Council Implementing Regulation (EU) No 831/2011 of 16 August 2011 imposing a definitive anti-dumping duty on imports of barium carbonate 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 831/2011

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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 Articles 9(4) and 11(2), (5) and (6) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) By Regulation (EC) No 1175/2005[(2)] the Council, imposed a definitive anti-dumping duty on imports of barium carbonate originating in the People's Republic of China ('PRC'). The rate of the definitive specific duty ranged from EUR 6,3 to EUR 56,4 per tonne.

2. **Request for an expiry review**

(2) Following the publication, in March 2010, of a notice of impending expiry of the anti-dumping measures applicable to imports of barium carbonate originating in the PRC[(3)], the Commission received on 19 April 2010 a request for an expiry review pursuant to Article 11(2) of the basic Regulation.

(3) The expiry review request was lodged by Solvay & CPC Barium Strontium GmbH & Co. KG ('the applicant'), the sole producer of barium carbonate in the European Union, representing 100 % of the total Union production of barium carbonate. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and continuation of injury to the Union industry.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article

11(2) of the basic Regulation, the Commission published a notice of initiation in the *Official Journal of the European Union*[4] ('notice of initiation').

3. Investigation

3.1. *Review investigation period and period considered*

(5) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 July 2009 to 30 June 2010 ('Review investigation period' or 'RIP').

(6) The examination of the trends relevant for the assessment of a likelihood of a continuation of injury covered the period from 1 January 2007 up to the end of the RIP ('period considered').

3.2. *Parties concerned by the investigation*

(7) The Commission officially advised the applicant, the exporting producers in the PRC, importers/traders, users in the Union known to be concerned and their associations, producers in the analogue country as well as the authorities of the PRC of the initiation of the review.

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

(9) In view of the apparently large number of Chinese exporting producers listed in the request, sampling was envisaged in the notice of initiation for the determination of dumping and the likelihood of continuation of dumping, in accordance with Article 17 of the basic Regulation.

(10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 July 2009 to 30 June 2010.

(11) The Commission received replies from only three companies or company groups in the PRC and therefore it was decided that sampling was not necessary in respect of Chinese exporting producers.

(12) The Commission sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(13) Replies to the questionnaire were received from the applicant and its related agent, nine users, four importers, two exporting producers in the PRC and two producers in possible analogue countries. One of the Chinese exporting producers that replied to the sampling exercise decided not to cooperate further in the proceeding.

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

(a) *Applicant*

— Solvay & CPC Barium Strontium GmbH & Co. KG, Hannover and its related company Solvay Bario e Derivati SpA, Massa

(b) *Exporting producers in the PRC*

— Zaozhuang Yongli Chemical Co., Ltd, Shangdong Province

— Guizhou Red Star Developing Import & Export Co., Ltd, Guizhou Province

(c) *Producer in the analogue country (India)*

— Solvay Vishnu Barium Private Limited, Hyderabad

(d) *Importers*

— Norkem Limited, Knutsford, United Kingdom

— L'Aprochimide Srl, Muggio, Italy

(e) *Users*

— Technische Glaswerke Ilmenau GmbH, Ilmenau, Germany

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(15) The product concerned is the same as that in the previous investigation and is defined as follows: barium carbonate with a strontium content of more than 0,07 % by weight and a sulphur content of more than 0,0015 % by weight, whether in powder, pressed granular or calcined granular form, originating in the PRC, currently falling within CN code ex 2836 60 00.

(16) Barium carbonate is used primarily in the brick and tile industry, the ceramics sector and in the production of ferrite. It was previously used in the production of cathode ray television tubes (CRT) but this application has disappeared in the Union following their replacement by LCD- and plasma-screens.

2. Like product

(17) As in the original investigation, this procedure has shown that barium carbonate produced in the PRC and exported to the Union, as well as the barium carbonate produced and sold on the domestic market of the analogue country (India) and that manufactured and sold in the Union by the applicant have the same basic physical and chemical characteristics and the same basic uses.

(18) Therefore these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 831/2011. (See end of Document for details)*

C. DUMPING

(19) 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.

1. General

(20) Of the 16 known Chinese exporting producers contacted at the initiation of the expiry review, three replied to the sampling exercise but only two fully cooperated with the Commission by replying to a full questionnaire.

2. Analogue country

(21) Since the PRC is an economy in transition and in accordance with Article 2(7)(a) of the basic Regulation, normal value for exporting producers not granted market economy treatment ('MET') has to be determined on the basis of the price or constructed value in an appropriate market economy third country ('analogue country').

(22) The USA was used as analogue country in the original investigation and proposed in the present investigation for the purposes of establishing normal value. However, it was considered necessary to verify if this country was still appropriate for the present expiry review. Letters were sent to all known producers of barium carbonate worldwide, i.e. in Brazil, India, Japan and the USA. Two replies were received, one from a producer in the USA and another from a producer in India.

(23) After a careful analysis of criteria such as total production, number of producers, competition in the market, total imports, anti-dumping duties and customs duties in both the American and the Indian domestic markets it was decided to select India as analogue country. The choice of India, in accordance with Article 2(7) of the basic Regulation, was considered to be more appropriate than USA due to its bigger market size, the larger volumes of imports and the stronger competition in its domestic market for this product. No comments or objections were received from any interested party in that respect. As a result, the normal value for exporting producers not granted MET was based on the data provided by the producer in India.

3. Dumping of imports during the RIP

3.1. *Normal value*

(24) For the company granted MET in the original investigation, in accordance with Article 2(2) of the basic Regulation, the Commission examined whether the domestic sales of barium carbonate to independent customers were representative during the RIP, i.e. whether the total volume of such sales represented at least 5 % of their export sales of the product concerned to the Union. The investigation showed that these sales were not representative and therefore the normal value had to be constructed. The established normal value was based on the total cost of manufacturing plus the company's selling, general and administrative costs ('SGA costs') and profit achieved on domestic sales made in the ordinary course of trade of the like product.

(25) For the company that was not granted MET in the original investigation, pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of the information received from the cooperating producer in the analogue country.

(26) It was first established whether the total domestic sales of the like product to independent customers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Union. The domestic sales of the cooperating producer in India were considered sufficiently representative during the RIP.

(27) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the Indian market the proportion of profitable domestic sales to independent customers during the RIP. Since there were no profitable sales of the like product during the RIP, the normal value had to be constructed. The normal value was based on the total cost of manufacturing of the producer concerned plus a reasonable amount for SGA costs and a reasonable amount of profit in accordance with Article 2(6)(c) of the basic Regulation. The SGA costs and the profit added to the manufacturing costs of the like product used were in line with those used in the original investigation and amounted to 10,6 % for SGA costs and 7,2 % for profit. No information was provided showing that these amounts would not be reasonable nor that the profit level used would exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

3.2. *Export price*

(28) All export sales to the Union of the cooperating exporting producers concerned were made directly to independent customers in the Union and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3.3. *Comparison*

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

(30) For the purposes of ensuring a fair comparison between the normal value and the export price, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport and commissions, which affected prices and price comparability.

3.4. *Dumping margin*

(31) In accordance with 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 prices at the same level of trade.