Council Implementing Regulation (EU) No 492/2010 of 3 June 2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 492/2010

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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 and Article 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. *MEASURES IN FORCE*

(1) By Regulation (EC) No 435/2004[(2)], the Council imposed, following an anti-dumping investigation ('the original investigation'), a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('China') and Indonesia (together 'the countries concerned').

2. *PRESENT INVESTIGATION*

2.1. REQUEST FOR REVIEW

(2) A request for an expiry review was lodged on 11 December 2008 by Productos Aditivos S.A., the sole Union producer of sodium cyclamate.

(3) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

2.2. INITIATION

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation pursuant to Article 11(2) of the basic Regulation on 10 March 2009 by

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a notice published in the *Official Journal of the European Union*[3] ('the notice of initiation').

2.3. INVESTIGATION PERIOD

(5) The investigation of likelihood or recurrence of dumping and injury covered the period from 1 January 2008 to 31 December 2008 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 to the end of the RIP ('period considered').

3. *PARTIES CONCERNED BY THIS INVESTIGATION*

(6) The Commission officially advised the applicant Union producer, known importers, suppliers and users, the known exporting producers in China and Indonesia and the authorities of the countries concerned of the initiation of the expiry review.

(7) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation, but no one submitted such a request to the Commission.

(8) The Commission sent questionnaires to all known exporting producers in China and in Indonesia. Two companies from China, both belonging to the Hong Kong-based group Rainbow Rich Industrial Ltd, and two companies from Indonesia indicated their willingness to cooperate and replied to the dumping questionnaire.

(9) Two additional Chinese producers, Fang Da Food Additive (Shenzhen) Limited and Fang Da Food Additive (Yan Quan) Limited, made themselves known. The original investigation found that those companies were not dumping in the Union market. As a consequence, Fang Da Food Additive (Shenzhen) and Fang Da Food Additive (Yan Quan) are not subject to the present expiry review.

4. *VERIFICATION OF INFORMATION RECEIVED*

(10) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the continuation or likelihood of recurrence of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

4.1. EXPORTING PRODUCERS IN CHINA:

— Golden Time Enterprises (Shenzhen) Co., Ltd, Shenzhen,

— Jintian Enterprises (Nanjing) Co., Ltd, Nanjing,

— and the related company Rainbow Rich Industrial Ltd (Hong Kong).

4.2. EXPORTING PRODUCERS IN INDONESIA:

— PT Golden Sari (Chemical Industry), Bandar Lampung,

— PT Tunggak Waru Semi, Solo.

4.3. UNION INDUSTRY PRODUCER

— Productos Aditivos S.A., Spain.

4.4. UNRELATED IMPORTER/TRADER

— Beneo Palatinit GmbH, Germany.

4.5. USER

— Schweppes International Ltd, the Netherlands.

5. *DISCLOSURE*

(11) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of anti-dumping duties on imports of sodium cyclamate originating from China and Indonesia.

(12) In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representation subsequent to this disclosure.

(13) The oral and written comments submitted by the parties were considered and, when appropriate, the definitive findings have been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. *PRODUCT CONCERNED*

(14) The product concerned by this review is the same as the one in the original investigation, i.e. sodium cyclamate ('SC') originating in China and Indonesia ('the product concerned'), currently falling within CN code ex 2929 90 00.

(15) As established in the original investigation and confirmed in the current review, SC is a commodity product used as a food additive, permitted in the European Union and in many other countries as a sweetener for low-calorie and dietetic food and beverages. It is widely used as an additive by the food industry, as well as by the producers of low-calorie and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.

2. *LIKE PRODUCT*

(16) As in the original investigation, it was shown that the product concerned produced in China and Indonesia and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold by the applicant on the Union market, or to the one produced and sold on the domestic market in Indonesia, which also served as an analogue country for the purpose of establishing the normal value with respect to China.

(17) Consequently, all those products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. *PRELIMINARY REMARKS*

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(18) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping. It is recalled that in the context of investigations under that Article, market economy treatment ('MET') is not reconsidered.

(19) In accordance with Article 11(9) of the basic Regulation, the same general methodology was used as in the original investigation, provided that circumstances had not changed. In order to establish the likelihood of continuation or recurrence of dumping, in accordance with standard practice, a sampling of transactions was carried out by taking data from four months, each being the last of one quarter, of the RIP. The outcome was verified by also analysing a number of other transactions. No operator contested this approach.

(20) Eurostat data showed that during the RIP, between 3 000 and 5 000 tonnes of product concerned were imported into the Union. Among them, more than 90 % came from China and the rest from Indonesia. Practically no imports were registered from other countries.

2. *DUMPING OF IMPORTS DURING THE INVESTIGATION PERIOD*

2.1. CHINA

2.1.1. ***Analogue country***

(21) Except for companies that were granted MET in the original investigation, the normal value for China was established in accordance with Article 2(7)(a) of the basic Regulation.

(22) In the previous investigation, Indonesia was used as an appropriate market economy country for the purpose of establishing normal value in respect of China.

(23) This choice has been proposed by the Commission in the notice of initiation, and no interested party has opposed this choice within the time limits.

(24) Prices in Indonesia have been considered a reasonable surrogate for prices in China because Indonesia has a competitive domestic market, with increasing imports from China and where at least six producers operate. In addition, it appears that the product under investigation is produced only in the Union, China and Indonesia. No evidence to the contrary has been presented in the current investigation.

(25) Therefore, Indonesia has been used as an analogue market economy country for the purpose of this review.

2.1.2. ***Cooperating Chinese exporting producers***

2.1.2.1. **Preliminary remarks**

(26) As set out in recital 8, two producers belonging to the same Hong Kong-based group, 'Rainbow Rich Industries', cooperated in this review. They represent more than

half of the exports to the Union during the RIP. Not taking into account the production and sales volumes of the companies not subject to the proceedings, the cooperating producers represented more than three-quarters of total Chinese production and almost half of its capacity. The representativeness in terms of exports to the Union was more than 80 %. Given this level of cooperation, detailed information obtained from the cooperating exporters was used as a source for the assessment of the likelihood of continuation or recurrence of injurious dumping from China.

(27) One of the cooperators, Golden Time Enterprises (Shenzhen), exported significant quantities to the Union during the RIP, while its sister company, Jintian Enterprises (Nanjing), did not export to the EU since the imposition of the measures. The data gathered during the on-the-spot verification visit of the company that did not export, Jintian Enterprises (Nanjing), did however allow for a more detailed insight into the Chinese domestic market, where the company holds a significant part of the market share and of the installed capacity.

(28) During the investigation, one Chinese company alleged that regular meetings were held between major domestic producers to fix a reference price for the Chinese domestic market. Given the dominant position of those producers, this arrangement appears to successfully keep Chinese domestic prices at a relatively high level.

2.1.2.2. **Normal value**

(29) The normal value for Golden Time Enterprises (Shenzhen) was calculated as the weighted average price of all domestic sales made during the RIP, paid or payable by independent customers, of the type in question.

2.1.2.3. **Export price**

(30) The export price to the Union of Golden Time Enterprises (Shenzhen) was the duly adjusted price actually paid or payable for the product when sold for export to the EU.

2.1.2.4. **Price comparison**

(31) The weighted average normal value was compared with the weighted average export price for each type of product concerned, on an ex-works basis and at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for ocean and domestic freight, insurance, credit, handling and packaging costs.

2.1.2.5. **Dumping margin**

(32) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export prices at the same level of trade. This comparison showed the existence of dumping during the RIP at a significantly