Council implementing Regulation (EU) No 965/2010 of 25 October 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sodium gluconate originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 965/2010

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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 ('the Commission'), after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission by Regulation (EU) No 377/2010[(2)] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of dry sodium gluconate originating in the People's Republic of China ('China' or 'country concerned').

(2) It is recalled that the proceeding was initiated following a complaint lodged by the European Chemical Industry Council (CEFIC) ('the complainant') on behalf of producers representing 100 % of the total Union production.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2005 to the end of the IP ('period considered').

1.2. 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 known their views on the provisional findings. The parties who so requested were

granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. To this end verification visits were carried out at the following companies:

Producers in the Union:

— Roquette GmbH, Germany,

— Roquette UK, United Kingdom.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of dry sodium gluconate originating in China and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments concerning the product concerned or the like product, recitals 14 to 17 of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market economy treatment (MET)

(8) The Union industry (UI) reiterated its reservations on the MET granted to the Chinese exporting producer, Shandong Kaison Biochemical, without providing any new elements to support them.

(9) The UI further claimed, without providing any evidence, that the raw materials used to produce dry sodium gluconate in China were exempt from VAT and that the buyer could be reimbursed a 'virtual VAT' of 13 % to 17 % on their purchases. In this regard, it was found that to produce dry sodium gluconate, the raw material (cornstarch) was purchased from several industrial suppliers that process the corn (agricultural product) into cornstarch. Furthermore, the prices of cornstarch in major regions of the world were examined and there were no indications that Chinese users of cornstarch obtained the product at favourable prices. In addition, several purchase invoices for cornstarch were checked and all of them carried VAT. In addition, there was no evidence that 'virtual VAT' was reimbursed on purchases. These claims were therefore rejected.

(10) In the absence of any other comments with regard to MET, recitals 18 to 21 of the provisional Regulation are hereby confirmed.

3.2. Individual treatment (IT)

(11) In the absence of any comments with regard to individual treatment (IT), recitals 22 to 25 of the provisional Regulation are hereby confirmed.

3.3. Normal value

3.3.1. *Analogue country*

(12) In the absence of any comments with regard to the analogue country, recitals 26 to 32 of the provisional Regulation are hereby confirmed.

3.3.2. *Methodology applied for the determination of the normal value*

3.3.2.1. *For the company granted MET*

(13) It should be clarified that, as a result of applying the methodology described in recitals 33 to 38 of the provisional Regulation, the normal value was not based on the actual domestic price of all transactions, as stated in recital 39 of that Regulation, but only on the profitable sales since the volume of profitable sales represented 80 % or less of the total sales volume.

(14) In the absence of any other comments with regard to the methodology for the determination of the normal value for the company granted MET, recitals 33 to 38 of the provisional Regulation are hereby confirmed.

3.3.2.2. *For the company granted IT*

(15) In the absence of any comments with regard to the method for calculating the normal value for the company granted IT, recitals 40 and 41 of the provisional Regulation are hereby confirmed.

3.4. **Export price**

(16) In the absence of any comments with regard to the determination of the export price, recital 42 of the provisional Regulation is hereby confirmed.

3.5. **Comparison**

(17) In the absence of any comments with regard to the comparison of the normal value and the export price, recitals 43 and 44 of the provisional Regulation are hereby confirmed.

3.6. **Dumping Margins**

(18) In the absence of any comments with regard to the dumping margins, recitals 45 to 50 of the provisional Regulation are hereby confirmed.

(19) The definitive weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are:

TABLE 1

Company	**Definitive dumping margin**
Shandong Kaison Biochemical Co., Ltd	5,6 %
Qingdao Kehai Biochemistry Co. Ltd	51,1 %

All other companies	79,2 %

4. **INJURY**

4.1. **Definition of the Union industry and Union production**

(20) In the absence of any comments concerning the definition of the Union industry and Union production, recitals 51 to 53 of the provisional Regulation are hereby confirmed.

4.2. **Union consumption**

(21) In the absence of any comments concerning Union consumption, recitals 54 to 55 of the provisional Regulation are hereby confirmed.

4.3. **Imports into the Union from China**

(22) It is noted that, as mentioned below in recital 34 of this Regulation, subsequent to the imposition of provisional measures, there were some minor corrections in the Union industry's sales value. However, these had no impact on the undercutting margins as set out in recital 59 of the provisional Regulation. Therefore recitals 56 to 59 of the provisional Regulation are hereby confirmed.

4.4. **Economic situation of the Union industry**

(23) Further to provisional disclosure one Chinese exporting producer contested the provisional findings claiming that some of the main injury indicators showed a positive development between 2008 and the IP.

(24) It should first of all be noted that while certain injury indicators showed a somewhat positive development between 2008 and the IP (e.g. production volume, market share and investments), other indicators showed negative developments (e.g. sales volumes and prices, as well as profitability). In this regard, it is noted that Article 3(5) of the basic Regulation provides that no one or more of the injury indicators is decisive in assessing whether the Union industry suffered material injury.

(25) In addition, the period under consideration covers the period between 2005 and the end of the IP. During this period most injury indicators clearly showed a negative development resulting in material injury during the IP. The somewhat positive development of certain injury indicators in the last year of this period did not undermine the finding of material injury.

(26) Subsequent to the imposition of provisional measures, the replies to the questionnaire of two other sales branches of the Union industry were verified at their premises, as mentioned above in recital 4.

(27) As result of these verifications, some minor adjustments were made to the total value of sales in the domestic market and to the cost of production. The profitability figure was also accordingly slightly amended. However, these changes did not have an

impact on the trends and indexes in prices and profitability as provisionally established in recitals 66 and 68 as well as Tables 5 and 7 of the provisional Regulation.

(28) Therefore the conclusions reached at provisional stage, i.e. that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation, are confirmed and recitals 60 to 79 of the provisional Regulation are hereby confirmed.

5. CAUSALITY

(29) In the absence of any comments concerning causality, recitals 80 to 96 of the provisional Regulation are hereby confirmed.

6. UNION INTEREST

(30) One cooperating user claimed that any increase in costs could not be easily passed on to final customers; therefore duties would have a significant impact on its profitability.

(31) However, the investigation revealed that this user made high profit margins both overall and on a wide range of its products. For most of the products produced by this user, the expected cost increase was found not to be significant due to the small part of dry sodium gluconate in the total production cost and it was considered that, overall, the expected cost increase could be absorbed without significantly affecting the overall profitability. The user in question did not submit any further evidence or information supporting its claim. Therefore this claim had to be rejected.

(32) In the absence of any other comments concerning the Union interest, recitals 97 to 107 of the provisional Regulation are hereby confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

(33) For the determination of the non-injurious price at definitive stage, the same methodology was used as the one described in recitals 111 to 113 of the provisional Regulation.

(34) However, as mentioned above in recital 27, the verification of additional data of the Union industry led to minor corrections in the value of total domestic sales, total cost of production and profitability.

(35) In the absence of any other comments that would alter the conclusion regarding the injury elimination level, recitals 108 to 113 of the provisional Regulation are hereby confirmed.

7.2. Definitive measures

(36) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed on imports of dry sodium gluconate originating in China at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.