Commission Regulation (EU) No 377/2010 of 3 May 2010 imposing a provisional anti-dumping duty on imports of sodium gluconate 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 30 June 2009, the Commission received a complaint concerning imports of dry sodium gluconate (SG) originating in the People's Republic of China (China) lodged pursuant to Article 5 of the basic Regulation by the European Chemical Industry Council (CEFIC) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of dry sodium gluconate.

(2) The complaint contained prima facie evidence of dumping and of material injury caused by such dumping which was considered sufficient to justify the opening of an anti-dumping proceeding.

(3) On 11 August 2009, a proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*[(2)].

2. Parties concerned by the proceeding

(4) The Commission officially advised the exporting producers in China, importers, traders, users and associations known to be concerned, the authorities of China and the complainant Union producers 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.

(5) All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 377/2010. (See end of Document for details)*

(6) In order to allow exporting producers 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 and to the authorities of China. One exporting producer requested MET pursuant to Article 2(7) of the basic Regulation and another exporting producer, including two related companies, requested IT pursuant to Article 9(5) of the same Regulation.

(7) In view of the apparent high number of exporting producers in China and importers in the Union, the Commission indicated in the notice of initiation that sampling might be applied for these parties in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in China and Union 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 during the investigation period (1 July 2008 to 30 June 2009).

(9) Given the limited number of responses to the sampling exercise, it was decided that sampling was not necessary for Chinese exporting producers or importers in the Union.

(10) Questionnaires were sent to all companies in China and importers in the Union who responded to the sampling exercise, to the Union producers, and to all known importers and users in the Union. Replies were received from two exporting producers or groups of exporting producers in China, two producers in the Union and four importers/users.

(11) 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:

1. Producers in the Union:
   - Jungbunzlauer (JBL), Marckolsheim, France and related sales companies,
   - Roquette Italia SpA, Cassano Spinola, Italy and related sales companies;

2. Exporting producers in China:
   - Shandong Kaison Biochemical Co., Ltd,
   - Qingdao Kehai Biochemistry Co., Ltd;

3. Users/importers in the Union:
   - Chryso SAS, Issy les Moulineaux, France,
   - Henkel AG, Düsseldorf, Germany,
   - CHT R. Beitlich GmbH, Tübingen, Germany.

(12) In view of the need to establish a normal value for exporting producers in China to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

— Producer in the USA: PMP — Fermentation Products Inc., Peoria, USA.

3. **Investigation period**

(13) The investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) The product concerned is dry sodium gluconate originating in China (the product concerned), with a Customs Union and Statistics (CUS) number 0023277-9 and a Chemical Abstracts Service (CAS) registry number 527-07-1 , currently falling within CN code ex 2918 16 00.

(15) Dry sodium gluconate is used mainly in the construction industry as a set retarder and concrete plasticiser and in other industries as surface treatment for metals (removal of rust, oxides and fat) and for the cleaning of bottles and industrial equipment. The product can also be used in the food and pharmaceutical industries.

2. **Like product**

(16) The investigation has shown that dry sodium gluconate produced and sold by the Union industry in the Union, dry sodium gluconate produced and sold on the domestic market in the USA, which was selected as an analogue country, dry sodium gluconate produced and sold on the domestic market in China and dry sodium gluconate produced in China and sold to the Union have essentially the same basic physical and technical characteristics.

(17) 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 (MET)**

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in China, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which are found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

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(19) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market signals and without significant State interference; costs of major inputs substantially reflect market values;

2. 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;

3. there are no significant distortions carried over from the former non-market economy system;

4. bankruptcy and property laws guarantee legal certainty and stability;

5. exchange rate conversions are carried out at market rates.

(20) Following the initiation of the proceeding, one Chinese exporting producer, Shandong Kaison Biochemical Co., Ltd, requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadline.

(21) The company demonstrated that it fulfilled the criteria of Article 2(7)(c) of the basic Regulation and could be granted MET.

2. **Individual treatment (IT)**

(22) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation to be granted IT.

(23) Briefly, and for ease of reference only, these criteria are set out below:

1. in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

2. export prices and quantities, and conditions and terms of sale are freely determined;

3. the majority of the shares belong to private persons. State officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

4. exchange rate conversions are carried out at the market rate; and

5. State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(24) Following the initiation of the proceeding, one Chinese exporting producer, Qingdao Kehai Biochemistry Co., Ltd requested IT pursuant to Article 9(5) of the basic Regulation and replied to the IT claim form within the given deadline.

(25) On the basis of information available, it was found that the Chinese exporting producer met all the requirements for IT as set out in Article 9(5) of the basic Regulation.

3. **Normal value**

3.1. *Analogue country*

(26) According to Article 2(7)(a) of the basic Regulation, in economies in transition, normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country).

(27) In the notice of initiation, USA was proposed as an appropriate analogue country for the purpose of establishing normal value for China. The Commission invited all interested parties to comment on this proposal.

(28) There were no comments from any interested party.

(29) Outside the EU, dry sodium gluconate is produced in very few countries, namely the USA, China and South Korea. Therefore the only possible alternative to the USA was South Korea. The Commission contacted the known companies producing dry sodium gluconate in South Korea, however, no replies were received from those producers.

(30) The producer in the USA cooperated fully with the investigation by submitting a full questionnaire response and accepting a verification visit.

(31) The Commission found that the USA met the criteria for an appropriate analogue country since the quantities sold in this market were sufficiently large and there was significant competition on the market with both domestic production and imports from other countries, i.e. China, Italy and France. In addition, the USA had no anti-dumping duty on the product concerned.

(32) In view of the above, it is therefore provisionally concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

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

3.2.1. For the company granted MET

(33) For the company granted MET, in accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of dry sodium gluconate to independent customers were representative during the IP, i.e. whether the total volume of such sales represented at least 5 % of Chinese export sales of the product concerned to the Union.