

## II

(Non-legislative acts)

## REGULATIONS

## COUNCIL IMPLEMENTING REGULATION (EU) No 464/2011

of 11 May 2011

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of zeolite A powder originating in Bosnia and Herzegovina**

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 having consulted the Advisory Committee,

Whereas:

**1. PROVISIONAL MEASURES**

- (1) By Regulation (EU) No 1036/2010<sup>(2)</sup> (the provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports of zeolite A powder originating in Bosnia and Herzegovina (BiH).
- (2) The proceeding was initiated as a result of a complaint lodged on 4 January 2010 by Industrias Quimicas del Ebro SA, MAL Magyar Aluminium, PQ Silicas BV, Silkem d.o.o. and Zeolite Mira Srl Unipersonale (the 'complainants'), representing a major proportion, in this case more than 25 % of the total Union production of zeolite A powder. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

**2. SUBSEQUENT PROCEDURE**

- (3) 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 the opportunity to be heard.

- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.
- (5) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 (the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered').
- (6) All parties were informed of the essential facts and considerations on the basis of which the Commission intended to recommend the imposition of a definitive anti-dumping duty on imports of zeolite A powder originating in the BiH and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations.
- (7) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

**3. PRODUCT CONCERNED AND LIKE PRODUCT**

- (8) In the absence of any comments on these issues, recitals 12 to 15 of the provisional Regulation are hereby confirmed.

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

<sup>(2)</sup> OJ L 298, 16.11.2010, p. 27.

- (9) In view of the above, it is definitively concluded that all types of zeolite A powder as defined above are alike within the meaning of Article 1(4) of the basic Regulation.

#### 4. SAMPLING

- (10) The Bosnian exporting producer group ('Birac') returned to its claim made at the provisional stage of the investigation that a non-sampled Union producer (Silkem d.o.o. or 'Silkem') should have been fully consolidated into the reply to the questionnaire of a sampled Union producer (MAL Magyar Aluminium or 'MAL') because the two companies are related. It was claimed that if that omission were accepted it would amount to discrimination between Union producers and exporters as in cases where there are related exporting producers located in countries subject to an anti-dumping investigation they are all required to submit replies to questionnaires. Further, Birac claimed that both MAL and Silkem should be declared to be non-cooperating.

- (11) Those claims cannot be accepted. For the reasons explained at recital 19 of the provisional Regulation both MAL and Silkem have fully cooperated with the investigation. It is recalled that Silkem provided information in the reply to the sampling form and account was taken of Silkem in the macro data indicators. However, the company was not included in the list of sampled companies on account of its small size. Therefore, Silkem did not need to submit so-called micro data and a fortiori those have not been verified. Moreover, since their sales of the product concerned are relatively small in comparison to those of MAL, there is no indication that consolidating Silkem's data into MAL's data would have made any difference.

- (12) Furthermore, the allegation of discrimination between exporting producers and Union producers is clearly unfounded because the situations are different. On the one hand, the investigation into the existence of dumping is the one that is normally conducted at company level for which the Commission services need to calculate a company-specific dumping margin. Furthermore, a group of exporting producers has to be looked at in its totality since otherwise there is a risk that exports would be channelled through the part of the group with the lowest duty level. On the other hand, the injury investigation aims at examining whether the Union industry as a whole suffers material injury. In this case, the sampled Union producers in this investigation were considered to represent the entire Union production in respect of certain injury indicators (micro indicators). This claim is therefore rejected.

- (13) Birac also claimed that a Bosnian mining company, related to MAL, which supplies to this particular Union producer a pre-raw material (i.e. bauxite) should also

have cooperated with the investigation. In this respect it is noted that the mining company was listed in MAL's questionnaire response. Also, the costs associated with the sourcing of bauxite, and its conversion into aluminium trihydrate, were fully reported in MAL's cost of production. Therefore, the MAL Group fully complied with the reporting requirements set out by the Commission services. This claim is therefore rejected.

- (14) In the absence of any other comments on these issues, recitals 16 to 20 of the provisional Regulation are hereby definitively confirmed.

