Council Implementing Regulation (EU) No 54/2010 of 19 January 2010 imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America

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imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)], repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(2)] ('the basic Regulation'), and in particular Articles 9(4) and 11(2) of Regulation (EC) No 1225/2009,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In February 1994, the Council imposed, by Regulation (EC) No 229/94[(3)], definitive anti-dumping duties on imports of ethanolamines (product concerned) originating in the United States of America ('USA').

(2) Following a request of the Conseil européen des fédérations de l'industrie chimique (CEFIC), an expiry review pursuant to Article 11(2) of the basic Regulation was initiated in July 2005. By Regulation (EC) No 1583/2006[(4)] the Council concluded that review and imposed definitive anti-dumping measures on imports of ethanolamines originating in the USA. The duties were in the form of a specific fixed duty.

2. Request for an expiry review

(3) Following the publication in March 2008 of a notice of impending expiry of the anti-dumping measures applicable to imports of ethanolamines originating in the USA[(5)], the Commission received on 25 July 2008 a request for a review pursuant to Article 11(2) of the basic Regulation.

(4) The request was lodged by BASF SE/AG, INEOS Oxide Ltd, Sasol Germany GmbH and Akzo Nobel Functional Chemicals AB ('the applicant Union producers')

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 54/2010. (See end of Document for details)*

on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of ethanolamines.

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

(6) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated by notice of initiation an investigation[6] pursuant to Article 11(2) of the basic Regulation.

3. **Investigation**

(7) The Commission's services officially advised the Union producers, the exporting producers in the USA, importers/traders, users in the Union known to be concerned, as well as the authorities of the USA of the initiation of the 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) The Commission's services sent questionnaires to all parties known to be concerned and to those who requested a questionnaire within the time-limit set out in the notice of initiation.

(9) The Commission also gave the parties directly concerned 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.

(10) Replies to the questionnaire were received from two exporting producers in the USA, one related importer in the Union, one related importer in Switzerland, the applicant Union producers and one industrial user in the Union. One additional exporting producer in the USA (Huntsman Petrochemical Corporation) submitted a document ('position paper') in which it claimed that the measures should be repealed but did not, however, respond to the questionnaire.

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

a. Applicant Union producers

BASF SE/AG, Ludwigshafen, Germany

INEOS Oxide Ltd, Southampton, United Kingdom

Sasol Germany GmbH, Hamburg, Germany

Akzo Nobel Functional Chemicals AB, Stenungsund, Sweden

b. Exporting producers in the USA

The Dow Chemical Company, Midland, Michigan and Seadrift, Texas, USA

INEOS Oxide LLC, Houston, Texas and Plaquemine, Louisiana, USA

c. Related importer in the Union

INEOS Oxide Ltd, Zwijndrecht, Belgium

d. Related importer in Switzerland

Dow Europe GmbH, Horgen, Switzerland

e. Industrial user in the Union

Evonik Degussa GmbH, Essen, Germany

4. **Review investigation period**

(12) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2007 to 30 September 2008 ('RIP').

(13) 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 up to the end of the RIP ('period considered'). Furthermore, trends for the assessment of a likelihood of a continuation or recurrence of injury were also evaluated under the angle of the impact of the effects of the world economic crisis on the ethanolamine market post RIP.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) The product concerned is the same as that covered by the previous investigations, i.e. ethanolamines currently falling within CN codes ex 2922 11 00, ex 2922 12 00 and 2922 13 10 originating in the USA. Ethanolamines are obtained by making ethylene oxide (EO), itself a result of a reaction of ethylene and oxygen, react with ammonia. This synthesis leads to three competing reactions and to three different types of ethanolamines: monoethanolamine (MEA), diethanolamine (DEA) and triethanolamine (TEA), depending on how many times EO is bound. The maximum number of combinations is limited by the number of hydrogen elements in ammonia, namely three. The proportions of the three types in the total output are determined by the specific design of the production facilities, but can, to a certain extent, be controlled by the ammonia/EO ratio (the molar ratio).

