II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 307/2014

of 24 March 2014

amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant of Article 11(3) of Regulation (EC) No 1225/2009

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 [1] ('the basic Regulation'), and in particular 11(3) thereof,

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

Whereas:

1. PROCEDURE

1. Measures in force

(1) Following an investigation ('the original investigation'), the Council, by Regulation (EC) No 682/2007 [2], imposed a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels currently falling within CN codes ex 2001 90 30 and ex 2005 80 00 originating in Thailand. The measures took the form of an *ad valorem* duty ranging between 3,1 % and 12,9 %.

(2) By Regulation (EC) No 954/2008 [3], the Council amended the measures in force with regard to one exporting producer and consequently the rate applicable to 'all other companies', thereafter ranging between 3,1 % and 14,3 %.

(3) Following an expiry review pursuant to Article 11(2) of the basic Regulation ('the expiry review') the Council, by Implementing Regulation (EU) No 875/2013 [4], maintained the duty ranging between 3,1 % and 14,3 %.

2. Request for a review

(4) The European Commission ('the Commission') received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. This request was lodged by River Kwai International Food Industry Co. Ltd ('the applicant'), an exporting producer from Thailand.

(5) The request was limited in scope to the examination of dumping as far as the applicant was concerned.

(6) In its request, the applicant provided *prima facie* evidence that, as far as the dumping by the applicant is concerned, the circumstances on the basis of which the measures in force were imposed have changed and that these changes were of a lasting nature.

(7) In particular, the applicant claimed that the changed circumstances relate to changes in the product range it commercialises which have a direct impact on the cost of production thereof. A comparison of its domestic prices with its export prices to the Union indicated that the dumping margin appeared to be lower than the current level of measures.

3. Initiation of a partial interim review

(8) The Commission determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review limited to

[1] OJ L 343, 22.12.2009, p. 51.

[2] Council Regulation (EC) No 682/2007 of 18 June 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 (OJ L 159, 20.6.2007, p. 14).

[3] Council Regulation (EC) No 954/2008 of 25 September 2008 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 (OJ L 260, 30.9.2008, p. 1).

[4] Council Implementing Regulation (EU) No 875/2013 of 2 September 2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 244, 13.9.2013, p. 1).

the examination of dumping as far as the applicant is concerned. On this basis, it announced by a notice published in the *Official Journal of the European Union* [1] on 14 February 2013 ('the notice of initiation'), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation.

4. **Review investigation period**

(9) The investigation of dumping covered the period from 1 July 2011 to 31 December 2012 ('the review investigation period' or 'RIP').

5. **Parties concerned by the investigation**

(10) The Commission officially advised the applicant, representatives of the exporting country, as well as the association of Union producers (Association Européenne des Transformateurs de Maïs Doux 'AETMD') of the initiation of the interim review.

(11) 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.

(12) The written comments submitted by AETMD were considered and, where appropriate, taken into account.

(13) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

(14) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out a verification visit at the premises of the applicant in Thailand in Bangkok and Kanchanaburi.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(15) The product under this review is the same as that defined in the original investigation and in the expiry review, namely sweetcorn *(Zea mays* var. *saccharata)* in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30, and sweetcorn *(Zea mays* var. *saccharata)* in kernels, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00, originating in Thailand.

2. **Like product**

(16) As established in the original investigation and confirmed in the expiry review, sweetcorn produced and sold in the Union and sweetcorn produced and sold in Thailand was found to have essentially the same physical and chemical characteristics and the same basic uses as sweetcorn produced in Thailand and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

1. **Determination of Normal Value**

(17) In accordance with the first sentence of Article 2(2) of the basic Regulation, the Commission first established whether the applicant's total domestic sales of the like product during the RIP were representative. The domestic sales are representative if the total domestic sales volume of the like product represented at least 5 % of the total export sales volume of the product concerned to the Union during the RIP.

(18) Total domestic sales of the like product were found to be representative.

(19) The Commission subsequently identified the product types sold domestically that were identical or directly comparable with the types sold for export to the Union.

(20) For each of those product types, the Commission established whether domestic sales were sufficiently representative in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the total volume of export sales to the Union of the identical or comparable product type.

