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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.8.2008
COM(2008) 531 final

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ("the basic Regulation")¹ in the proceeding concerning imports of certain sweetcorn originating in Thailand.

- **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**

Council Regulation (EC) No 682/2007² imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand.

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

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The company concerned and the Community industry have been informed of the findings of the examination and have had the opportunity to submit their comments.

- **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 make provision for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 159, 20.6.2007, p. 14.

- **Summary of the proposed action**

By Regulation (EC) No 682/2007, the Council imposed a definitive anti-dumping duty on imports of prepared or preserved sweetcorn in kernels originating in Thailand.

During the investigation which led to the imposition of measures, given the large number of exporting producers of the product concerned in Thailand, sampling was applied.

16 companies applied for the sample; four were selected. One of the 12 companies not selected in the sample, Kuiburi, nevertheless submitted a questionnaire reply as it sought an individual determination. The company was not individually examined and, after the imposition of definitive measures, it lodged an application to the Court of First Instance.

Following the company's application to the CFI raised by Kuiburi, the Commission decided to reopen the investigation in order to establish an individual determination for Kuiburi. The attached proposal is the result of that reopening.

It is therefore proposed that the Council adopts the attached proposal for a Regulation, which sets the individual duty rate of Kuiburi. The Regulation should be published in the *Official Journal of the European Union*.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ("the basic Regulation").

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Council Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, 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 instruments: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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amending Council Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand

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 (the 'basic Regulation')³, and in particular Article 9 thereof,

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

Whereas:

A. MEASURES IN FORCE

- (1) By Regulation (EC) No 682/2007⁴ (the 'definitive Regulation'), the Council imposed a definitive anti-dumping duty on imports into the Community of certain prepared or preserved sweetcorn in kernels, originating in Thailand ('the product concerned'), normally declared within CN codes ex 2001 90 30 and ex 2005 80 00. Given the large number of co-operating parties, a sample of Thai exporting producers was selected during the investigation which led to the imposition of the measures.
- (2) The sampled companies were attributed the individual duty rates established during the investigation. A countrywide duty of 12,9 %, based on the weighted average dumping margin of the sampled parties, was imposed on all other companies.

B. CURRENT INVESTIGATION

- (3) After the imposition of definitive measures on imports of sweetcorn originating in Thailand, on 30 August 2007, Kuiburi Fruit Canning Co., Limited ('Kuiburi' or 'the company'), an exporting producer which was not selected in the sample but which had provided the Commission with a full questionnaire reply and had requested an individual examination, submitted an application to the Court of First Instance. In that application, the company claimed that it should have been granted an individual examination.

³ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁴ OJ L 159, 20.6.2007, p. 14.

- (4) Without prejudice to the position which the Community institutions will take should that case be pursued by the applicant, the Commission decided on its own initiative to initiate a partial reopening of the anti-dumping investigation⁵. The reopening was limited in scope to the examination of dumping as far as Kuiburi is concerned.
- (5) The Commission officially advised Kuiburi, the representatives of the exporting country and the Community industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (6) The Commission sought to verify the information provided by Kuiburi which it deemed necessary for the determination of dumping and a verification visit was carried out at the premises of the company.
- (7) As set out in the definitive Regulation, the investigation of dumping covered the period from 1 January 2005 to 31 December 2005 ('the investigation period' or 'IP').

C. FINDINGS

1. Dumping

- (8) The methodology used for the calculation of dumping was the same as that applied for the sampled companies, as described in recital (21)-(36) of Regulation (EC) No 1888/2006⁶ (the 'provisional Regulation'), and confirmed in the definitive Regulation.

