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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)

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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

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 [1] (the 'basic Regulation') and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 28 March 2006, the Commission published a notice [2] initiating an anti-dumping proceeding on imports into the Community of certain prepared or preserved sweetcorn in kernels originating in Thailand. On 20 December 2006, the Commission, by Regulation (EC) No 1888/2006 [3] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of the same product.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. A meeting pursuant to Article 6(6) of the basic Regulation among one exporting producer, an Association of Thai producers, the Thai Government and the Community producers took place on 9 February 2007 at the Commission premises. The meeting was devoted to the issue of competition on the Community market for sweetcorn.

(3) The Commission continued to seek and verify all information it deemed necessary for the definitive findings.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand and the definitive collection of the amounts secured by way of the provisional duty. Parties were also granted a period within which to make representations subsequent to the disclosure of the essential facts and considerations on the basis of which definitive measures are imposed.

(5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

(6) It is recalled that the investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 ('investi-

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 75, 28.3.2006, p. 6.
[3] OJ L 364, 20.12.2006, p. 68.

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gation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2002 to 31 December 2005 (period considered). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments concerning the product concerned and like product, recitals 13 to 15 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. Sampling and individual examination

(8) A number of exporters and an association of Thai producers raised objections to the sampling and individual examination assessment described in recitals 16 to 20 of the provisional Regulation. In particular, it was claimed that the sample was not representative since the Commission disregarded other factors such as the size of the companies and their geographical location. Furthermore, it was claimed that it would not have been unduly burdensome to investigate more companies than the four sampled.

(9) As explained in recitals 16 to 18 of the provisional Regulation, the Commission considered that in order to reach the highest possible representativeness of the sample taking into account the time limits of the investigation, it was appropriate to include only four companies in the sample since (i) this allowed coverage of a large volume of exports and (ii) it was feasible to investigate these four companies within the time available. Article 17 of the basic Regulation does not specify any threshold beyond which the number of exporters would be considered so large as to warrant sampling, neither does it provide a precise indication on the appropriate number of parties to be included in the sample. As for the latter, the Commission itself has to judge what is feasible to investigate within the given time limit while ensuring that the sample should cover as large a part as possible of the exports in question. In this respect, the sample selected covered 52 % of the total Thai exports during the investigation period, which indeed is considered as highly representative on a volume basis.

(10) In accordance with Article 17(1) of the basic Regulation, the criteria applied for the selection of the sample was the largest representative volume of exports from Thailand into the Community that could reasonably be investigated within the time available. In view of the high representativity of the selected sample in terms of volume, it was not considered necessary to examine other factors such as the size of the companies or their geographical location.

(11) As already mentioned in recital 20 of the provisional Regulation, to investigate more companies would have rendered the investigation unduly burdensome and would have prevented completion of the investigation in good time.

(12) The claims raised by some parties concerning recitals 16 to 20 of the provisional Regulation are therefore rejected and those recitals are hereby confirmed.

2. Normal value

(13) One exporting producer claimed that a number of mathematical errors had been made in its normal value calculation. These

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claims were cross-checked and it was found that no errors had been made.

(14) In the absence of any other comments in this respect, recitals 21 to 32 of the provisional Regulation are hereby confirmed.

3. **Export Price**

(15) Following the provisional disclosure, one exporting producer contested the findings in recital 34 of the provisional Regulation. This party claimed that all export sales of the company, including its sales of purchased product manufactured by other independent producers, should have been taken into account. This party claimed that purchased finished products should be regarded as originating from its own production as it was alleged that they were manufactured in the framework of a tolling system.

(16) In this context, it is to be noted that only products produced by the exporting producer in question can be considered when determining individual dumping margins. If an exporting producer is partly purchasing product for further resale to the Community it is, in fact, in a position similar to that of an agent or trader in respect of those purchases and such resales cannot be considered when establishing its individual dumping margin.

