Council Implementing Regulation (EU) No 398/2012 of 7 May 2012 amending Implementing Regulation (EU) No 492/2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in, inter alia, the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 398/2012

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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 Articles 9(4), 11(3), 11(5) and 11(6) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 435/2004[(2)], the Council imposed, following an anti-dumping investigation, a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('the PRC' or 'the country concerned') and Indonesia ('the original investigation'). Following an expiry review, the Council, by Implementing Regulation (EU) No 492/2010[(3)] imposed a definitive anti-dumping duty for a further period of five years. The measures were set at the level of dumping and consist of specific anti-dumping duties. The rate of the duty for the PRC ranges between 0 and 0,11 EUR/kilo for individually named Chinese producers with a residual duty rate of 0,26 EUR/kilo imposed on imports from other producers ('current duties').

1.2. Request for a review

(2) A request for a partial interim review ('the current review') pursuant to Article 11(3) of the basic Regulation was lodged by Productos Aditivos S.A., the sole Union producer of sodium cyclamate and the complainant in the original investigation ('the complainant'). The request was limited in scope to dumping and to Golden Time Enterprise (Shenzhen) Co., Ltd ('GT Enterprise' or 'the company concerned'), member of the Rainbow Rich group ('the group of companies concerned', 'Rainbow group', or 'Rainbow'), which was also one of the individually named Chinese producers in the original investigation. The anti-dumping duty applicable to imports of products

produced by GT Enterprise is 0,11 EUR/kilo and the duty applicable to imports from the other production companies within the group of companies concerned is 0,26 EUR/kilo (i.e. the residual duty rate).

(3) The complainant provided prima facie evidence that the existing measures are no longer sufficient to counteract the dumping which is causing injury.

1.3. **Initiation of a partial interim review**

(4) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence to justify the initiation of the partial interim review, the Commission announced, by a notice of initiation published in the *Official Journal of the European Union*[(4)] on 17 February 2011, the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation limited to the examination of dumping as far as GT Enterprise is concerned.

1.4. **Product concerned and like product**

(5) The product under review is sodium cyclamate, originating in the People's Republic of China, currently falling within CN code ex 2929 90 00 ('the product concerned').

(6) As in previous investigations, this investigation has shown that the product concerned produced in the PRC and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in Indonesia which served as an analogue country in the current review. It is therefore concluded that products sold on the domestic market in Indonesia and sold by the group of companies concerned on the Union market are like products within the meaning of Article 1(4) of the basic Regulation.

1.5. **Parties concerned**

(7) The Commission officially informed the complainant, the company concerned and the representatives of the country concerned about the initiation of the current review. The Commission also advised producers in Indonesia of the initiation of the proceedings, as Indonesia was envisaged as a possible analogue country.

(8) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(9) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the company concerned and received replies from five companies in the Rainbow group within the deadline set for that purpose. (As the Rainbow group now consists of two production companies (one being GT Enterprise), one raw material supplier, one company previously involved with the product concerned, but now dormant, and a trader in Hong Kong, the review encompassed the activities of the full group). The Commission also sent questionnaires

to producers in Indonesia. One Indonesian producer showed willingness to provide information in the current review and provided a partial reply to the questionnaire.

(10) The Commission sought and verified all information deemed necessary for the analysis of market economy treatment and individual treatment and the determination of dumping. The Commission carried out verification visits at the premises of the following members of the group of the companies concerned:

— Golden Time Enterprises (Shenzhen) Co. Ltd, Shenzhen, PRC, (GT Enterprise),

— Jintian Industrial (Nanjing) Co. Ltd, Nanjing, PRC,

— Golden Time Chemical (Jiangsu) Co. Ltd, Jiangsu, PRC,

— Nanjing Jinzhang Industrial Co. Ltd, Nanjing, PRC,

— Rainbow Rich Ltd, Hong Kong.

1.6. Review investigation period

(11) The investigation of dumping covered the period from 1 January 2010 to 31 December 2010 (‘the review investigation period’ or ‘RIP’).

2. RESULTS OF THE INVESTIGATION

2.1. Market economy treatment (MET)

(12) In anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) thereof. Briefly, and for ease of reference only, the criteria in Article 2(7)(c) of the basic Regulation, fulfilment of which the applicant companies have to demonstrate, are set out in summarised form below:

— business decisions and costs are made in response to market conditions, and without significant State interference and costs of major inputs substantially reflect market values,

— accounting records are independently audited in line with international accounting standards and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— legal certainty and stability are provided by bankruptcy and property laws,

— currency exchanges are carried out at the market rate.

(13) The group of companies concerned requested MET pursuant to Article 2(7)(b) of the basic Regulation and submitted claim forms for four producers located in the People’s Republic of China. The Commission sought and verified at the premises of the companies all information submitted in the companies’ requests and deemed necessary.