Normal value

- (9) For the determination of normal value the Commission first established whether the total domestic sales of the like product were representative in comparison with the company's total export sales to the Community. In accordance with Article 2(2), first sentence, of the basic Regulation, the domestic sales of the like product are considered to be representative if the company's domestic sales volume exceeds 5 % of its total export sales to the Community.
- (10) It was established that the like product was not sold at all on the domestic market. Therefore, normal value had to be constructed pursuant to Article 2(3) of the basic Regulation. Normal value was constructed by adding to the cost of manufacturing of each type exported to the Community, corrected where appropriate, a reasonable amount for selling, general and administrative (SG&A) expenses and profit. Like in the original investigation, it was decided not to establish the SG&A expenses and profit on the basis of Article 2(6)(a) of the basic Regulation, since only one company which had been included in the sample had representative domestic sales of the like product. Therefore, also in conformity with what was done in the original investigation, the SG&A expenses and profit were determined in accordance with Article 2(6)(b) as Kuiburi had representative sales, in the ordinary course of trade, of the same general category of products.

⁵ OJ C 7, 12.1.2008, p. 21.

⁶ OJ L 364, 20.12.2006, p. 68.

- (11) The costs of manufacturing and SG&A expenses reported were found to be understated and were corrected before being used in constructing normal value.
- (12) Following the disclosure of the essential facts and considerations forming the basis of the findings in this proceeding, Kuiburi claimed that in constructing normal value, the amounts for SG&A expenses and profit should be established pursuant to Article 2(6)(c) of the basic Regulation. The company argued that Article 2(6)(b) could not be used as the domestic sales of other products (i) included non-canned products and (ii) were in any case not representative. As concerns the first argument, the definition of the product concerned does not include any specific receptacle type and therefore is not limited to products packed in cans. By analogy, the same applies to the same general category of products. Concerning the second argument, it is to be noted that the 5 % threshold referred to in Article 2(2) of the basic Regulation serves to determine the representativity of domestic sales of the like product (as compared to sales of the product concerned to the Community). It is not required, for the application of Article 2(6)(b), that sales of the same general category of products represent more than that 5 % threshold. In any event, the company's sales of the same general category of products as compared to the sales of the product concerned to the Community, are very significant and, therefore, representative. In view of the above, the company's arguments cannot be accepted and it is confirmed that SG&A expenses and profit are established pursuant to Article 2(6)(b) of the basic Regulation.
- (13) Kuiburi further submitted that if SG&A and profit were established pursuant to Article 2(6)(b) of the basic Regulation, a level of trade adjustment on the profit used for the construction of normal value would have to be made as it sells retailer branded products to the EC and a mix of own branded and retailer branded products domestically. In this respect it is important to note that Kuiburi had allocated the cost of sales on the basis of turnover. Consequently, the profit and SG&A amounted to the same combined level in the case of sales of all product types to all markets and the profit figures reported only reflected some slight variation in SG&A. It could therefore not be established that the reported figures reflected differences in the level of trade. As a consequence, no level of trade adjustment on the profit is warranted and Kuiburi's argument is dismissed.

Export price

- (14) All sales of the company were made directly to unrelated customers in the Community. For those sales, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of prices actually paid or payable by these independent customers in the Community.

Comparison

- (15) The comparison between normal value and export price was made on an ex-works basis. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect price comparability. Allowances for differences in transport costs, handling costs, commissions, and credit costs were granted where applicable and justified.
- (16) The SG&A used to construct normal value pursuant to the methodology set out above, included costs for commissions. Therefore, albeit that no claim had been made in this

regard, an ex-officio adjustment to the normal value pursuant to Article 2(10)(e) was made to reduce the SG&A by the amount of the costs incurred in respect of commissions.

Dumping margin

- (17) Kuiburi's dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.
- (18) The comparison showed the existence of dumping. The weighted average dumping margin established for the company, expressed as a percentage of the CIF Community-frontier price, amounts to 14,3 %.

2. Injury elimination level

- (19) In accordance with Article 9(4) of the basic Regulation, the level of the anti-dumping measure should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margin found. The calculation of the non-injurious price has been described in recitals (120)-(122) of the provisional Regulation.
- (20) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the total CIF Community-frontier price.
- (21) The above price comparison showed an injury margin of 17,5 %.