(17) In the investigation it was established that the exporting producer in question was actually buying from other producers part of the goods sold to the Community. It was further found that this exporter always paid for finished products and that such transactions were recorded in its accounting system as purchases of finished goods. No contractual or other evidence (e.g. so called 'tolling' agreement) was shown to prove that the goods were from the outset owned by the exporting producer and that the activity of the other companies was limited to a simple transformation of the products in question.

(18) Following definitive disclosure, the exporting producer in question reiterated its claims, underlining that it should be considered as a co-producer of the product purchased from other producers. However, given that the ownership of the goods produced by other parties was transferred to the exporting producer concerned only after completion of the manufacturing process, as evidenced by the purchase invoices, it is confirmed that this exporting producer cannot be considered as the producer, or co-producer, of the product purchased for resale.

(19) In view of the above, the claim of the exporting producer is rejected and recitals 33 and 34 of the provisional Regulation are hereby confirmed.

(20) An association of importers claimed that an adjustment pursuant to Article 2(10)(k) of the basic Regulation should have been made in order to reflect the fact that heavy flooding in Thailand had caused export prices of the product concerned to be comparatively low relative to increased cost of raw material sweetcorn after the flooding. In this respect, it should be noted that the claim was not made by any of the exporting producers themselves, nor quantified. Moreover, flooding is a relatively common occurrence in Thailand and cannot be considered as an unforeseeable event when negotiating contracts and in particular export prices. Finally, the analysis showed that the possible effect, if any, of the flooding on the price of raw material sweetcorn would have been limited only to the last quarter of the IP when, in fact, the vast majority of raw material purchases by exporting producers took place before that period. Therefore, the claim for adjustment is rejected.

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4. **Comparison**

(21) Further to provisional disclosure, a number of exporting producers claimed that certain allowances on domestic sales (mainly relating to handling, loading and ancillary expenses and credit costs) should be granted in the dumping calculations. These claims were examined and for one company it was indeed found that an additional allowance should be granted. After this adjustment, the dumping margin for this company decreased from 4,3 % to 3,1 %.

(22) Since data from the company mentioned in recital 21 above was used in constructing the normal value of another company, as explained in recitals 29 and 31 of the provisional Regulation, the dumping margin of the latter company also decreased from 11,2 % to 11,1 % as a result of the allowance granted.

(23) In the absence of any other comments in this respect, and apart from the above changes, recitals 35 and 36 of the provisional Regulation are hereby confirmed.

5. **Dumping margin**

(24) In the light of the above adjustment, the amount of dumping finally determined, expressed as a percentage of the cif net free-at-Community-frontier price, before duty, is as follows:

Company	Dumping margin
Karn Corn	3,1 %
Malee Sampran	17,5 %
River Kwai	15,0 %
Sun Sweet	11,1 %

(25) For the cooperating companies not selected in the sample, the dumping margin was established on the basis of the weighted average dumping margin of the companies selected in the sample, pursuant to Article 9(6) of the basic Regulation. This weighted average dumping margin, expressed as a percentage of the cif Community frontier price, duty unpaid, is 12,9 %.

(26) In the absence of any comments, recital 40 of the provisional Regulation is hereby confirmed.

E. **INJURY**

(27) One interested party submitted that the approach followed by the Commission and described under recitals 50 and 51 of the provisional Regulation with respect to different sales channels is inconsistent with the basic Regulation and the WTO Anti-Dumping Agreement ([1]), as it would, allegedly, 'be intended to artificially reflect a higher injury and cannot be considered as properly based nor as objective and unbiased'. In support of its plea, the claimant made reference to the Report of the WTO Appellate Body of 24.7.2001 ([2]) (AB) where it is held that 'the investigating authorities are not entitled to conduct their investigation in such a way that it becomes more likely that, as a result of the fact-finding or evaluation process, they will determine that the domestic industry is injured' (paragraph 196 of the AB).

([1]) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

([2]) WT/DS184/AB/R, 23.8.2001, United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan.

