China' or 'the country concerned') ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty at the level of 49,1 %.

1.2. Request for an expiry review

(2) Following the publication of a notice of impending expiry of the definitive anti-dumping measures in force[(3)], the Commission received on 14 August 2012 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 AlzChem AG ('the applicant'), representing 100 % of the total Union production of dicyandiamide.

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

1.3. Initiation of an expiry review

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 15 November 2012, by a notice published in the *Official Journal of the European Union*[(4)] ('the Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. **Investigation**

1.4.1. *Review investigation period and period considered*

(5) The investigation of a continuation of dumping covered the period from 1 October 2011 to 30 September 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of recurrence of injury covered the period from 1 January 2009 to the end of the review investigation period ('the period considered').

(6) After final disclosure, the applicant argued that the period considered should have started in 2008 because 2009 would result in unrepresentative findings. It should firstly be noted that the Commission enjoys a broad discretion when determining the period to be taken into account for the purpose of verifying injury. Secondly, the applicant has made this claim at a stage too late to change the period. The period considered was announced early in the process, but the applicant did not contest it then. The period cannot be changed at such a late stage of the process for practical reasons and because a modification on the basis of the collected evidence would be against the impartial conduct of an investigation. The claim was, therefore, rejected.

1.4.2. *Parties concerned by the investigation*

(7) The Commission officially advised the applicant, exporting producers in the country concerned, unrelated importers, users in the Union known to be concerned, and the representatives of the exporting country of the initiation of 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.

(8) In view of the apparent large number of exporting producers in the country concerned and unrelated importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, those parties were requested, pursuant to Article 17 of the basic Regulation, to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of initiation.

(9) Twelve known exporting producers in Chinawere contacted. As only one exporting producer from Chinacame forward with the requested information it was not necessary to select a sample of exporting producers.

(10) With regard to importers, some 10 unrelated importers of dicyandiamide in the Union were identified and invited to provide sampling information. Only two of

them came forward and were willing to cooperate in the current review. Consequently, no sampling was necessary for unrelated importers.

(11) The Commission sent questionnaires to all parties known to be concerned and to those who made themselves known within the deadlines set in the Notice of initiation. Replies were received from the Union producer, the cooperating exporting producer in China, two unrelated importers and one user in the Union.

(12) Additional representations were received from two unrelated importers/traders and three users in the Union.

(13) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of a continuation of dumping and likelihood of recurrence of injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) *Union producer*:
— AlzChem AG, Trostberg, Germany

(b) *Exporting producer in China*:
— Ningxia Jiafeng Chemicals Co., Ltd Shizuishan, China

(c) *Unrelated importer in the Union*:
— Helm AG, Hamburg, Germany

(d) *User in the Union*:
— Merck Santé S.A.S., Lyon, France

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(14) The product concerned by this review is the same as the one in the original investigation, i.e. 1-cyanoguanidine (dicyandiamide) ('DCD') originating in the People's Republic of China ('the product concerned'), currently falling within CN code 2926 20 00. It is produced from quick lime and carbon black, and appears after several production steps. It is a solid substance in the form of a fine, white, crystalline powder, usually odourless.

(15) DCD is usually used as an intermediate to produce a broad range of other chemical intermediates, such as pharmaceuticals, various industrial applications — water, pulp and paper, textile, leather — and diverse fields of epoxy applications. It is a key element of the nitrogen — carbon — nitrogen (NCN) chain, with niche end-products such as guanidine nitrate and other NCN derivatives.

(16) Most of the DCD sold on the Union market is standard. Only a limited amount is of a smaller particle size (the so-called micro DCD). The cooperating Chinese exporting producer provided data for the standard type only.

2.2. Like product

(17) One user questioned whether Union DCD and Chinese DCD were unlike products on the basis that the standard type of DCD produced by the Union industry is, allegedly, of higher quality than that produced by the Chinese exporting producers. In particular, this user claimed that the water content of the Chinese DCD would be significantly higher and more volatile compared to the water content of the DCD produced in the Union. Moreover, Chinese DCD would also have a higher content of impurities.

(18) As in the original investigation, the investigation showed, however, that while there may be certain quality differences, these cannot be quantified and moreover, they do not affect the basic chemical, physical and technical characteristics of DCD produced and sold by the Union industry in the Union and the product concerned, which were found to be the same and to have the same end-uses.

(19) Another user argued that micro DCD should be excluded from the product scope of the anti-dumping measures due to the alleged differences in physical characteristics, end-uses and prices from standard DCD.

(20) The investigation showed, however, that both types share the basic chemical, physical and technical characteristics. The further processing of standard DCD to produce micro DCD involves a straightforward physical process (milling), but no chemical processing. In addition, even though the prices of micro DCD are higher than those of standard DCD, both types have the same basic end-uses and can normally be interchanged.

(21) The investigation confirmed that, as in the original investigation, the product concerned and the products manufactured and sold on the domestic market in China, as well as those manufactured and sold in the Union by the Union producer, have the same basic physical and technical characteristics as well as the same uses and are, therefore, considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OF DUMPING

3.1. Preliminary remarks

(22) 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 of dumping.

(23) As mentioned in recital 9, due to the fact that only one company cooperated, it was not necessary to select a sample of exporting producers in China. This company covered more than 35 % of the imports of product concerned from China to the Union during the RIP. This company did not export during the IP of the original investigation and therefore did not cooperate in the original investigation.

3.2. Dumping of imports during the RIP

3.2.1. *Analogue country*

(24) In accordance with Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the prices or constructed value in an appropriate market economy third country (the 'analogue country'), or the price from such a third country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(25) In the absence of production of the product concerned outside the Union and China, the Commission indicated in the Notice of initiation its intention to base the normal value on the prices actually paid or payable in the Union for the like product, as had also been done in the original investigation.

(26) The like product was sold by the Union industry in representative quantities. However, the Union industry's domestic sales were loss-making, albeit close to break even. Therefore, the normal value was based on the Union industry's manufacturing costs plus a reasonable amount for selling, general and administrative costs (SGA) and profit. SGA and profit were determined using the same method as in the original investigation. Pursuant to Article 11(9), adjustments were made on the Union industry's manufacturing costs so as to offset the additional transport costs due to the physical separation between production units, no direct access to raw materials, which must be transported from remote production sites and disposal of the by-product (black lime). These adjustments were also made in the original investigation.

3.2.2. *Export price*

(27) All export sales of the cooperating exporting producer to the Union were made directly to independent customers established in the Union. In accordance with Article 2(8) of the basic Regulation the export price was established on the basis of the prices actually paid or payable.

3.2.3. *Comparison*

(28) The comparison between normal value and export price was made on an ex-works basis.

(29) For the purpose of ensuring a fair comparison between the normal value and the export price of the cooperating exporting producer, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to differences in transport, insurance, taxes and credit costs which affected prices and price comparability.

3.2.4. *Dumping margin*

(30) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price.