#### 5. DUMPING

##### 5.1. Normal value

- (15) It is recalled that in the absence of representative domestic sales, normal value was constructed in accordance with Article 2(3) of the basic Regulation.

- (16) To construct normal value pursuant to Article 2(3) of the basic Regulation, the selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by each of the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period, were added to their own average cost of production during the investigation period. Since there are no separate types of the product concerned or like product, a weighted average profit was used. Where necessary, the costs of production and SG&A expenses were adjusted, before being used in the ordinary course of trade test and in constructing normal values.

- (17) Further to the provisional disclosure Birac submitted comments regarding the determination of the profit margin used for constructing normal value. According to Birac, the methodology applied violates Article 2(3) of the basic Regulation because in this specific case the result of using the profit margin of the non-representative domestic sales to construct normal value is exactly the same as if the prices of the non-representative domestic sales had been used. It claimed that such an incoherent approach cannot have been intended by a combined reading of Article 2(3) and 2(6) of the basic Regulation. It also considered that the profit margin used is unreasonable and disproportionate, in particular in comparison to the target profit used for the underselling calculations.

- (18) Furthermore, Birac claimed that the domestic sales, due to their nature, should not be considered as having been made in the ordinary course of trade and should thus not be used to establish normal value.

(19) Regarding the first claim, it is noted that the method applied is in line with the provisions of the basic Regulation and the jurisprudence stemming from WTO rulings, according to which when constructing the normal value, the profit of the domestic sales in the ordinary course of trade has to be used, even if these sales were not representative. In this specific case it is noted that since all domestic sales were profitable, constructing the normal value indeed gave the same result as if the normal value had been based on domestic sales prices. It should first be noted that the profit and SG&A data were based on the company's own domestic sales which were considered to be in the ordinary course of trade. It is further noted that 'reasonableness' cannot be measured against the target profit used for the underselling calculations, since that profit reflects the situation on the EU market in the absence of dumped imports and cannot therefore constitute a proper benchmark for determining the profit to be used in the context of constructing normal value. The claim should therefore be rejected.

(20) As regards the claim that the domestic sales should not be considered as having been made in the ordinary course of trade, the investigation established that the data and evidence provided by Birac constituted a reliable basis for determining the normal value. Therefore this claim was not considered warranted and was therefore rejected.

(21) In the absence of any other comments concerning the determination of normal value, the method described in recitals 21 to 26 of the provisional Regulation is hereby confirmed.

## 5.2. Export price

(22) In the absence of any comments regarding the export price, recitals 27 and 28 of the provisional Regulation are hereby confirmed.

## 5.3. Comparison

(23) In the absence of any comments regarding the comparison between normal value and export price, recital 29 of the provisional Regulation is hereby confirmed.

## 5.4. Dumping margin

(24) In the absence of any other comments concerning the determination of the dumping margin, which would alter the provisional findings, recitals 30 to 32 of the provisional Regulation are hereby confirmed.

## 6. INJURY

(25) Comments on the findings concerning injury were received from certain Union producers, two users in the EU and from the sole Bosnian exporting producer.

(26) To the extent that arguments have already been fully addressed in the provisional Regulation they are not repeated in this Regulation.

### 6.1. General remarks

(27) It is made clear at recitals 45 and 68 of the provisional Regulation that the term 'Union industry' in this investigation covers all Union producers. In addition the injury factors on which the finding of injury was reached are, as a rule, based on data relating to the Union industry. When data relating to the Union industry have been used, section 5.4 of the provisional Regulation identifies this by referring to 'macro data'. However, where information was not available for the entire Union industry the data of the representative sample of Union producers was used. No comments were received on these issues and thus the provisional findings are definitively confirmed.

(28) However, an erroneous statement was made in recital 34 of the provisional Regulation. This recital should have read 'All Union producers constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the "Union industry"'.

(29) In the absence of any other comments, the findings set out in recitals 52 to 56 of the provisional Regulation are hereby confirmed.

