Council Implementing Regulation (EU) No 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China

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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 Article 9 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Provisional measures**

(1) By Regulation (EU) No 1035/2010[(2)] (the provisional Regulation) the Commission imposed a provisional anti-dumping duty on imports of melamine originating in the People's Republic of China (PRC). The provisional anti-dumping duties ranged from 44,9 % to 65,2 %.

(2) The proceedings were initiated as a result of a complaint lodged on 4 January 2010 by EU producers Borealis Agrolinz Melamine GmbH, DSM Melamine BV and Zakłady Azotowe Puławy (the complainant), representing a major proportion, in this case more than 50 %, of the total Union production of melamine.

(3) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP (period considered).

2. **Subsequent procedure**

(4) 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 their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 457/2011. (See end of Document for details)*

(5) The Commission sought and verifed all information it deemed necessary for its definitive findings. To this end a verification visit was carried out at the premises of the following user company in order to assess the possible impact of the imposition of definitive anti-dumping measures:

— Coveright Surfaces Spain, Martorelles (Barcelona), Spain.

(6) Subsequently all parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of melamine originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty (final disclosure). All parties were granted a period within which they could make comments on the final disclosure.

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

3. Parties concerned by the proceeding

(8) In the absence of any comments with regard to the parties concerned by the proceeding, recitals 4 to 10 of the provisional Regulation are hereby confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(9) It is recalled that in recital 12 of the provisional Regulation the product concerned is defined as melamine, currently falling within CN code 2933 61 00 and originating in the PRC.

(10) Melamine is a white crystalline powder obtained from urea. It is used mainly in laminates, moulding powders, wood-based panels and coating resins.

2. Like product

(11) One exporting producer reiterated the claim made in recital 65 of the provisional Regulation that the melamine produced and exported from the PRC was in general of a slightly lower quality compared to the melamine produced by the Union industry and could not be used for certain surface applications. The argument of difference in quality was also brought forward by several users located in the Union.

(12) The investigation has shown that although melamine may vary slightly in colour, it is not sold on the basis of different quality standards, either on the domestic market or on export markets. No evidence was provided which would point to the fact that possible slight variations in melamine would lead to different basic physical and chemical characteristics and end uses. The issue was not raised by the other exporting producers. Moreover, the investigation has also shown that the exporting producer in question was using a similar production process as the Union industry.

(13) Based on the above, the claim is rejected and it is hereby confirmed that melamine produced and sold by the Union industry in the Union, melamine produced

and sold on the domestic market of the PRC and melamine imported into the Union from the PRC, as well as that produced and sold in Indonesia, which served as the analogue country, are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(14) In the absence of any other comments regarding the like product, recitals 12 to 15 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Market economy treatment

(15) Market economy treatment (MET) was initially refused to all exporting producers that requested it on the grounds that the costs of the major inputs did not substantially reflect market values as required under Article 2(7)(c) of the basic Regulation. As set out in recitals 20 to 24 of the provisional Regulation, the MET investigation determined that this was due to State interference in both the natural gas market and the urea market in the PRC. In addition to this general situation, there were also company-specific reasons for refusing MET as set out in recitals 25 to 28 of the provisional Regulation.

(16) One exporting producer argued that the urea price in the PRC was in line with the prices in other parts of the world, such as Indonesia and the Middle East, therefore the conclusion that the costs of major inputs were distorted was not correct.

(17) However, the initial conclusion that the urea market in the PRC was subject to significant State interference, as set out in recitals 23 and 24 of the provisional Regulation, was not questioned. This element is already sufficient to conclude that criterion 1 of point (c) of Article 2(7) of the basic Regulation is not fulfilled. This conclusion is not affected by the fact that at a certain point in time urea prices in the PRC and in some other parts of the world prices might have been roughly at the same level.

(18) One exporting group disagreed with the refusal of MET and individual treatment (IT) based on the fact that the Commission did not receive full MET claim forms for all related companies. In its comments on the disclosure, this group offered full cooperation but did not question the fact that one of its related companies did not provide a MET claim form at the same time as the rest of the group. Therefore this claim is rejected.