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(28) Firstly, the existence of the two different sales channels described by the Commission under recitals 50 and 51 of the provisional Regulation, together with its ensuing implications in terms of selling costs and sales prices, is not questioned by any party to this proceeding, and not even by the claimant. Secondly, the fact, also established under recital 51 of the provisional Regulation, that all imports from the cooperating Thai exporters pertain to the retailer's brand channel is not contested either. Rather, it is acknowledged by the claimant: 'It should be reminded that Thai sales to retailers in Europe are made under the retailers' private label'.

(29) Furthermore, it is also to be noted that the AB stated in paragraph 204 that '[…] it may be highly pertinent for investigating authorities to examine a domestic industry by part, sector or segment.' It was therefore adequate to distinguish the two separate sales channels, for certain injury indicators as appropriate, for the purpose of ensuring a fair evaluation of the injury felt by the Community industry, and of establishing whether the dumped imports from Thailand had had a direct bearing on the injury suffered by the Community industry. The injury determination has systematically covered both sales channels taken together, and in addition, has analysed separately, when appropriate, the sales under the retailer's brand.

(30) However, the AB in paragraph 204 went on to say that '[…] where investigating authorities undertake an examination of one part of a domestic industry, they should, in principle, examine, in like manner, all of the other parts that make up the industry, as well as examine the industry as a whole.' The Commission services therefore complemented below their injury analysis with regard to the three injury indicators which had been analysed separately under the retailer's brand channel in the provisional Regulation. These three indicators are the sales volume (recital 56 of the provisional Regulation), the sales price (recital 63 of the provisional Regulation) and the profitability (recital 66 of the provisional Regulation). A specific injury analysis concerning the producer's own brand channel separately was therefore carried out for these three injury indicators.

(31) As set out under recital 51 of the provisional Regulation, the Community industry's sales under the retailer's brand accounted for around 63 % of the total Community industry's sales (own and retailer's brand) during the IP. Consequently, sales under the own brand channel accounted for around 37 % of the total.

(32) The sales volume by the Community industry of own brand products on the Community market first declined by 1 % in 2003, increased by six percentage points in 2004, and declined by six percentage points in the IP. During the IP, the volume of own brand sales stood practically at the same level as in 2002, i.e. slightly above 68 000 tonnes.

(33) Unit prices for the Community industry's sales of own brand products to unrelated customers remained practically flat throughout the period considered. From a level of EUR 1 380/tonne in 2002, they increased by 2 % in 2003, declined by two percentage points in 2004, before declining marginally by one percentage point in the IP, when they reached a level of EUR 1 361/tonne.

(34) During the period considered, the profitability of the Community industry's sales of own brand products, expressed as a percentage of net sales, declined gradually from almost 30 % in 2002 to 29 % in 2003, to around 27 % in 2004 and finally to around 24 % in the IP.

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	2002	2003	2004	IP
EC Sales volume (own brand) to unrelated customers (tonne)	68 778	68 002	72 387	68 193
Index (2002 = 100)	*100*	*99*	*105*	*99*
Unit price EC market (own brand) (EUR/tonne)	1 380	1 405	1 386	1 361
Index (2002 = 100)	*100*	*102*	*100*	*99*
Profitability of EC sales to unrelated (own brand) (% of net sales)	29,7 %	29,0 %	27,4 %	23,6 %
Index (2002 = 100)	*100*	*98*	*92*	*79*

Source: Investigation

(35) It is therefore noted that sales of own brand products remained relatively flat both in terms of quantities sold and of prices during the period considered. Conversely, profitability of these sales eroded gradually over the same period. This picture contrasts with the clear injury picture established with respect to all sales taken together, and with that established with respect to retailer's brand sales in the provisional Regulation. It is clear, however, that the impact of imports from Thailand is felt most where their imports are concentrated, i.e. retailer's branded products.

(36) Complemented as above, the examination carried out by the Commission services is consistent with the basic Regulation and satisfies the requirement of objectivity laid down in Article 3.1 of the WTO Anti-Dumping Agreement as all the injury indicators listed under Article 3.4 of the WTO Anti-Dumping Agreement have been examined with and without distinction of any sales channels, where it was deemed appropriate in respect of the specificities of the case at hand. The above claim is therefore rejected.