### 6.2. Union consumption

(30) In the absence of any comments, the findings set out in recitals 35 to 38 of the provisional Regulation are hereby confirmed.

### 6.3. Imports from the country concerned

(31) In the absence of any comments, the findings set out in recitals 39 to 43 of the provisional Regulation are hereby confirmed.

### 6.4. Situation of the Union industry

#### 6.4.1. Injury indicators

(32) In October 2010 an industrial incident occurred at the site of one of the Union producers, MAL. However, figures supplied by the company show that its deliveries of the product concerned had recovered by January 2011. It was therefore clear that this incident did not cause serious supply problems on the EU market.

- (33) Birac asserted that as the above-mentioned Bosnian mining company related to MAL made profits in the IP, the Commission should adjust MAL's COP and profit in the calculation of the economic indicators because MAL's profit situation was allegedly reduced as a result of high profits made by its related mining company in BiH.
- (34) With respect to the above claim it is noted that the purchases of bauxite from the related company were made at arm's length. This issue was covered during the on-the-spot verification. Because MAL purchased bauxite from both related and unrelated companies during the IP at roughly the same average prices, the Commission was satisfied that bauxite purchases were made at arm's length and therefore no adjustments are necessary to the profitability trend of MAL which was used in the calculation of the trend shown at recital 52 of the provisional Regulation. This claim was therefore rejected.
- (35) Birac also claimed that since it obtained certain raw materials directly from its production of alumina it had significant competitive advantages over the majority of the Union producers and this should be reflected in the injury margins. This argument cannot be accepted. If a company has a competitive advantage this should normally have an effect on its overall dumping calculation in terms of lower costs and hence also a lower normal value. This kind of competitive advantage has conceptually nothing to do with the injury margin. The latter examines whether a level of duty lower than the dumping margin would be sufficient to remove the injury. This claim was therefore rejected.
- (36) Union users claimed that the positive development of certain injury factors was ignored in the Commission provisional assessment (profitability, cash flow and return on investment) stating that all factors should be analysed. However in the injury assessment these positive developments are fully analysed. They were taken into account but they were not considered decisive in this case for the reasons set out in recitals 52 to 60 of the provisional Regulation. That claim was therefore rejected.
- (37) In the absence of any other comments, the findings set out in recitals 44 to 64 of the provisional Regulation are hereby confirmed.

#### 6.5. Conclusion on injury

- (38) Accordingly, and in the absence of any other comments in this respect, the conclusions reached at recitals 65 to 69 of the provisional Regulation, are hereby confirmed.

#### 7. CAUSATION

- (39) One cooperating user claimed that the causation analysis is flawed because the Commission stated that a temporary improvement was seen in certain injury factors for the IP (2009). That user did not agree with the assessment made by the Commission that the higher profitability in 2009 as compared to 2008 was the result of short-lived temporary developments which would not be repeated in 2010.
- (40) With respect to the above submission it is noted that the party's arguments are simply statements and not backed up by any new evidence. In contrast, the Commission's position is supported by information submitted by the Union producers during the investigation both during the provisional and definitive stages. The information submitted in the run up to the verification visits was also verified on the spot. The post-IP deterioration in profit margins predicted by the Commission is also confirmed by data for the entire year 2010 provided by two Union producers. That claim is therefore rejected.
- (41) Birac contested the provisional finding concerning the impact of imports from third countries. However, the Commission's analysis in the provisional Regulation (recital 77) was that Birac was the only major exporter to the EU market. There were practically no imports from other sources. Birac provides no new evidence in this respect and its claim is therefore rejected.
- (42) One cooperating user contested the analysis made in the provisional Regulation concerning the fall in consumption and quoted the cathode-ray colour television tubes anti-dumping investigation as a precedent regarding a contraction in demand<sup>(1)</sup>. It was claimed that in that investigation a contraction in demand led to the closure of the proceedings. However there is no parallel between the cathode-ray colour television tubes case and the current investigation. In the former, consumption fell dramatically because the product concerned was substituted by other products. By contrast, the fall in consumption in the current investigation is very moderate (7 % — as stated in recitals 37 and 38 of the provisional Regulation). In this respect it is also noted that the development of consumption was further elaborated in recitals 78 to 80 of the provisional Regulation, but the cooperating user concerned was not in a position to provide any evidence to rebut the Commission's findings. Those claims are therefore rejected.
- (43) In the light of the above, the findings set out in recitals 70 to 92 of the provisional Regulation, i.e. that the material injury to the Union industry was caused by the dumped imports, are hereby confirmed.

