Council Regulation (EC) No 847/2009 of 15 September 2009 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation) and in particular Articles 8 and 11(3) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) Following an investigation (the original investigation), the Council, by Regulation (EC) No 682/2007[(2)] (the original Regulation), imposed definitive anti-dumping duties on imports of certain prepared or preserved sweetcorn in kernels falling within CN codes ex 2001 90 30 and ex 2005 80 00 and originating in Thailand. The measures took the form of an *ad valorem* duty. Regulation (EC) No 954/2008[(3)] amended Regulation (EC) No 682/2007 with regard to the rate of duty imposed on one company and on 'all other companies'. The duty rates range between 3,1 % and 14,3 %. Imports from two Thai exporting producers, namely Malee Sampran Public Co. Ltd (Malee) and Sun Sweet Co. Ltd (Sun Sweet), from whom undertakings had been accepted by Commission Decision 2007/424/EC[(4)] and which fulfilled the conditions set out in Article 2 of Regulation (EC) No 682/2007, were exempted from the duty.

2. **Grounds for a review**

(2) At the time of imposition of definitive measures, the Council exceptionally allowed cooperating exporting producers who were not able to submit a sufficiently substantiated undertaking offer within the deadline set in Article 8(2) of the basic Regulation to complete their offer within 10 calendar days from the entry into force of the original Regulation. Ten further undertaking offers were completed within this deadline. The two undertaking offers accepted, as well as those 10 further offers, include fixed minimum import prices.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 847/2009. (See end of Document for details)*

(3) Upon disclosure of the 10 further offers, the Community industry opposed the acceptance of price undertakings by stating that fixed minimum import prices were no longer an effective form of the measure because of the increasing price of the product concerned, as defined in recital 16, as well as of its main raw material and inputs.

(4) In order to reassess the appropriateness of undertakings as an effective form of anti-dumping measures, the Commission deemed it necessary to reassess the acceptability and workability of the undertakings offered and of those accepted.

3. Investigation

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission announced on 16 September 2008, by a notice of initiation published in the *Official Journal of the European Union*[(5)], the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation.

(6) The review was limited in scope to the examination of the form of the measure applicable to the two Thai exporting producers from whom undertakings had been accepted and the 10 Thai exporting producers with pending undertaking offers.

(7) The Commission officially advised the exporting producers, the representatives of the exporting country, the Community producers and their association as well as importers of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(8) In order to obtain the information deemed necessary for the investigation, the Commission sent questionnaires to the 12 exporting producers concerned as well as to the Community producers. The Community producers and seven out of the 12 Thai companies replied to the questionnaire.

(9) Five Thai companies with pending undertaking offers did not reply at all to this review questionnaire and were considered as not cooperating within the meaning of Article 18 of the basic Regulation. The information submitted by one Thai company had to be disregarded due to incompleteness of the confidential questionnaire reply. In addition, this company did not provide a meaningful non-confidential version of the questionnaire reply. The company argued that due to significant structural changes within the company, including a name change, it was difficult to react efficiently to the questionnaire. Another Thai company also refused to provide a meaningful non-confidential version of the questionnaire reply. The companies concerned were informed about the proposed application of Article 18 of the basic Regulation and were given the opportunity to comment. The latter company claimed that it was impossible for it to furnish a meaningful non-confidential reply of its data submitted due to the sensitivity of the information contained. It is noted that whereas this argument is acceptable for parts of the questionnaire dealing with the companies costs and prices, this argument cannot be accepted for other parts of the questionnaire such as operating statistics, general information, etc. The first company submitted further confidential

information. However, even considering that this first company may be in a phase of restructuring, basic information has to be given in order to allow for an assessment of the situation of the company. Despite the additional information submitted at a later stage, this minimum requirement was not met, given that no details about certain cost items were given. Moreover, no meaningful non-confidential version of the reply was provided.

(10) It was thus considered that no decisive arguments were submitted to reverse the decision to apply Article 18 of the basic Regulation.

(11) All other producing companies cooperated by replying to the questionnaire.

(12) Several other interested parties submitted comments. One importer stated that the imposition of measures was not justified due to the absence of dumping during the original investigation period (original IP), as defined in recital 17, and should therefore be withdrawn. In this regard, it should be recalled that the original investigation established that injurious dumping was taking place. Moreover, this review focuses on the appropriateness of undertakings as an effective form of anti-dumping measures, and any claims regarding the findings of the original investigation other than the form of the measures cannot be taken into account. The comment therefore had to be rejected. Another importer submitted a formal request for suspension of the measures. This request is being assessed outside the current review investigation.