(15) The product concerned is used as an intermediate and/or additive for surfactants used in detergents and personal care products, cosmetics, fertilisers and crop protection agents (glyphosate), corrosion inhibitors, lubrication oils, textile auxiliaries and fabric softeners (esterquats), photographic chemicals, paper and metal-works, wood treatment, as a grinding and binding aid for cement production and as a gas scrubber absorption aid (sweetening the gas by removing acids). The product can also be used by the manufacturers themselves or by their related manufacturers in the production of

ethyleneamines. New MEA applications include taurine and electronics, in particular products belonging to the LCD sector.

2. **Like product**

(16) As in the original and previous review investigations, it was shown that the product concerned produced in the USA and sold to the Union is identical in terms of physical and technical characteristics to the product produced and sold in the Union by the Union producers and that there is no difference in use between those products. It has further been found that the product concerned produced in the USA and sold to the Union is identical to that sold on the US domestic market. Therefore, all these products must be 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**

(17) 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.

1. **Preliminary remarks**

(18) Of the four US exporting producers named in the complaint, two cooperated in the investigation, one did not cooperate but only submitted a position paper while no reply or any other information was received from the fourth US company mentioned in the complaint.

(19) The two cooperating exporting producers represented the major proportion (i.e. more than 90 %, the precise figure cannot be disclosed for reasons of confidentiality) of imports to the Union during the RIP, which amounted to 37 583 tonnes and which is 8,5 % lower than the imports during the previous investigation period (1 July 2004 to 30 June 2005). Imports into the Union of the product concerned originating in the USA represented 14 % of Union consumption during the RIP.

2. **Dumping of imports during the RIP**

Normal value

(20) With regard to the two cooperating US exporting producers, normal value was established for each type of the product concerned, based on the price paid or payable on the domestic market in the USA by unrelated customers pursuant to Article 2(1) of the basic Regulation, since these sales were found to have been made in sufficient quantities and in the ordinary course of trade.

Export price

(21) As in the original and in the previous review investigations, this investigation showed again that the two cooperating US exporting producers exported the product concerned to the Union via companies which are related. As a consequence, and in accordance with Article 2(9) of the basic Regulation, export prices were constructed on the basis of the prices at which the imported product was first resold to independent customers in the Union. Allowance was made for all costs incurred between importation

and resale, including selling, general and administrative costs and the profit realised in the Union by the importing companies during the RIP. With respect to profit margin, the actual profit of the related traders could not be used since the relationship between the exporting producers and the related traders made these prices unreliable. Their profit margin was thus set at a reasonable rate, not exceeding the actual profit margin obtained by the related traders and in line with profit margins used for the similar reasons in the previous review.

Comparison

(22) The normal value was compared with the average export price for each type of the 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 inland and ocean freight, deferred rebates, handling and packaging costs, credit costs and import duties, which were all deducted from the resale prices in order to arrive at an ex-works basis.

Dumping margin

(23) 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, albeit at a lower level than that established in the previous review. The weighted average dumping margin expressed as a percentage of the CIF value at the Union frontier was 11,9 % for INEOS Oxide LLC and 0 % for Dow Chemical. With respect to the other US producers who did not cooperate with the investigation and covered during the RIP less than 5 % (the precise figure cannot be disclosed for reasons of confidentiality) of the US imports of the product concerned to the Union, the dumping margin had to be based on facts available in accordance with the provisions of Article 18 of the basic Regulation.

As stated above, the investigation established the existence of dumping. Thus, in line with the provisions of Article 18(6) of the basic Regulation, the existence of dumping at the level found for INEOS Oxide LLC, i.e. 11,9 %, is attributed also to those exporters that did not cooperate with the investigation. Indeed, there is no reason to believe that a party that did not cooperate with the investigation was dumping less than any cooperating party and to treat such party more favourably than parties that have cooperated. It should be noted that there was no verifiable information available for the non-cooperating US producers while the verified questionnaire replies of the cooperating US exporting producers in comparison with the Eurostat statistics rules out the possibility that the missing quantities were exported by the cooperating US exporting producers.

3. **Development of imports should measures be repealed**

Preliminary remarks