(21) The Commission established that, for all the product types sold for export to the Union, the applicant's domestic sales were made in representative quantities.

(22) Next, the Commission defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales for the calculation of the normal value in accordance with Article 2(4) of the basic Regulation.

(23) The normal value is based on the actual domestic price per product type irrespective of whether the sales are profitable or not, if:

— the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type, and

— the weighted average sales price of that product type is equal to or higher than the unit cost of production.

[1] OJ C 42, 14.2.2013, p. 7.

(24) The Commission's analysis of domestic sales showed that more than 90 % of domestic sales were profitable and that the weighted average sales price was higher than the unit cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the RIP.

2. **Determination of the Export price**

(25) All sales by the applicant for export to the Union were made directly to unrelated customers in the Union or Thailand. The export price is therefore established on the basis of prices paid or payable, in accordance with Article 2(8) of the basic Regulation.

3. **Comparison**

(26) The Commission compared the normal value and the export price on an ex-works basis.

(27) Where justified, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(28) Adjustments for differences in transport costs, insurance costs, handling and loading costs, packaging, commissions, credit costs and bank charges were granted when applicable and duly justified.

(29) The applicant claimed an allowance under Article 2(10)(d) of the basic Regulation for a difference in brand value when sold under own brand on the domestic market and when sold under own brand on the Union market. Allegedly, the brand value of the applicant's own brand is higher on the Thai market than on the Union market. To justify its claim the applicant made reference to the adjustment made in the original investigation and in the expiry review.

(30) However, the applicant's situation in this interim review differs from the situation of other exporting producers for which the adjustment was granted in the original investigation and the expiry review. The adjustment made in the original investigation and in the expiry review specifically refers to exporting producers whose sales on the domestic market are carrying their own brand whereas sales to the Union are sold under retailer's brand. In this interim review, the applicant's sales on both the domestic market and the Union market carry its own brand. Moreover, the adjustments made in the original investigation and the expiry review were made to the profit margin when constructing the normal value in accordance with Article 2(6) of the basic Regulation. However, in this interim review, the normal value is based on applicant's actual domestic prices.

(31) Concerning the alleged lack of brand value when selling to the Union market, the importer of the product concerned carrying the applicant's brand is specialised in imports of branded food products, in particular from Asia. The applicant failed to clarify or provide evidence why sales to that particular importer would carry a lower value than the brand value on the applicant's domestic market. Consequently, the Commission concluded that the applicant has not demonstrated that the alleged difference in brand value has an impact on prices or price comparability.

(32) The applicant also claimed the same adjustment under Article 2(10)(k) of the basic Regulation. However, since the applicant has not demonstrated that the alleged difference has an impact on prices or price comparability, the allowance could not be accepted under this provision either.

(33) The claim for an allowance under Article 2(10)(d) and (k) is therefore rejected.

(34) With reference to Article 2(10)(b) of the basic Regulation, the applicant also claimed an allowance for a government-paid export tax rebate. An amount is paid to the applicant by the government when the product concerned is sold for export, including to the Union market.

(35) The applicant could demonstrate that an amount equivalent to less than 0,5 % of the invoice value is paid to the applicant for exports to the Union market. However, in accordance with Article 2(10)(b) of the basic Regulation, an adjustment is to be made to the normal value if the conditions set in that Article are met, and not to the export price as claimed by the applicant. Furthermore, the investigation showed that no direct link could be established between the payment received by the applicant in respect of the product concerned when exported to the Union and import charges for the raw materials physically incorporated therein.

(36) The applicant also claimed the same adjustment under Article 2(10)(k). However, since it failed to demonstrate any link between the export tax rebate and the pricing of the exported product concerned, the claim could not be accepted.

(37) The claim for an allowance for export tax rebate under Article 2(10)(b) and (k) is therefore rejected.

4. **Dumping during the RIP**

(38) The weighted average normal value of each type of the product concerned exported to the Union was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

(39) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was found to be 3,6 %.

4. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(40) In accordance with Article 11(3) of the basic Regulation, the Commission examined whether the circumstances on the basis of which the current dumping margin was based have changed and whether that change was of a lasting nature.