(37) In the absence of other comments in this respect, recitals 41 to 76 of the provisional Regulation are hereby confirmed.

F. **CAUSATION**

1. **Restrictive trade practices**

(38) Several interested parties claimed that the Community industry had engaged in restrictive trade practices, allegedly characterised, notably, by the fixing of prices in the Community market for sweetcorn. As supportive elements, one of these interested parties indicated that: (i) it had expressly drawn the attention of the Commission to this issue in its submission dated 21 June 2006; (ii) one European retailer had raised a similar concern in a submission dated 17 May 2006; and finally, (iii) this party submitted on 1 December 2006 two e-mails from the Chairman of the complainant Association mentioned under recital 1 of the provisional Regulation. In one of these e-mails, dated 13 April 2005, the Chairman of the complainant Association allegedly informs the CEO of a Thai exporting company that the western European processors had agreed on prices for three presentations of the like product.

(39) The above interested parties therefore requested the Commission to terminate immediately the present proceeding, on the grounds of an absence of causation between dumped imports and the injurious situation of the Community industry, as the level of prices practised by the Community industry would be unreliable and artificially inflated by the alleged anti-competitive behaviour of the Community industry. One party made explicit reference to

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both Article 3(7) of the basic Regulation and to the *Mukand* case ([1]), to request the Commission to assess the potential impact on the injurious situation of the Community industry stemming from the above alleged anti-competitive behaviour, prior to any conclusion on causation.

(40) As regards items (i) and (ii) in recital (38), it is noted that the two submissions consisted merely in a few unsubstantiated allegations. In the submission referred to under (i), the claimant had itself indicated that 'further information and evidence, regarding these abuses, which constitute flagrant violations of EC Competition rules, will be provided in due course.' The party concerned subsequently sent the e-mails referred to in recital 38 above.

(41) Upon receipt of those e-mails, the Commission services in charge of anti-dumping matters immediately invited the claimant to forward the same material to the Commission services in charge of competition matters. Further, the Commission services in charge of anti-dumping matters examined closely the prices practiced by the various Community producers given the existence of these e-mails, and, in particular, as the Chairman of the complainant Association acknowledged that he was the author of the messages.

(42) The Chairman strongly denied that the Community industry had, in fact, ever reached an agreement nor applied any 'reference' prices as suggested in the e-mail. Since, in the framework of the present anti-dumping proceeding, the Commission services dispose of detailed information on prices by model on a transaction-by-transaction basis, from all the cooperating Community producers, it was verified whether any price alignment could, in fact, be detected.

(43) No evidence of an effective price alignment amongst cooperating Community producers was found in this anti-dumping investigation. Furthermore, actual prices, in their vast majority, stood well below the 'reference' prices mentioned in the above e-mail dated 13 April 2005.

(44) Therefore, the Community institutions did not find in this anti-dumping investigation any evidence that the fact that prices of dumped imports from the country concerned undercut those of the Community industry was mainly due to an artificial price level stemming from anti-competitive behaviour.

(45) It is also observed that the Commission has not issued any final decision establishing that the Community industry had practised a cartel.

(46) As a consequence of all the above elements, the Commission considers that the current anti-dumping investigation has not found any evidence that the Community industry's prices and injury indicators have been affected by any anti-competitive behaviour or trade restrictive practices. This claim is therefore rejected.

2. **Impact of weather conditions**

(47) Several interested parties claimed that the impact stemming from weather conditions should be addressed in the causation examination. More precisely, these parties made reference to: (i) the heatwave of the summer 2003; and (ii) the flooding suffered in Hungary during the period May-August 2005.

(48) It was carefully examined if the heatwave of 2003 in Europe (claim (i) above) and the 2005 flooding in Hungary (claim (ii)

([1]) Case T-58/99 Mukand and others v. Council (2001) ECR II-2521.

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above) could have had an impact on the negative situation of the Community industry.