(14) The current review revealed that the situation of the company concerned changed since the original investigation. It was found that GT Enterprise no longer meets all MET criteria. Furthermore, compared to the original investigation the

Rainbow group had been enlarged and restructured. The other companies within the group that submitted claim forms could not demonstrate either that they meet all MET criteria.

(15) With regard to criterion 1 concerning business decisions and State interference, it was found that the local government has the authority to interfere in the hiring and dismissal of personnel in one company within the group. Furthermore, the local government is a major shareholder of the company producing raw materials. Indications of significant State interference were identified in the supply of raw materials to the company (electricity and water) and by the company to its related companies, in labour costs and in the operations and decision-making of this company. As a way of example the State shareholder outsourced personnel to the raw material producer at terms that the company could not specify. Furthermore, the company has been continuously loss-making due to selling raw material at abnormally low prices to its related companies and without any further compensation e.g. in the form of profit distribution. Through the accumulation of these losses, the State-owned raw material producer influenced the decisions of the related companies with regard to purchase of raw materials for the production of sodium cyclamate. Finally, interference and influence could be detected in the financing and investment decisions of another company within the group by a local government agency.

(16) With regard to criterion 2 concerning accounting, the investigation showed that accounting records of all members of the group of companies concerned were not in line with international accounting standards as a number of material accounting shortcomings and errors were found which were not reported by the auditors.

(17) With regard to criterion 3, it was found that distortions were carried over from the non-market economy system through the provision of infrastructure investments to one company of the group for free. The same company benefited from favourable rental conditions for the land it uses. The other companies within the group could not demonstrate that they acquired their land use rights in return for a consideration and/or that the consideration would have reflected a market value. Finally one company was not able to demonstrate that certain assets transferred to it were made for monetary consideration or otherwise at prices reflecting market values.

(18) Finally, with regard to criteria 4 and 5, it was found that the companies met the criteria as the companies were subject to bankruptcy and property laws which guaranteed stability and legal certainty. Currency conversions were carried out at or following the official rate published by the Bank of China.

(19) The group of companies concerned and the complainant were given an opportunity to comment on the above findings. The complainant had no comments but the group of companies concerned objected on several grounds. Some of these comments were reiterated after final disclosure of the facts and considerations on the basis of which it was proposed to impose definitive measures. The most important comments received are described in the recitals below.

(20) The Rainbow group firstly stated that the Commission illegally imposed an obligation to re-qualify for MET as the group was given MET in the original investigation and the expiry review and thus the legal obligation to apply the same methodology in reviews as in the original investigation was breached. It argued that the Commission has not shown that circumstances of this company had changed in a way that would justify a different method to that applied in the original investigation. According to the claimant several of the issues identified by the Commission had already existed at the time of the original investigation and thus the Commission's new findings do not relate to new circumstances but are merely a different interpretation of the same circumstances.

(21) It should be noted that, contrary to the claimant's statement, the same methodology was applied both in the original investigation and in the current review whereas due account was taken of the fact that certain circumstances have changed since the original investigation. Even if the claimant's argumentation would be correct in relation to certain facts that were indeed the same during both the original and current investigations, namely in relation to GT Enterprise's land use right agreement, the following can be noted. The current review established additional other facts that — even though they had already existed during the original investigation — were not disclosed at that time by GT Enterprise, such as the local government's authority to approve the hiring and dismissal of its personnel. Finally, the circumstances of the company have also changed since the original investigation in respect of criterion 2. That is because it was established in the current review that during the RIP GT Enterprise had not had a clear set of accounting records that were independently audited in line with international accounting standards and applied for all purposes.

(22) The claimant later explained that it considers that it had disclosed the local government's authority to approve the hiring and dismissal of its personnel by providing in the original investigation the same Articles of Association as in the current review. However, the translation of this document provided by the claimant both during the original and current investigation was incomplete as it did not disclose the powers given by the Articles of Association to the local government.

(23) The Rainbow group further argued that the MET regime was introduced for countries with an economy in transition, i.e. from the former non-market economy system towards a market economy. It would therefore be illogical to require a company that previously qualified for MET to once again submit sufficient evidence in an interim review that it still qualifies for MET. In this respect it should be noted that there is nothing in the basic Regulation which would support such an interpretation and which would prevent the application of Article 2(7)(c) of the basic Regulation in reviews initiated pursuant to Article 11(3) of the basic Regulation. Therefore, this argument had to be dismissed.

(24) The Rainbow group also invoked the procedural requirement in Article 2(7)(c) that an MET determination shall be made within three months of the initiation of the investigation. Rainbow itself acknowledges that exceeding this deadline is in