Council Implementing Regulation (EU) No 464/2011 of 11 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of zeolite A powder originating in Bosnia and Herzegovina

COUNCIL IMPLEMENTING REGULATION (EU) No 464/2011

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of zeolite A powder originating in Bosnia and Herzegovina

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 Article 9 thereof,

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

Whereas:

1. PROVISIONAL MEASURES

(1) By Regulation (EU) No 1036/2010[(2)] ('the provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports of zeolite A powder originating in Bosnia and Herzegovina ('BiH').

(2) The proceeding was initiated as a result of a complaint lodged on 4 January 2010 by Industrias Quimicas del Ebro SA, MAL Magyar Aluminium, PQ Silicas BV, Silkem d.o.o. and Zeolite Mira Srl Unipersonale (the 'complainants'), representing a major proportion, in this case more than 25 % of the total Union production of zeolite A powder. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted the opportunity to be heard.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 ('the investigation period' or 'IP'). The examination of

trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period ('period considered').

(6) All parties were informed of the essential facts and considerations on the basis of which the Commission intended to recommend the imposition of a definitive anti-dumping duty on imports of zeolite A powder originating in the BiH and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations.

(7) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

3. PRODUCT CONCERNED AND LIKE PRODUCT

(8) In the absence of any comments on these issues, recitals 12 to 15 of the provisional Regulation are hereby confirmed.

(9) In view of the above, it is definitively concluded that all types of zeolite A powder as defined above are alike within the meaning of Article 1(4) of the basic Regulation.

4. SAMPLING

(10) The Bosnian exporting producer group ('Birac') returned to its claim made at the provisional stage of the investigation that a non-sampled Union producer (Silkem d.o.o. or 'Silkem') should have been fully consolidated into the reply to the questionnaire of a sampled Union producer (MAL Magyar Aluminium or 'MAL') because the two companies are related. It was claimed that if that omission were accepted it would amount to discrimination between Union producers and exporters as in cases where there are related exporting producers located in countries subject to an anti-dumping investigation they are all required to submit replies to questionnaires. Further, Birac claimed that both MAL and Silkem should be declared to be non-cooperating.

(11) Those claims cannot be accepted. For the reasons explained at recital 19 of the provisional Regulation both MAL and Silkem have fully cooperated with the investigation. It is recalled that Silkem provided information in the reply to the sampling form and account was taken of Silkem in the macro data indicators. However, the company was not included in the list of sampled companies on account of its small size. Therefore, Silkem did not need to submit so-called micro data and a fortiori those have not been verified. Moreover, since their sales of the product concerned are relatively small in comparison to those of MAL, there is no indication that consolidating Silkem's data into MAL's data would have made any difference.

(12) Furthermore, the allegation of discrimination between exporting producers and Union producers is clearly unfounded because the situations are different. On the one hand, the investigation into the existence of dumping is the one that is normally conducted at company level for which the Commisson services need to calculate a company-specific dumping margin. Furthermore, a group of exporting producers has to

be looked at in its totality since otherwise there is a risk that exports would be channelled through the part of the group with the lowest duty level. On the other hand, the injury investigation aims at examining whether the Union industry as a whole suffers material injury. In this case, the sampled Union producers in this investigation were considered to represent the entire Union production in respect of certain injury indicators (micro indicators). This claim is therefore rejected.

(13) Birac also claimed that a Bosnian mining company, related to MAL, which supplies to this particular Union producer a pre-raw material (i.e. bauxite) should also have cooperated with the investigation. In this respect it is noted that the mining company was listed in MAL's questionnaire response. Also, the costs associated with the sourcing of bauxite, and its conversion into aluminium trihydrate, were fully reported in MAL's cost of production. Therefore, the MAL Group fully complied with the reporting requirements set out by the Commission services. This claim is therefore rejected.

(14) In the absence of any other comments on these issues, recitals 16 to 20 of the provisional Regulation are hereby definitively confirmed.

5. DUMPING

5.1. Normal value

(15) It is recalled that in the absence of representative domestic sales, normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(16) To construct normal value pursuant to Article 2(3) of the basic Regulation, the selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by each of the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period, were added to their own average cost of production during the investigation period. Since there are no separate types of the product concerned or like product, a weighted average profit was used. Where necessary, the costs of production and SG&A expenses were adjusted, before being used in the ordinary course of trade test and in constructing normal values.

