Council Implementing Regulation (EU) No 875/2013 of 2 September 2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 875/2013

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) thereof,

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 9 and 11(2) thereof,

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

Whereas:

A. **PROCEDURE**

1. **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 within 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) 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 Consequently, the accepted undertakings were withdrawn and the undertaking offers by 10 other Thai exporting producers were rejected.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 875/2013. (See end of Document for details)*

2. **Request for an expiry review**

(4) Following the publication of a notice of impending expiry[6] of the definitive anti-dumping measures in force, the Commission received on 19 March 2012 a request for the initiation of an expiry review of those measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Association Européenne des Transformateurs de Maïs Doux (AETMD) ('the complainant') on behalf of producers representing a major proportion of the total Union production of prepared or preserved sweetcorn — in this case more than 50 %.

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

3. **Initiation of an expiry review**

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced, on 19 June 2012, by a notice published in the *Official Journal of the European Union*[7] ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. **Investigation**

4.1. *Review investigation period and period considered*

(7) The investigation of a continuation of dumping covered the period from 1 April 2011 to 31 March 2012 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation of injury covered the period from 1 January 2008 to the end of the review investigation period ('the period considered').

4.2. *Parties concerned by the proceedings*

(8) The Commission officially advised the applicants, the other known Union producers, the exporting producers in Thailand, the unrelated importers, the users 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.

(9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(10) In view of the apparent large number of exporting producers in Thailand and unrelated importers in the Union involved in the investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above-mentioned parties were requested to make themselves

known to the Commission within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

(11) As regard to the selection of the sample of the exporting producers in Thailand, the Commission received complete information from 17 exporting producers, out of which 9 had exports to the Union during the RIP. It was decided to select a sample of 3 exporting producers whose combined exports represented 90 % of the total quantities exported to the Union by the cooperating exporting producers during the RIP.

(12) Given that only one reply has been received from an unrelated importer, sampling was not applied to unrelated importers.

(13) In view of the large number of Union producers involved in these proceedings, the notice of initiation announced that the Commission had provisionally selected a sample of Union producers for the determination of injury in accordance with Article 17 of the basic Regulation. That pre-selection had been made by using the information available to the Commission at initiation stage and was based on the producers' sales volume, production volume and geographical location in the Union. The proposed sample corresponds to the largest representative volume of production which could be reasonably investigated within the time available, representing 58 % of the total production of the Union industry. In addition, the proposed sample is representative in terms of geographical location of the companies as it covers three different Member States. Union producers have been consulted about the proposed sample on the date of publication of the notice of initiation. Given that no additional producers came forward and no comments were received on the sample, the proposed sample has been confirmed.

(14) Two interested parties claimed that the sample of Union producers has only been selected among applicants and that an effort should have been made to sample producers outside the group of applicants.

(15) However, all known Union producers, both applicants as well as non-applicants, have been invited to cooperate. Ten Union producers, both applicants and non-applicants, have submitted sampling information. As explained in recital 13, the selected sample corresponds to the largest representative volume of production which could be reasonably investigated within the time available, representing 58 % of the total production of the Union industry. The Commission considers that the selected sample is representative in terms of geographical location, irrespective of whether the producers are applicants or not. Therefore, the claim is rejected.

(16) The Commission sought and verified all the information deemed necessary for a determination of the likelihood of continuation or recurrence of dumping, resulting injury and of the Union interest. To this end, the Commission sent questionnaires to the exporting producers and Union producers selected in the sample and to the unrelated importer. Verification visits were carried out at the premises of the following companies:

(a) Producers in the Union:

— Bonduelle Conserve International SAS, Renescure, France

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— Compagnie Générale de Conserve France SA, Theix, France
— Compagnie Générale de Conserve Hungary, Debrecen, Hungary
— Conserve Italia SCA, San Lazzaro di Savena, Italy;

(b) Exporting producers in Thailand:
— Agri Sol., Ltd, Pathumthani City
— Lampang Food Products co, Ltd, Bangkok
— Sun Sweet Co., Ltd, Chiang Mai City.

(17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(18) The product concerned is 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.

(19) The investigation has shown that, despite differences in the preservations, the different types of the product concerned all share the same basic biological and chemical characteristics and are basically used for the same purposes.

(20) Two interested parties claimed that the CN codes for sweet corn do not only represent the product concerned, but include considerable quantities of canned babycorn which is not produced in the Union and which is not the like product. They suggested that the Commission include babycorn it its data.

(21) However, the investigation focused exclusively on the product under measures, which excludes babycorn, by using corresponding TARIC codes as a basis for analysis. Therefore, the claim is rejected as factually incorrect.

2. Like product

(22) The sweetcorn produced and sold in the Union by the Union industry and the sweetcorn produced and sold in Thailand was found to have essentially the same physical and chemical characteristics and the same basic uses as the 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.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

(23) 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 or recurrence of dumping.

1. Preliminary remarks

(24) As stated in recital 10, in view of the potentially large number of exporting producers which expressed their willingness to cooperate, sampling was foreseen in the notice of initiation. A sample of three exporting producers, representing approximately 90 % of total exports among the exporting producers that expressed their willingness to cooperate, was selected for the determination of the likelihood of a continuation or recurrence of dumping.

(25) As the combined export quantities of the three sampled exporting producers accounted for approximately 25 % of all exports from Thailand to the Union during the RIP, information from other sources such as the request for the review and available trade statistics on exports (from the Thai Customs) and on imports (from Eurostat) had to be used in order to assess the likelihood of a continuation or recurrence of dumping.

(26) Sales to traders in Thailand, where the goods were destined for unknown export destinations, have not been included in the determination of the dumping margin.

(27) As in the original investigation, it has been found that certain exporting producers source part of their sales of the product concerned from external suppliers. For the purpose of the investigation, sales of the product concerned which have not been manufactured by the exporting producers themselves have not been taken into account when determining their respective dumping margins.

2. Dumping of imports during the RIP

2.1. *Determination of the Normal Value*

(28) In accordance with the first sentence of Article 2(2), of the basic Regulation, for the determination of normal value, it was first established, for each of the three exporting producers, whether their total domestic sales of the like product during the RIP were representative in comparison to their total export sales to the Union, i.e. if sales volumes of the like product intended for domestic consumption represented 5 % or more of their exports of the product concerned to the Union.

(29) The domestic sales of the like product were found to be representative for one of the three sampled companies.

(30) It was subsequently examined whether the types of the like product sold by this company and intended for domestic consumption were identical or directly comparable to the types for export to the Union. For each of the those types, it was established whether sales of the like product intended for domestic consumption were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Sales intended for domestic consumption were sufficiently representative when they represented 5 % or more of the total sales volume of the comparable type exported to the Union.

(31) It was found that, for this company, only one type of the like product was directly comparable to the type exported to the Union. Moreover, this particular type was also sold in sufficiently representative quantities on the domestic market.