(13) Verification visits were carried out at the premises of the following companies:

(14)
(a) Exporting producers in Thailand
~~La~~mpang Food Products Co., Ltd, Bangkok,
~~M~~alee Sampran Public Co., Ltd, Bangkok,
~~Ri~~ver Kwai International Food Industry Co., Ltd, Bangkok, and,
~~Su~~n Sweet Co., Ltd, Chingmai;

(b) Community Producers
~~Bo~~nduelle Conserve International, Lille-Villeneuve d'Ascq, France, and,
~~Co~~nserve Italia SCA, San Lazzaro di Savena, Italy.

(15) The investigation covered the period from 1 July 2007 to 30 June 2008 ('review investigation period' or 'RIP').

4. Product concerned

(16) The product concerned is sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30, and sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00, originating in Thailand.

B. FINDINGS

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 847/2009. (See end of Document for details)*

1. **Evolution of sale prices of the product concerned**

(17) As a first step, the price developments of the product concerned were examined for the period beginning with the original IP, i.e. from 1 January 2005 to 31 December 2005 and ending with the RIP. Data for the remainder of 2008 was looked at to cross-check conclusions.

(18) The analysis showed a clear upward trend of import prices of the product concerned from Thailand since the original IP, in particular since the end of 2006. Despite a price decrease during the RIP, prices remained significantly above the price level of the original IP. Data available for 2008 point to yet another increase.

Table 1

Import prices for imports from Thailand into the EU by quarter

Index, Q1/2005 = 100	**Q1**	**Q2**	**Q3**	**Q4**
Original IP	656	669	723	699
Index	*100*	*102*	*110*	*107*
2006	719	705	715	747
Index	*110*	*107*	*109*	*114*
2007	830	798	814	773
Index	*127*	*122*	*124*	*118*
RIP	814	773	763	740
Index	*124*	*118*	*116*	*113*
2008	763	740	768	811
Index	*116*	*113*	*117*	*124*

Source: Eurostat.

(19) The overall evolution of the average import price of the product concerned reported by Eurostat, as set out in Table 1, was corroborated by the analysis of the verified sale prices to the EU of a representative can size (12 oz) by the Thai companies. Indeed, as shown in Table 2, the same trend as that reported by Eurostat could be observed for this can size.

(20) Furthermore, an analysis of the Thai prices for the representative can size demonstrated an even higher price fluctuation since the original IP. Sale prices varied by more than 30 % in the period between the first quarter of 2005 and the last quarter of the RIP. Data available for the second half of 2008 confirm this evolution.

Table 2

Thai sale prices to the EU (euro/t — can size 12 oz — indexed)

Index, Q1/2005 = 100	**Q1**	**Q2**	**Q3**	**Q4**
Original IP	100	105	106	115
2006	118	119	118	123
2007	129	133	123	116
RIP	123	116	109	112
2008	109	112	121	122

Source: Investigation.

(21) In view of the significant price variation of the product concerned since the original IP, it has to be concluded that price undertakings with fixed minimum import prices are no longer suitable.

2. **Possible indexation of the minimum import prices**

(22) Although the pending undertaking offers and the accepted undertaking offers exclusively contain fixed minimum prices, it was also examined whether the two undertakings in force and the 10 pending undertaking offers could exceptionally be maintained, or respectively accepted, through an indexation of the minimum import prices.

(23) It therefore had to be established whether there is a correlation between the price evolution of the sale prices of the product concerned and the purchase prices of the main raw material/inputs used in the production process and, should that be the case, whether they represent a significant part of the total cost of production and whether there is publicly available price information for those components.

(24) The two main components are sweetcorn and cans, representing each between 30 and 40 % of the cost of production of the product concerned.

(a) *Indexation on the evolution of purchase prices of sweetcorn*

(25) As can be seen from Table 3, average purchase prices of sweetcorn in Thailand and in the EU increased significantly compared to the original IP. Prices at the end of the RIP were significantly higher than during the original IP. Data available for the second half of 2008 confirm the price increase.

(26) It is also evident that, other than in the EU, purchase prices in Thailand show an increasing volatility within a given year, in particular since the end of 2006. The difference between the lowest and the highest price in Thailand varied by almost 40 %