(17) Further to the provisional disclosure Birac submitted comments regarding the determination of the profit margin used for constructing normal value. According to Birac, the methodology applied violates Article 2(3) of the basic Regulation because in this specific case the result of using the profit margin of the non-representative domestic sales to construct normal value is exactly the same as if the prices of the non-representative domestic sales had been used. It claimed that such an incoherent approach cannot have been intended by a combined reading of Article 2(3) and 2(6) of the basic Regulation. It also considered that the profit margin used is unreasonable and disproportionate, in particular in comparison to the target profit used for the underselling calculations.

(18) Furthermore, Birac claimed that the domestic sales, due to their nature, should not be considered as having been made in the ordinary course of trade and should thus not be used to establish normal value.

(19) Regarding the first claim, it is noted that the method applied is in line with the provisions of the basic Regulation and the jurisprudence stemming from WTO rulings, according to which when constructing the normal value, the profit of the domestic sales in the ordinary course of trade has to be used, even if these sales were not representative. In this specific case it is noted that since all domestic sales were profitable, constructing the normal value indeed gave the same result as if the normal value had been based on domestic sales prices. It should first be noted that the profit and SG&A data were based on the company's own domestic sales which were considered to be in the ordinary course of trade. It is further noted that 'reasonableness' cannot be measured against the target profit used for the underselling calculations, since that profit reflects the situation on the EU market in the absence of dumped imports and cannot therefore constitute a proper benchmark for determining the profit to be used in the context of constructing normal value.The claim should therefore be rejected.

(20) As regards the claim that the domestic sales should not be considered as having been made in the ordinary course of trade, the investigation established that the data and evidence provided by Birac constituted a reliable basis for determining the normal value. Therefore this claim was not considered warranted and was therefore rejected.

(21) In the absence of any other comments concerning the determination of normal value, the method described in recitals 21 to 26 of the provisional Regulation is hereby confirmed.

5.2. **Export price**

(22) In the absence of any comments regarding the export price, recitals 27 and 28 of the provisional Regulation are hereby confirmed.

5.3. **Comparison**

(23) In the absence of any comments regarding the comparison between normal value and export price, recital 29 of the provisional Regulation is hereby confirmed.

5.4. **Dumping margin**

(24) In the absence of any other comments concerning the determination of the dumping margin, which would alter the provisional findings, recitals 30 to 32 of the provisional Regulation are hereby confirmed.

6. **INJURY**

(25) Comments on the findings concerning injury were received from certain Union producers, two users in the EU and from the sole Bosnian exporting producer.

(26) To the extent that arguments have already been fully addressed in the provisional Regulation they are are not repeated in this Regulation.

6.1. **General remarks**

(27) It is made clear at recitals 45 and 68 of the provisional Regulation that the term 'Union industry' in this investigation covers all Union producers. In addition the injury factors on which the finding of injury was reached are, as a rule, based on data relating to the Union industry. When data relating to the Union industry have been used, section 5.4 of the provisional Regulation identifies this by referring to 'macro data'. However, where information was not available for the entire Union industry the data of the representative sample of Union producers was used. No comments were received on these issues and thus the provisional findings are definitively confirmed.

(28) However, an erroneous statement was made in recital 34 of the provisional Regulation. This recital should have read 'All Union producers constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the "Union industry"'.

(29) In the absence of any other comments, the findings set out in recitals 52 to 56 of the provisional Regulation are hereby confirmed.

6.2. **Union consumption**

(30) In the absence of any comments, the findings set out in recitals 35 to 38 of the provisional Regulation are hereby confirmed.

6.3. **Imports from the country concerned**

(31) In the absence of any comments, the findings set out in recitals 39 to 43 of the provisional Regulation are hereby confirmed.

6.4. **Situation of the Union industry**

6.4.1. *Injury indicators*

(32) In October 2010 an industrial incident occurred at the site of one of the Union producers, MAL. However, figures supplied by the company show that its deliveries of the product concerned had recovered by January 2011. It was therefore clear that this incident did not cause serious supply problems on the EU market.

(33) Birac asserted that as the above-mentioned Bosnian mining company related to MAL made profits in the IP, the Commission should adjust MAL's COP and profit in the calculation of the economic indicators because MAL's profit situation was allegedly reduced as a result of high profits made by its related mining company in BiH.

(34) With respect to the above claim it is noted that the purchases of bauxite from the related company were made at arm's length. This issue was covered during the on-the-spot verification. Because MAL purchased bauxite from both related and unrelated companies during the IP at roughly the same average prices, the Commission was