(49) It was found that the 2003 heatwave and the 2005 flooding had virtually no impact on the harvested quantity of sweetcorn on a global, Community industry, level. Indeed, data obtained from the Community producers in the framework of the investigation showed very stable figures for the yields (in tonnes of sweetcorn harvested per hectare) throughout the period considered. It is further reminded that the Commission had found, as described under recitals 86 and 87 of the provisional Regulation, that the unit production cost of the Community industry had risen by a mere 5 % over the period 2002 to the IP, mainly on account of the rising steel price (the can being the most important cost element). On the basis of these elements, claims (i) and (ii) above are rejected.

(50) It is therefore considered that weather conditions cannot have broken the causal link between the dumped imports and the injury suffered by the Community industry.

(51) In the absence of any other comments with respect to causation, recitals 77 to 99 of the provisional Regulation are hereby confirmed.

G. **COMMUNITY INTEREST**

(52) In the absence of new and substantiated arguments with respect to Community interest, recitals 100 to 118 of the provisional Regulation are hereby confirmed.

H. **DEFINITIVE MEASURES**

(53) Several interested parties claimed that: (i) the Commission should clarify further how it had computed the profit that could be achieved in the absence of dumped imports of 14 % as mentioned in recital 121 of the provisional Regulation; and (ii) the aforementioned profit of 14 % was too high. With regard to the latter claim, reference was made to recent safeguard and anti-dumping proceedings concerning similarly processed agricultural products such as preserved citrus fruits ([1]) and frozen strawberries ([2]), where profit margins of respectively 6,8 % and 6,5 % had been used. In this context, another interested party claimed (iii) that the profit of 14 % was too low, and should rather be set at 17 % to reflect the profitability achieved in 2002 on sales of retailer's brand product.

(54) With respect to claims (i) and (iii) above, recital 121 of the provisional Regulation explains that the profit of 21,4 % achieved in 2002 on sales of both own and retailer's brand products had been adjusted to 14 % in order to reflect the difference in the labelling mix of the Community industry compared to that of imports from Thailand. The Commission observed that, as indicated in recital 66 of the provisional Regulation, the profitability of sales under the retailer's brand channel was of 17,0 % and 11,1 % in 2002 and 2003 respectively, i.e. when the volume of dumped imports was the lowest. The Commission considered it reasonable to take the average of these two profit rates, which amounts to 14 %.

(55) With respect to claim (ii) above, it is considered that the profit in the absence of dumped imports must, as much as possible, reflect the actual specificities of the Community industry at stake. Only

([1]) Commission Regulation (EC) No 658/2004 (OJ L 104, 8.4.2004, p. 67) (see recital 115).

([2]) Commission Regulation (EC) No 1551/2006 (OJ L 287, 18.10.2006, p. 3) (see recital 144).

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in the absence of such information can data from other industries which belong to the same broader sector be relevant. This approach, which the Commission applies consistently, was upheld by the Court of First Instance in the *EFMA* case ([1]).

(56) Claims (i) (ii) and (iii) are therefore rejected and the finding that a profit of 14 % could be achieved in the absence of dumped imports is confirmed.

(57) In view of the conclusions reached with regard to dumping, injury, causation and Community 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 dumping margin found, but should not be higher than the injury margin presented in recital 123 of the provisional Regulation and confirmed in the present Regulation. Given the high level of cooperation, the duty for the remaining companies, which did not cooperate in the investigation, is set at the level of the highest duty to be imposed on the companies cooperating in the investigation. Therefore, the residual duty is set at the rate of 12,9 %.

(58) The definitive duties will therefore be as follows:

Company	Injury margin	Dumping margin	Anti-dumping duty
Karn Corn	31,3 %	3,1 %	3,1 %
Malee Sampran	12,8 %	17,5 %	12,8 %
River Kwai	12,8 %	15,0 %	12,8 %
Sun Sweet	18,6 %	11,1 %	11,1 %
Cooperating exporters not sampled	17,7 %	12,9 %	12,9 %
All other companies	31,3 %	17,5 %	12,9 %

I. **UNDERTAKINGS**

(59) Subsequent to the imposition of the provisional measures a number of cooperating exporting producers expressed an interest to offer price undertakings. However after the definitive disclosure (save for the two companies mentioned in recital 60), they failed to submit undertaking offers within the time limit foreseen in Article 8(2) of the basic Regulation.