<sup>(1)</sup> Commission Decision 2006/781/EC (OJ L 316, 16.11.2006, p. 18).

## 8. UNION INTEREST

(44) One cooperating user claimed that the Commission provided misleading information regarding the importance of zeolite costs in its total costs at recital 104 of the provisional Regulation. In particular it claimed that costs of zeolite are more than the 5 % of total cost as quoted at that recital. In this respect it is noted that this party did not supply any new data to support its claim while the Commission's findings were based on verified information from the cooperating users. It is noted that the term 'total costs' used in recital 104 of the provisional Regulation includes all manufacturing costs plus SG&A expenses. In addition, the 'less than 5 %' statement is an average covering both laundry detergent and water softener products combined. Finally it should be clarified that the zeolite costs in water softener are higher than those of laundry detergent but by far the most important use relates to laundry detergent. Indeed with respect to this particular cooperating user the water softeners constituted a minor part of the turnover of its downstream products using zeolite. That claim is therefore rejected.

(45) One cooperating user challenged the finding in recital 102 of the provisional Regulation that China is a potential alternative source of supply. Bearing in mind the comments made, the Commission accepts that, although some Chinese merchandise has entered the EU market during the IP, it is unlikely that China will in the near future become a major supplier (see recital 41 above). However, given the capacity utilisation rates in the Union for the product concerned, the Commission maintains its view that there are no supply problems in respect of the product concerned. That claim is therefore rejected.

(46) One cooperating user claimed that if duties were imposed as a result of this investigation, zeolite costs would increase to such an extent that its prices for laundry detergent and water softener products would also increase thereby increasing consumer prices. This argument is based on the assumption that users will pass on price increases of zeolite as a result of an anti-dumping duty. In the first place, the Commission is of the opinion that Union producers would rather benefit from the measures by increased economies of scale and not by increasing prices (see recitals 108 and 111 of the provisional Regulation). Finally, as stated above, the proportion of costs associated with zeolite in the total cost of production of downstream products is small so any consequence of the duty, albeit unlikely, would not put into question the provisional conclusion that there are no overriding Union interest reasons against the imposition of measures. That claim is therefore rejected.

(47) One cooperating user claimed that it may switch to non-zeolite formulas in its laundry detergents which would negatively impact the Union producers of zeolite. The Union producers are aware from information on the file 'Open for Inspection by Interested Parties' that this risk to their business exists. However, no concrete

evidence exists in order to evaluate the alleged impact to the Union industry of this hypothetical switch. That claim is therefore rejected.

(48) The points made above were taken into account in the definitive stage of the investigation but do not alter its main conclusions. In the absence of any other comments, the findings set out in recitals 93 to 112 of the provisional Regulation are hereby confirmed. It is therefore concluded that no arguments have been raised to suggest that it is not in the Union interest to impose measures as a result of this investigation.

## 9. DEFINITIVE ANTI-DUMPING MEASURES

### 9.1. Injury elimination level

(49) In the absence of any comments, the findings set out in recitals 114 to 116 of the provisional Regulation are hereby confirmed.

### 9.2. Definitive measures

(50) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the dumping found. This was calculated at 28,1 %.

(51) On the basis of the above, the rate of the definitive anti-dumping duty for BiH is 28,1 %.

## 10. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(52) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of the duty definitively imposed by this Regulation.

## 11. FORM OF THE MEASURES

(53) In the course of the investigation the Bosnian exporting producer Alumina d.o.o. Zvornik, together with its related company in the Union, Kauno Tiekimas AB, located in Kaunas Lithuania, offered a price undertaking in accordance with Article 8(1) of the basic Regulation. It is noted that recently Fabrica glinice 'Birac' became a holding company and Alumina d.o.o, located in Zvornik, remained the sole exporting producer of the group.