(19) In the absence of any other comments concerning MET, recitals 16 to 32 are hereby confirmed.

2. Individual treatment

(20) It was provisionally established that three of the five exporting producer companies or groups in the PRC met all the requirements for IT.

(21) The Union industry questioned the decision to grant IT to three groups of companies by arguing that one exporting producer was owned by the Chinese State and another exporting producer had various links at management level to companies

that were ultimately controlled by the State. In addition, the extent of State interference was such that it would allow circumvention of the measures with respect to all three exporting producers.

(22) The investigation has shown that none of the exporting producers initially granted IT were State-owned. In addition, the claim that the management of one exporting producer had links to State-controlled companies was not substantiated. With regard to the possible risk of circumvention, it should be noted that the investigation showed that export prices, quantities, conditions and terms of sale were freely negotiated and determined and that the exporting producers were neither State-owned nor otherwise subject to dominant State influence at management level. Hence it may be concluded that State interference is not such as to permit circumvention of measures.

(23) In view of the above, the claims of the Union industry are rejected. The initial conclusion that three of the five exporting producers meet all requirements for IT is therefore confirmed.

3. **Normal value**

(a) *Choice of the analogue country*

(24) Indonesia was chosen as the analogue country. The data submitted in the cooperating Indonesian producer's reply were verified *in situ* and found to be reliable and a suitable basis for the normal value.

(25) One exporting producer questioned the choice of Indonesia as analogue country on the grounds that interested parties had not had the opportunity to comment on this choice. However, since May 2010 the file open for inspection had contained a note explaining why Indonesia had been chosen as analogue country. Thus, as parties had had ample opportunity to comment on this choice, their procedural rights had been respected in full. No further comments were received on the choice of the analogue country.

(26) It is therefore confirmed that Indonesia is an appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

(b) *Determination of normal value*

(27) It is recalled that normal value was constructed using the cost of manufacturing of the Indonesian producer plus a reasonable amount for SG & A and for profit on the domestic market.

(28) One exporting producer questioned the level of the constructed normal value, in particular the SG & A and profit that were based on those of the Union industry. However, this method is in line with point (c) of Article 2(6) and considered appropriate. No other data were available that could be used as a basis for SG & A and profit as there were no other exporters or producers subject to investigation in the analogue country and the producer subject to the investigation did not sell any other category of products in the IP.

(29) Therefore this claim is rejected. Recitals 35 to 45 with regard to the determination of the normal value are hereby confirmed.

(c) *Export prices for the exporting producers granted IT*

(30) In the absence of any comments with regard to the determination of the export price, recital 46 of the provisional Regulation is hereby confirmed.

(d) *Comparison*

(31) One exporting producer questioned the comparison of the normal value and the export price with regard to the issue of VAT. However, as normal value and export price were compared at the same level of indirect taxation, i.e. VAT included, in line with point (c) of Article 2(10), no change to this method is needed. Therefore recitals 47 and 48 of the provisional Regulation are hereby confirmed.

4. **Dumping margins**

(a) *For the cooperating exporting producers granted IT*

(32) In the absence of any comments with regard to the dumping margins, recital 49 of the provisional Regulation is hereby confirmed.

(33) On that basis the definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Sichuan Jade Elephant Melamine S&T Co. Ltd	44,9 %
Shandong Liaherd Chemical Industry Co. Ltd	47,6 %
Henan Junhua Development Company Ltd	49,0 %

(b) *For all other exporting producers*

(34) In the absence of any comments with regard to the dumping margins recitals 51 to 52 of the provisional Regulation are hereby confirmed.

On this basis the country-wide level of dumping is definitely established at 65,6 % of the CIF Union frontier price, duty unpaid, and recital 53 of the provisional Regulation is hereby confirmed.

D. **INJURY**

1. **Injury**

1.1. ***Union production and Union industry***