D. MODIFICATION OF THE LIST OF COMPANIES BENEFITING FROM INDIVIDUAL DUTY RATES

- (22) In the light of the results of the investigation, it is considered that a definitive anti-dumping duty should be imposed on exports of the product concerned by the company at the level of the dumping margin found, but, in accordance with Article 9(4) of the basic Regulation, should not be higher than the injury margin established for Kuiburi and presented in recital (21) above.
- (23) Accordingly, the anti-dumping duty applicable to the CIF Community-frontier price shall be 14,3 %. Since, pursuant to recital (57) of Council Regulation (EC) No 682/2007, the duty for the companies non cooperating in the investigation should be set at the level of the highest duty to be imposed on the companies cooperating in the investigation, that duty is now set at 14,3 %. However, since the reopening of the investigation did not have as its aim to include Kuiburi in the sample, but to perform an individual examination of Kuiburi on the basis of Article 17 paragraph 3 of the basic Regulation, it would not be appropriate to recalculate the duty for the manufacturers listed in Annex I.
- (24) Kuiburi and the Community Industry have been informed of the findings of the investigation and have had the opportunity to submit their comments,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Council Regulation (EC) No 682/2007 shall be replaced by the following:

'2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-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 (%)	TARIC additional code
Karn Corn Co., Ltd., 68 Moo 7 Tambol Saentor, Thamaka, Kanchanaburi 71130, Thailand	3,1	A789
Kuiburi Fruit Canning Co., Ltd., 236 Krung Thon Muang Kaew Building, Sirindhorn Rd., Bangplad, Bangkok 10700, Thailand	14,3	A890
Malee Sampran Public Co., Ltd., Abico Bldg. 401/1 Phaholyothin Rd., Lumlookka, Pathumthani 12130, Thailand	12,8	A790
River Kwai International Food Industry Co., Ltd., 52 Thaniya Plaza, 21st. Floor, Silom Rd., Bangrak, Bangkok 10500, Thailand	12,8	A791
Sun Sweet Co., Ltd., 9 M. 1, Sanpatong, Chiangmai, Thailand 50120	11,1	A792
Manufacturers listed in Annex I	12,9	A793
All other companies	14,3	A999'

Article 2

Annex I of Council Regulation (EC) No 682/2007 shall be replaced by the following:

Name	Address
Agro-on (Thailand) Co., Ltd.	50/499-500 Moo 6, Baan Mai, Pakkret, Monthaburi 11120, Thailand
B.N.H. Canning Co., Ltd.	425/6-7 Sathorn Place Bldg., Klongtonsai, Klongsan, Bangkok 10600, Thailand
Boonsith Enterprise Co., Ltd.	7/4 M.2, Soi Chomthong 13, Chomthong

	Rd., Chomthong, Bangkok 10150, Thailand
Erawan Food Public Company Limited	Panjathani Tower 16th floor, 127/21 Nonsee Rd., Chongnonsee, Yannawa, Bangkok 10120, Thailand
Great Oriental Food Products Co., Ltd.	888/127 Panuch Village, Soi Thanaphol 2, Samsen-Nok, Huaykwang, Bangkok 10310, Thailand
Lampang Food Products Co., Ltd.	22K Building, Soi Sukhumvit 35, Klongton Nua, Wattana, Bangkok 10110, Thailand
O.V. International Import-Export Co., Ltd.	121/320 Soi Ekachai 66/6, Bangborn, Bangkok 10500, Thailand
Pan Inter Foods Co., Ltd.	400 Sunphavuth Rd., Bangna, Bangkok 10260, Thailand
Siam Food Products Public Co., Ltd.	3195/14 Rama IV Rd., Vibulthani Tower 1, 9th Fl., Klong Toey, Bangkok, 10110, Thailand
Viriyah Food Processing Co., Ltd.	100/48 Vongvanij B Bldg, 18th Fl, Praram 9 Rd., Huay Kwang, Bangkok 10310, Thailand
Vita Food Factory (1989) Ltd.	89 Arunammarin Rd., Banyikhan, Bangplad, Bangkok 10700, Thailand'

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
The President