Commission Regulation (EU) No 1035/2010 of 15 November 2010 imposing a provisional anti-dumping duty on imports of melamine originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 4 January 2010, the Commission received a complaint concerning imports of melamine originating in the People's Republic of China lodged pursuant to Article 5 of the basic Regulation by Borealis Agrolinz Melamine GmbH, DSM Melamine BV and Zakłady Azotowe Puławy ('the complainants'), representing a major proportion, in this case more than 50 %, of the total Union production of melamine.

(2) This complaint contained prima facie evidence of dumping and of material injury resulting there from, which was considered sufficient to justify the opening of a proceeding.

(3) On 17 February 2010, the Commission announced, by a notice published in the *Official Journal of the European Union*[(2)] ('the notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of melamine originating in the People's Republic of China ('the country concerned' or 'the PRC').

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainants, exporting producers in the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of the PRC of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1035/2010. (See end of Document for details)*

(5) In view of the apparent high number of exporting producers in the PRC sampling was envisaged in the notice of initiation for the determination of dumping and injury 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 exporting producers in the PRC 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 investigation period (1 January 2009-31 December 2009).

(6) Seven replies were received to the sampling exercise from exporting producers or groups of exporting producers in the PRC. However two companies withdrew from further cooperation with the investigation at an early stage. Sampling was therefore no longer necessary and all parties were informed that a sample would not be selected.

(7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned, the Chinese authorities and to other Chinese exporting producers that made themselves known within the deadlines set out in the notice of initiation. Three Chinese exporting producer groups and one individual company requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET. One further group requested IT only.

(8) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from five exporting producers and related companies in the PRC, one producer in the United States of America which was the proposed analogue country as mentioned in the notice of initiation, and one producer in another possible analogue country, Indonesia. Questionnaire replies were also received from three Union producers and seven users cooperated by submitting a questionnaire reply. None of the importers supplied the Commission with any information or made themselves known in the course of this investigation.

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

(a) *Union producers*

— Borealis Agrolinz Melamine GmbH, Austria

— DSM Melamine BV (now OCI Melamine BV), the Netherlands

— Zakłady Azotowe Puławy, Poland

(b) *Exporting producers in the PRC*

— Sichuan Chemical Group: Sichuan Chemical Co., Ltd, Sichuan Jinhua Chemical Co., Ltd, New Tianfu Chemicals Co., Ltd and M&A Chemicals Corporation

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— Sichuan Golden Elephant Group: Sichuan Golden Elephant Chemical Industry Group Co., Ltd and Sichuan Jade Elephant Melamine S&T Co., Ltd

— Shandong Liaherd Group: Shandong Liaherd Chemical Industry Co., Ltd, Shandong Lianhe Fengyuan Chemical Industry Co., Ltd and Yiyuan Lianhe Fertilizer Co., Ltd

— Tianjin Kaiwei Chemical Co., Ltd

— Henan Junhua Group: Henan Junhua Chemical Company Ltd and Haohua-Junhua Group Zhengyang Chemical Co., Ltd

(10) In view of the need to establish a normal value for the exporting producer that requested only IT and exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from Indonesia as analogue country took place at the premises of the following company:

(c) *Producer in Indonesia*

— DSM Kaltim Melamine (DKM)

3. **Investigation period**

(11) 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 investigation period (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(12) The product concerned is melamine, currently falling within CN code 2933 61 00 and originating in the People’s Republic of China.

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

2. **Like product**

(14) The investigation has shown 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 an analogue country, has essentially the same basic physical and chemical characteristics and the same basic end uses.

(15) Therefore these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **Market Economy Treatment**

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(16) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and Property laws guarantee stability and legal certainty, and

— exchange rate conversions are carried out at market rates.

(17) Three exporting producer groups and one exporting producer from the PRC requested MET and replied to the MET claim form within the given deadline.

(18) For all these cooperating companies in the PRC, the Commission sought all information deemed necessary and verified information submitted in the MET claim at the premises of the companies in question.

(19) All of the cooperating exporting producers and groups in the PRC were found not to meet criteria to be granted MET. All companies involved in the production or commercialisation of melamine located in the PRC were invited to claim MET. Should one company in a group be denied MET then the group as a whole is also denied.

(20) For those companies producing urea from natural gas to manufacture melamine this denial was based on the grounds that the costs of the major input, natural gas, did not substantially reflect market values, as required by Article 2(7)(c) of the basic Regulation. The MET investigation determined that this was due to State interference in the natural gas market in the PRC.

(21) The natural gas market in the PRC is dominated by three State-owned companies. Companies that produce urea, which is then used by them to produce melamine, benefit from a low government fixed gas price for the production of urea. A company producing urea, which is a fertiliser and important for the Chinese agricultural and food industry, pays a significantly lower price for its gas compared to companies which need gas for other industrial uses. In addition to this dual-pricing mechanism, the price of natural gas for industrial use is itself distorted by State interference and is itself considerably lower than the world market price for gas.

(22) This low gas price allows these melamine producers to produce it at unnaturally reduced prices, taking advantage of the distorted low price of natural gas. Since natural gas forms a major part of the cost of urea (around 80 %) and that urea

represents between 50 and 60 % of the cost of production of melamine, criterion 1 cannot be considered to be met for those companies in the PRC that produce urea from natural gas.

(23) Some companies do not produce urea themselves but purchase it from unrelated suppliers. However the urea market itself is also distorted by three main types of State interference. Firstly the existence of strict import quotas for urea and export taxes of 110 % during mid-season and 10 % during off-season in the IP. Secondly the Chinese government has exempted the domestic sale of urea from VAT since 1 July 2005. Thirdly the Chinese government is directly involved in the market through the State Fertilizer System, operating since 2004, whereby the State purchases urea directly from producers to keep in a strategic reserve and can also release quantities of urea in the domestic market. Urea producers also benefit from preferential electricity rates, preferential railway freight rates and, as mentioned above, preferential natural gas prices.

(24) The restraints on exports, in combination with the benefits in the case of domestic sales, have the effect of reducing export volumes of urea, thereby diverting supplies to the domestic market and creating a downward pressure on the domestic price. This low domestic price is directly caused by State interference in the urea market in the PRC. Accordingly, criterion 1 cannot be considered to be met for those companies in the PRC that do not produce urea but purchase it from third parties.

(25) In addition to the general situation described above, one group of companies did not meet the other requirements of criterion 1 as the holding company is fully State-owned and the individual companies within the group are majority State-owned. Accordingly, this group is subject to significant State interference in relation to important business decisions.

(26) Two companies did not meet either criterion 2 or criterion 3. One of them was not able to show complete accounting records and received office space from a public body for free. The other company did not keep its accounts in line with international accounting standards and was not able to demonstrate that their take over of a State-owned company was done at a fair value.

(27) One company did not demonstrate that it met criterion 3 as no interest was paid on the debt regarding the sale of its shares emanating from the privatisation process. More specifically, at the beginning of the privatisation process a shareholder was loaned back the capital it had invested. At subsequent transfers of the shares, the liability of the debt was used as a payment. Only after 10 years was the loan repaid by the then privately-owned holder of those shares without any interest ever charged or paid on the amount.

(28) One company was refused MET as its related sales company, dealing with the product concerned as well, failed to complete a MET claim form.

(29) The Commission officially disclosed the results of the MET findings to the companies concerned in the PRC, the authorities of the PRC and the complainants. They