(41) In its request for a review, the applicant had referred to changes in the product range it commercialises which would have a direct impact on the cost of production thereof. The investigation has confirmed that, due to a corporate restructuring, the applicant no longer produces and sells certain other products as compared to the original investigation period, and that this change has had an impact on the cost of production for the product concerned.

(42) AETMD has commented that the restructuring carried out by the applicant might not be of a lasting nature, as it could easily be reversed.

(43) It is indeed possible that the management of the applicant, if it so wishes, would be in a position to reverse the restructuring. However, there is no evidence suggesting that the applicant's decision to restructure and to streamline the commercialisation of the group's products between the group's companies would not be of a lasting nature. In addition, the restructuring already took place by 2009, which indicates that the new corporate structure is of a lasting nature.

(44) Following disclosure, AETMD reiterated its claim that the change on the basis of which the review was initiated could not be considered as of a lasting nature. More specifically, it questioned the impact on the cost of production due to the internal reorganisation within the group, claiming that costs within the group can simply be reallocated in order to lower the normal value. For this reason, the new cost of production could not be considered as being of a lasting nature. AETMD also noted that the subsidiary responsible for production and sales of fresh products shares the same address as the applicant. AETMD claimed that this is another indication that the reorganisation is not profound and lasting.

(45) In response to AETMD's claims set out in recital 44, the applicant stressed that the reorganisation also entailed an improved cost accounting system whereby bottlenecks were identified and resolved in order to optimise production and to reduce manufacturing costs. The applicant also stressed that any reversal of the 2009 reorganisation at this stage would be a very complex process as the mother-company to the applicant, Agripure Holding PLC, is listed on the Thai Stock Exchange.

(46) The risk for a potential reversal of the applicant's reorganisation has already been addressed in recital 43.

(47) Moreover, for the purpose of verifying the accuracy of the claims in the request for the initiation of this review, the Commission made a comparison of the cost of production for the product types exported to the Union during the original investigation (i.e. before the applicant's reorganisation in 2009) and during the RIP. That comparison confirmed that the manufacturing costs per unit have changed to a significant degree. The change in manufacturing costs per unit identified goes beyond a simple reallocation of costs and is due to a real decrease in indirect costs of production such as manufacturing overheads and labour costs.

(48) As to the question of the applicant and its subsidiary sharing the same administrative address, this is a common business practice. Moreover, during the verification visit to the applicant's premises, the Commission noted that the production lines and storage of finished goods within the premises were dedicated to sweetcorn production; there was no visible trace of the production and storage of the fresh products sold by the subsidiary.

(49) Having regard to the arguments of AETMD and of the applicant, and having identified a de facto decrease in the cost of manufacturing per unit between the original investigation and the RIP, the argument put forward by AETMD has to be rejected.

(50) AETMD has also submitted that the applicant planned to increase its production capacity during 2013 by some 40 %. According to AETMD, this fact would go against the applicant's claim that the new, revised cost of production (which followed the restructuring) would be of a lasting nature.

(51) The investigation indeed confirmed that the applicant is in the process of increasing its production capacity. The impact of the increased capacity has been one of the factors on the basis of which it was concluded in the expiry review that there was a risk for continuation of dumping ([1]).

(52) Following disclosure, AETMD reiterated the claim that the investment into new production capacity will necessarily have an effect on the cost of production and therefore, the prevailing cost of production against which the domestic prices were compared in this review (see recital 24) is not of a lasting nature. In particular, AETMD made a calculation based on available sources on the basis of which it concluded that the total costs would increase due to increased depreciation by some 10 % as compared to the current costs.

(53) The applicant did not contradict AETMD's claim concerning increased depreciation costs per se, but stressed that these increased costs of depreciation are to be offset by increases in total revenues (through increased sales) and by decreases in other costs as a result of increased automation.

(54) As mentioned in recital 51, the applicant is indeed in the process of investing in new production facilities. Investments in new facilities may entail increases of costs for depreciation. On the other hand, and as the applicant pointed out in response to AETMD's comment, new production facilities may also entail changes (as compared to existing production lines) such as the level of automation. These changes should have a direct decreasing effect on the labour and energy costs and could offset the increases for the cost of depreciation.

(55) On balance, it is concluded that the overall impact on the cost of production per unit produced cannot be measured until the new installations have been inaugurated and any additional costs reflected in the accounts.

