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EUROPEAN COMMISSION

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2010/0268 (NLE)

Proposal for a

**COUNCIL REGULATION**

**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**

## EXPLANATORY MEMORANDUM

### **1. Context of the proposal**

#### **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the proceeding concerning imports of dry sodium gluconate originating in the People's Republic of China ('China').

#### **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

#### **Existing provisions in the area of the proposal**

By Regulation (EU) No 377/2010 the Commission imposed provisional anti-dumping measures on imports of dry sodium gluconate originating in the People's Republic of China.

#### **Consistency with other policies and objectives of the Union**

Not applicable.

### **2. Consultation of interested parties and impact assessment**

#### **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### **3. Legal elements of the proposal**

#### **Summary of the proposed action**

On 11 August 2009, the Commission initiated an anti-dumping proceeding concerning imports of dry sodium gluconate originating in the People's Republic of China.

The investigation found dumping of the product concerned, which caused injury to the Union industry. The investigation also found that it was not against the Union interest to impose anti-dumping measures. On this basis, provisional measures were imposed by Commission Regulation (EU) No 377/2010. The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Union interest which confirmed the provisional findings regarding imports from the People's Republic of China. In addition, based on additional data collected from interested parties, the level of the anti-dumping duty for one cooperating exporting producer as well as the level of the residual anti-dumping duty were slightly revised downwards.

It is therefore proposed that the Council adopts the attached proposal for a Regulation in order to impose definitive measures on imports of dry sodium gluconate originating in the People's Republic of China and to collect definitively the provisional duty imposed on these imports.

### **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community

### **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

### **Proportionality principle**

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

### **Choice of instruments**

Proposed instrument: Regulation.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

## **4. Budgetary implication**

The proposal has no implication for the Union budget.

Proposal for a

## **COUNCIL REGULATION**

**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**

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<sup>1</sup> (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<sup>2</sup> (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**

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<sup>1</sup> OJ L 343, 22.12.2009, p.51

<sup>2</sup> OJ L 111, 4.5.2010, p. 5.

- (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 (corn starch) was purchased from several industrial suppliers that process the corn (agricultural product) into corn starch. Furthermore, the prices of corn starch in major regions of the world were examined and there were no indications that Chinese users of corn starch obtained the product at favourable prices. In addition, several purchase invoices for corn starch 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.
- (37) The proposed definitive anti-dumping duty rates are the following:

Table 2

Name	Injury Margin	Dumping Margin	Definitive duty
Shandong Kaison Biochemical Co Ltd, Wulian County, Rizhao City	29.7%	5.6%	5.6%
Qingdao Kehai Biochemistry Co Ltd, Jiaonan City	27.1%	51.1%	27.1%
All other companies	53.2%	79.2%	53.2%

- (38) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (39) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission<sup>3</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be accordingly amended by updating the list of companies benefiting from individual duty rates.
- (40) In order to ensure a proper enforcement of the anti-dumping duty, the country-wide duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP.

### 7.3. Definitive collection of provisional duties

<sup>3</sup> European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, Belgium.

(41) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released.

#### **7.4. Special monitoring**

(42) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following.

(43) The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other producers.

(44) Should the exports by the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of dry sodium gluconate, 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 (TARIC code 2918 16 00 10) and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

Company	Anti-Dumping duty rate (%)	TARIC additional codes
Shandong Kaison Biochemical Co., Ltd, Wulian County, Rizhao City	5.6	<b>A972</b>
Qingdao Kehai Biochemistry Co. Ltd, Jiaonan City	27.1	<b>A973</b>

All other companies	53.2	A999
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3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

The amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EU) No 377/2010 on imports of dry sodium gluconate 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 (TARIC code 2918 16 00 10), and originating in the People's Republic of China shall be definitely collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the rate of the definitive anti-dumping duty shall be released.

#### *Article 3*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the Council*

[...]

## ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration: "I, the undersigned, certify that the (volume) of dry sodium gluconate sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.

Date and signature