Commission Regulation (EU) No 1036/2010 of 15 November 2010 imposing a provisional anti-dumping duty on imports of zeolite A powder originating in Bosnia and Herzegovina

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THE EUROPEAN COMMISSION,

Having regard to the Treaty of 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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 17 February 2010, the European Commission (the 'Commission') announced, by a notice published in the *Official Journal of the European Union*[(2)] ('Notice of Initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union 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 *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainants, other known Union producers, the exporting producer group in BiH, importers, users, and other parties known to be concerned, and representatives of BiH of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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(4) The complainants, Union producers, the exporting producer group in BiH, importers and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In view of the apparent high number of Union producers and importers, 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, all known Union producers and importers 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 (as defined in section 2.1. below) during the period from 1 January 2009 to 31 December 2009.

(6) As explained in recital (16) below, eight Union producers provided the requested information and agreed to be included in a sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of four Union producers having the largest volume of production/sales in the Union.

(7) As explained in recital (20) below, only three unrelated importers provided the requested information and agreed to be included in a sample. However one of these importers did not import/purchase the product concerned. Therefore, in view of the limited number of importers, sampling was deemed to be no longer necessary.

(8) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the Notice of initiation, namely to the exporting producer group in BiH, the four sampled Union producers and three unrelated importers/users.

(9) Replies were received from the exporting producer group in BiH, including its related companies, from the four sampled Union producers and three Union unrelated importer/users.

(10) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

Producers in the Union

— Industrias Quimicas del Ebro SA, Zaragoza, Spain
— MAL Magyar Aluminium, Ajke, Hungary
— PQ Silicas BV, Eijsden, Netherlands
— Zeolite Mira Srl Unipersonale, Mira, Italy

Importers/users in the Union

— Reckitt Benckiser Group, Slough, UK and Mira, Italy
— Henkel AG, Dusseldorf, Germany
— Chemiewerk Bad Kostritz GmbH, Bad Kostritz, Germany

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Exporting producers in BiH

— Fabrika Glinice Birac AD, Zvornik

— Alumina d.o.o., Zvornik (related to the above mentioned exporting producer)

Related importer in the Union

— Kauno Tiekimas AB, Kaunas, Lithuania

1.3. **Investigation period**

(11) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 (the 'investigation period' or the 'IP'). The examination of trends relevant for the assessment of injury covered the period from January 2005 to the end of the IP ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(12) The product concerned is zeolite A powder, also referred to as zeolite NaA powder or zeolite 4A powder (the 'product concerned'), currently falling within CN code ex 2842 10 00.

(13) The product concerned is destined at end-use applications as a builder, used in the production of dry detergents and water softeners.

2.2. **Like product**

(14) The product concerned, the product sold domestically in BiH as well as the one manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(15) The Bosnian exporting producer group submitted that the product concerned exported by both Fabrika Glinice Birac AD and its related company Alumina d.o.o. ('the Birac group'), has different production costs, production processes and quality than the like product produced by some Union producers. It was also argued that the production process of the Birac group is based on alumina liquor from the alumina production process instead of aluminium trihydrate, while production in the Union is typically based on hydrate crystals which, by heating and adding caustic soda, are brought back to liquid state for the production of the zeolite slurry. With respect to the above arguments it is noted that the information submitted by the Birac group does not put in dispute the established facts that irrespectively of any alleged differences in production processes, costs or quality, the product concerned has the same basic physical and technical characteristics and serves the same purposes as the like product.

3. SAMPLING

3.1. **Sampling of Union producers**

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(16) Eight Union producers representing around 50 % of the Union producers' sales volume on the market replied to the request for sampling data in the Notice of Initiation. Initially the five largest Union producers were selected to be part of the sample. However, one company decided to terminate its co-operation. Therefore the remaining four Union producers form the sample in this investigation.

(17) These four producers represented around 37 % of the Union producers' total sales volume on the Union market in the IP and more than 75 % of the sales volume of the eight producers that provided data for the sampling exercise. The four producers selected in the sample were considered to be representative of the overall producers in the Union.

(18) The Bosnian exporting producer group argued that three Union producers (MAL Magyar Aluminium, Silkem d.o.o. and Industrias Quimicas del Ebro SA) should be considered as non-cooperating with the investigation. It was argued that these companies submitted non-confidential replies to deficiency letters some days latter than the dateline set. With respect to the above it is noted that the information provided by the aforesaid parties was submitted in a timely fashion and it did not impede in any way the progress of the investigation or the rights of defence of parties.

(19) It was also argued that one Union producer (MAL Magyar Aluminium) failed to mention in its reply on sampling that it was related to another Union producer (Silkem d.o.o.). The latter company was not sampled and was not included in MAL Magyar Aluminium's questionnaire reply. It was therefore argued that both these two Union producers should be considered as non-cooperating with the present investigation. To this it is noted that the relationship between these two parties was known to the Commission services at complaint stage and the relationship was stated in the reply on sampling from one of the two parties. Furthermore the relationship was disclosed in MAL Magyar Aluminium's questionnaire response. Finally it should be made clear that Silkem d.o.o. and MAL Magyar Aluminium have fully co-operated with the investigation. In respect of Silkem d.o.o. they submitted data at sampling stage but were not sampled and hence were not requested to complete a questionnaire response. In respect of MAL Magyar Aluminium there was no need for them to submit a consolidated response including Silkem d.o.o. as Silkem d.o.o. is a separate legal entity.

3.2. Sampling of unrelated importers

(20) Only three unrelated importers replied to the request for information for the sampling exercise in the Notice of Initiation. It was subsequently discovered that one of these companies did not import or purchase the product concerned. Subsequently it was decided that sampling was not necessary for unrelated importers.

4. DUMPING

4.1. Normal value

(21) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of the like product to independent customers by

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each of the two exporting producers of the Birac group were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Union. It was found that the domestic sales were not representative.

(22) The Commission subsequently examined whether the domestic sales of each exporting producer could be considered as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers.

(23) Domestic sales transactions were considered profitable where the unit price was equal to or above the cost of production. Cost of production on the domestic market during the IP was therefore determined.

(24) The above analysis showed that all domestic sales of both exporting producers were profitable, given that the unit net sales price was above the calculated unit cost of production.

(25) Since the sales on the domestic market were not sold in representative quantities, normal value had to be constructed, in accordance with Article 2(3) of the basic Regulation.

(26) 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, was added to their own average cost of production during the investigation period. 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.

4.2. **Export price**

(27) Since all exports to the Union were made via a related importer, the export price was constructed on the basis of the resale price to independent customers in accordance with Article 2(9) of the basic Regulation. Adjustments were made in the resale price to the first independent buyer in the Union for all costs including duties and taxes, incurred between importation and resale, as well as a reasonable margin for SG&A and profits. As regards the SG&A, the related importer's own SG&A costs were used. In the absence of cooperation by unrelated importers in the investigation, a reasonable profit margin of 5 % was used, based on information obtained from users who also imported the product concerned in the IP.

(28) The Birac group claimed that the functions of its related importer were similar to those of an export department rather than an importer, and therefore the export price should not be constructed in accordance with Article 2(9) of the basic Regulation, but rather established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable. In this respect, it is noted that, in accordance with Article 2(9) of the basic Regulation, the export price is established on the basis of the resale price to independent customers whenever the product concerned