

DECISIONS

COMMISSION DECISION

of 13 May 2011

accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of zeolite A powder originating in Bosnia and Herzegovina

(2011/279/EU)

THE EUROPEAN COMMISSION,

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⁽¹⁾ (the 'basic Regulation'), and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) By Regulation (EU) No 1036/2010⁽²⁾, the Commission imposed a provisional anti-dumping duty on imports into the Union of zeolite A powder originating in Bosnia and Herzegovina.
- (2) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Union interest. The investigation confirmed the provisional findings of injurious dumping relating to these imports.
- (3) The definitive findings and conclusions of the investigation are set out in Council Regulation (EU) No 464

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⁽³⁾ (the 'product concerned').

B. UNDERTAKING

- (4) Subsequent to the adoption of provisional anti-dumping measures, the cooperating exporting producer in Bosnia and Herzegovina, Alumina d.o.o. Zvornik, together with its related company in the Union, AB Kauno Tiekimas filialas 'Kauno Tiekimas', located in Kaunas, Lithuania, offered a price undertaking in accordance with Article 8(1) of the basic Regulation. In this undertaking offer, both companies offered to sell the product concerned at or above price levels which eliminate the injurious effects of dumping found during the investigation.
- (5) The minimum import price (MIP) offer from the companies was based on the normal value calculated for the investigation period.
- (6) The undertaking offer also contained the provision that the sales of the product concerned would be shipped directly from Alumina d.o.o. Zvornik to the first independent customer in the Union and invoiced either from Alumina d.o.o. Zvornik to the first independent customer in the Union or invoiced directly by Kauno. Furthermore, the companies offered to establish a link between the transfer invoices concerning the product concerned issued by Alumina d.o.o. Zvornik to Kauno Tiekimas and the resale invoices to the first independent customer in the Union by Kauno Tiekimas.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 298, 16.11.2010, p. 27.

⁽³⁾ See page 1 of this Official Journal.

- (7) Both companies also agreed to undertake to provide the Commission with regular and detailed information concerning their sales to the Union, allowing for the undertaking to be monitored effectively by the Commission.

since the Commission ensured that the proposed MIP is in line with its administrative practices followed with respect to undertaking offers.

C. COMMENTS OF PARTIES AND ACCEPTANCE OF THE UNDERTAKING

- (8) The Union industry indicated that it disagrees with the acceptance of an undertaking offer, in particular with a fixed MIP. It was argued that prices of zeolite A powder depend on cost of raw materials, especially caustic soda, and energy and that the market prices are expected to rise. In this respect it is noted that available information concerning the evolution of the cost of production (which includes raw materials and energy costs) confirms that the evolution was linear. The information gathered throughout the investigation suggest that the prices of main raw materials did not change dramatically with exception to the caustic soda in the mid-2009, however this trend was reversed towards the end of 2009 and prices returned to long-time average. Furthermore, energy is not a raw material input and could not be linked with a MIP. The Union industry disputed whether the Bosnian exporting producer and its related company in the Union could be considered trustworthy, account taken of their financial situation. Nevertheless, no concrete and verifiable information was provided to corroborate this claim. The trustworthiness of the aforesaid parties was also questioned since it was argued that they declared on importation the product concerned under various CN codes. In this respect, it is noted that the product concerned is currently falling within CN code ex 2842 10 00 and that the customs declaration is not carried out by the companies offering the undertaking. It was also argued that the Bosnian exporting producer may sell other products in the Union, thus, increasing the danger of cross compensation and that the related company in the Union may provide compensation to its Union clients when selling the product under MIP. In this respect, it is noted that the Commission has not established any systemic danger of cross compensation, in particular as the market and clients for zeolite A powder is well defined. Indeed, the clients that purchase zeolite A powder do not purchase any other products produced by Alumina d.o.o. Zvornik since they operate in completely different markets than the customers of the other products. In this respect, it is emphasised that all parties subject to this undertaking offer will be closely monitored. The Union industry also submitted that the undertaking offer was not submitted within the time period foreseen under the basic Regulation. In this respect, it is noted that the offer was indeed submitted within the time frame period foreseen under Article 8(2) of the basic Regulation. The Union industry submitted some additional comments concerning the calculation method of the MIP and the monitoring of such undertaking, which were however not considered pertinent or justified

- (9) In view of the above, the undertaking offered by the two companies is acceptable.

- (10) In order to enable the Commission to effectively monitor the companies' compliance with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional on (i) the presentation of an undertaking invoice containing at least the elements listed in the Annex to Regulation (EU) No 464; (ii) the fact that the imported goods are manufactured by Alumina d.o.o. Zvornik and shipped directly by it to the first independent customer in the Union and invoiced to the first independent customer in the Union either directly by Alumina d.o.o. Zvornik or Kauno Tiekimas and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty shall instead be payable.

- (11) To ensure that the undertaking is respected, importers have been made aware by the Council Regulation mentioned above in recital 3 that the non-fulfilment of the conditions provided for by that Regulation, or the withdrawal by the Commission of the acceptance of the undertaking, may lead to a customs debt being incurred for the relevant transactions.

- (12) In the event of a breach or withdrawal of the undertaking or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply pursuant to Article 8(9) of the basic Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The undertaking offered by the exporting producer, together with its related importer in the Union mentioned below in connection with the anti-dumping proceeding concerning imports of zeolite A powder originating in Bosnia and Herzegovina is hereby accepted.

Country	Company	Taric Additional Code
Bosnia and Herzegovina	Manufactured, shipped and invoiced directly by Alumina d.o.o., Zvornik, Bosnia and Herzegovina to the first independent customer in the Union	B115
Bosnia and Herzegovina	Manufactured and shipped directly by Alumina d.o.o., Zvornik, Bosnia and Herzegovina to the first independent customer in the Union and invoiced directly by AB Kauno Tiekimas filialas, Kaunas, Lithuania to the first independent customer in the Union	B116

Article 2

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

Done at Brussels, 13 May 2011.

For the Commission
The President
José Manuel BARROSO