(56) Nevertheless, and having regard to the objective of the investment (increased efficiency and competitiveness, to reduce manufacturing costs per unit), it is expected that at least in the medium to long term there will be no significant increase in the cost of production per unit. In such circumstances it is expected that the normal value will still be based on domestic prices as in this review. The argument brought forward by AETMD must therefore be rejected.

(57) Following disclosure, AETMD also questioned the lasting nature of the new dumping margin. It argued that the basis of the export prices used for the calculation of the dumping margin were not representative. More specifically, it argued that:

(a) the number of tonnes exported during the RIP was too small to be considered representative; and

(b) with reference to recital 29, the fact that the export transactions of own-branded products made up almost half of all exports during the RIP, the export prices should be deemed unrepresentative. AETMD considered that, should the proposed decrease of measures enter into force, the major portion of exports to the Union are more likely to be of retailers' brand carrying lower export prices ([2]).

(58) Due to the fact that the quantities exported to the Union were not significant, the Commission itself ascertained that the applicant's prices paid or payable for exports to the Union were representative by comparing them with the applicant's prices paid or payable for exports to other third countries. On this basis, it was concluded that the prices charged to customers in the Union were consistent with those charged to customers in other export markets.

(59) The existence of different market segments, the own-brand and the retailers' brand, have been acknowledged during the course of earlier investigations ([3]). It constitutes one important part of the definition of different product types within the scope of the product concerned. On this basis, exports of own-brand products have been compared with domestic sales of own-brand products and export sales of retailers' brand have been compared with domestic sales of retailers' brand.

(60) The claim by AETMD that future exports will mainly be constituted by retailers' brand is speculative, not supported by evidence and as such is insufficient to put into question the representativity of the exports of own-brand products during the RIP. The claim by AETMD is therefore rejected.

(61) AETMD also claimed that the decrease of the duty to a lower level could lead to the risk for circumvention of the measures.

(62) It is recalled that the duties in force are already differentiated between the Thai exporting producers. Thus, the risk for circumvention (i.e. using the TARIC additional code with lower duties) has been present since the introduction of the original measures. The lower duty for one of these exporting producers does not per se increase the risk of circumvention from Thailand as a whole.

([1]) See recitals 49 to 75 of the expiry review.

([2]) See recital 86 of the expiry review.

([3]) See recital 85 of the expiry review.

(63) Moreover, should information become available suggesting that the duties are undermined by way of circumvention, an investigation can be initiated as appropriate provided that conditions set in Article 13 of the basic Regulation are met.

(64) AETMD also stated that the applicant may have artificially increased the export prices to the Union by way of cross-compensation with parallel sales of other products at artificially low prices.

(65) As indicated in recital 58, export prices to the Union of the product concerned were in line with those to third countries. Thus, there are no indications that export prices to the Union were artificially high during the RIP, and the argument is therefore rejected.

5. **ANTI-DUMPING MEASURES**

(66) In light of the results of the investigation, the Commission considers it appropriate to amend the anti-dumping duty applicable to imports of the product concerned from River Kwai International Food Industry Co., Ltd.

(67) Moreover, and upon request from the applicant, its address in Thailand is also changed.

6. **DISCLOSURE**

(68) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment to Implementing Regulation (EU) No 875/2013.

(69) Following disclosure, the Thai government argued that the average duty rate for cooperating non-sampled exporters should also be revised in order to take account of the findings of this partial interim review. It should be noted that this claim goes beyond the limited scope of this review which aims only at adjusting the level of the existing anti-dumping duty rate for the applicant. Any request to amend the level of the anti-dumping duty rates following an alleged change in circumstances should be presented pursuant to Article 11(3) of the basic Regulation. Therefore, this claim has to be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning River Kwai International Food Industry Co., Ltd in the table of Article 1(2) of Implementing Regulation (EU) No 875/2013 is hereby replaced by the following:

Company	Anti-Dumping duty (%)	TARIC Additional Code
'River Kwai International Food Industry Co., Ltd, 99 Moo 1 Thanamtuen Khaupoon Road Kaengsian, Muang, Kanchanaburi 71000 Thailand	3,6	A791'

Article 2

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, 24 March 2014.

For the Council
The President
A. TSAFTARIS