- (54) The Commission examined the offer. The product concerned is a commodity product which only exists in one product type and specification, thus excluding a possible risk of price compensation through various product types. The investigation showed that all exports to the Union were invoiced via the related company in the Union (i.e. Kauno Tiekimas AB, Kaunas, Lithuania). This related company sells also other products produced by the Birac group. However, the market for zeolite A powder is well defined and the customers purchasing zeolite A powder would by nature not buy the other products produced by the Birac Group. Therefore, it was concluded that a risk of cross-compensation by possibly selling other products to the same clients was very low.
- (55) By Decision 2011/279/EU <sup>(1)</sup> the Commission accepted the undertaking offer from Alumina d.o.o. Zvornik and its related company Kauno Tiekimas. The Council recognises that the offer of a price undertaking eliminates the injurious effect of dumping and limits to a sufficient degree the risk of circumvention.
- (56) To further enable the Commission and the customs authorities to effectively monitor the compliance of Alumina d.o.o. Zvornik and its related company with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex; (ii) the fact that imported goods are manufactured, shipped and invoiced either directly by Alumina d.o.o. Zvornik to the first independent customer in the Union or invoiced directly by Kauno Tiekimas to the first unrelated customer in the Union and (iii) the fact that the goods declared and presented to the customs authorities correspond exactly with the description on the undertaking invoice. Where the above conditions are not met, the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.
- (57) Whenever, pursuant to Article 8(9) of the basic Regulation, the Commission withdraws its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices to be invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation.
- (58) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 56 and 57 even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.
- (59) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.
- (60) For the reasons stated above, the undertaking offered by Alumina d.o.o. Zvornik and Kauno Tiekimas is considered acceptable by the Commission. The companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance were based.
- (61) In the event of a breach or withdrawal of the undertakings, or in the event of withdrawal of acceptance of the undertakings by the Commission, the anti-dumping duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of zeolite A powder, also referred to as Zeolite NaA or Zeolite 4A powder, currently falling within CN code ex 2842 10 00 (TARIC code 2842 10 00 30) and originating in Bosnia and Herzegovina.
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 shall be 28,1 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2011/279/EU, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:
  - (a) they are manufactured, shipped and either invoiced directly by Alumina d.o.o., Zvornik, Bosnia and Herzegovina to the first independent customer in the Union or invoiced directly by the company Kauno Tiekimas AB, Kaunas, Lithuania to the first independent customer in the Union;

<sup>(1)</sup> See page 26 of this Official Journal.

(b) they are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration set out in the Annex to this Regulation; and

(c) the goods declared and presented to the customs authorities correspond exactly with the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

— whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled, or

— when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation by a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices to be invalid.

#### *Article 3*

Amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 1036/2010 on imports of zeolite A powder, currently falling within CN code ex 2842 10 00 (TARIC code 2842 10 00 30) originating in Bosnia and Herzegovina shall be definitively collected.

#### *Article 4*

This Regulation shall enter into force on the day following 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, 11 May 2011.

*For the Council*  
*The President*  
MARTONYI J.

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## ANNEX

The following elements shall be indicated in the commercial invoice accompanying the companies' sales to the Union of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Union frontier (Taric additional code xxxx or yyyy).
6. The exact description of the goods, including:
  - plain language description of the goods corresponding to the goods subject to the undertaking,
  - the company product code number (CPC),
  - TARIC code,
  - quantity (in tonnes).
7. The description of the terms of the sale, including:
  - price per tonne,
  - the applicable payment terms,
  - the applicable delivery terms,
  - total discounts and rebates.
8. Name of the company acting as an importer (i.e. the person who declares the goods for customs clearance) in the Union to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by Alumina d.o.o., Zvornik and its related company Kauno Tiekimas AB, and accepted by the European Commission by Decision 2011/279/EU. I declare that the information provided in this invoice is complete and correct.'

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