(60) A cooperating exporting producer failed to submit a sufficiently substantiated undertaking offer within the deadlines set in Article 8(2) of the basic Regulation. Consequently no undertaking offer could be accepted by the Commission from this exporting producer. Nevertheless, the Council, in view of the complexity of the issue for the economic operator in question and for other cooperating exporting producers in a similar situation (fragmented industry, exporting producers located in a developing country and often operating both as traders and exporting producers which makes the formulation of an acceptable undertaking offer more complex) as well as the high level of cooperation during the investigation, considers that these exporting producers should exceptionally be allowed to complete their undertaking offers beyond the above mentioned deadline, but within 10 calendar days from entry into force of this Regulation. The Commission is allowed to propose an amendment to this Regulation accordingly.

([1]) Case T-210/95 EFMA v Council, [1999] ECR II-3291 (paragraph 54 et seq.).

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(61) Subsequent to the definitive disclosure two cooperating exporting producers offered acceptable price undertakings combined with a quantitative ceiling in accordance with Articles 8(1) and 8(2) of the basic Regulation. They have offered to sell the product concerned within the quantitative ceiling at or above price levels which eliminate the injurious effects of dumping. Imports beyond the quantitative ceiling will be subject to anti-dumping duties. The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertaking can be monitored effectively by the Commission. Furthermore, the sales structure of these companies is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(62) The Commission, by Decision 2007/424/EC ([1]), accepted the above undertaking offers. The Decision sets out in more detail the reasons for accepting these undertakings.

(63) To further enable the Commission and the customs authorities to effectively monitor the compliance of the companies with the undertakings, 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 Annex II; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to 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.

(64) Whenever the Commission withdraws, pursuant to Article 8(9) of the basic Regulation, its acceptance of an undertaking following a breach by referring to particular transactions, and declares the relevant undertaking invoices as invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.

(65) 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 62 and 63 even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(66) 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.

(67) For the reasons stated above the undertakings offered by the Thai exporting producers are therefore considered acceptable by the Commission and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.

(68) In the event of a breach or withdrawal of the undertakings, or in case of withdrawal of acceptance of undertaking by the Commission, the anti-dumping duty which has been imposed by the Council, in accordance of Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation.

([1]) See page 41 of this Official Journal.

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J. **DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(69) In view of the magnitude of the dumping margins found for the exporting producers in Thailand and given the level of the injury caused to the Community 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 definitive duties imposed.

(70) 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 countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities 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'.

(71) 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 forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, falling within CN code ex 2001 90 30 (TARIC code 2001 90 30 10) 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, falling within CN code ex 2005 80 00 (TARIC code 2005 80 00 10), originating in Thailand.

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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

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Company	Anti-dumping duty (%)	TARIC additional code
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

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3. Notwithstanding the first subparagraph, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.

4. 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 the Decision 2007/424/EC, as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community, and

— such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in Annex II of this Regulation, and

— the goods declared and presented to customs correspond precisely to 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 in a regulation or decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

The amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 1888/2006 on imports of sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, falling within CN code ex 2001 90 30 (TARIC code 2001 90 30 10) 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, falling within CN code ex 2005 80 00 (TARIC code 2005 80 00 10), originating in Thailand, shall be definitively collected. The amounts secured in excess of the definitive duties as set out in Article 1(2) shall be released.

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.

▼**M1**

ANNEX I

List of the cooperating manufacturers referred to in Article 1(2) under TARIC additional code A793:

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

▼B

ANNEX II

The following elements shall be indicated in the commercial invoice accompanying the company's sales to the Community 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 Community frontier.
6. The exact description of the goods, including:
   - — the product code number (PCN) used for the purpose of the undertaking,
   - — plain language description of the goods corresponding to the PCN concerned,
   - — the company product code number (CPC),
   - — Taric code,
   - — quantity (to be given 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 in the Community 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 Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2007/424/EC. I declare that the information provided in this invoice is complete and correct.'