Council Regulation (EC) No 1010/2008 of 13 October 2008 imposing a definitive countervailing duty on imports of sulphanilic acid originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 and a partial interim review pursuant to Article 19 of Regulation (EC) No 2026/97 and amending Regulation (EC) No 1000/2008 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and India following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 1010/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 15, 18 and 19 thereof,

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and existing measures

(1) In July 2002, by Regulation (EC) No 1338/2002[(2)], the Council imposed a definitive countervailing duty (the existing measures) of 7,1 % on imports of sulphanilic acid falling within CN code ex 2921 42 10 (TARIC code 2921 42 10 60) originating in India. The measures imposed had been based on the findings of an antisubsidy proceeding initiated pursuant to Article 10 of the basic Regulation (the original investigation).

(2) At the same time, by Regulation (EC) No 1339/2002[(3)], the Council imposed a definitive anti-dumping duty of 18,3 % on imports of the same product originating in India.

(3) Within the framework of the above-mentioned countervailing and anti-dumping proceedings, the Commission, by Decision 2002/611/EC[(4)] accepted a price

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1010/2008. (See end of Document for details)*

undertaking offered by the Indian exporting producer, Kokan Synthetics and Chemicals Pvt. Ltd (Kokan).

(4) In December 2003, Kokan informed the Commission that it wished to withdraw its undertaking voluntarily. Accordingly, the Commission Decision accepting the undertaking was repealed by Decision 2004/255/EC[(5)].

(5) In April 2005, following a request lodged by Kokan, the Commission initiated[(6)] a partial interim review pursuant to Article 19 of the basic Regulation and Article 11(3) of Regulation (EC) No 384/96[(7)] (the basic anti-dumping Regulation) respectively, limited in scope to the examination of the acceptability of an undertaking to be offered by the company.

(6) Following an investigation, in December 2005, by Decision 2006/37/EC[(8)], the Commission accepted an undertaking offered by Kokan in connection with the anti-dumping and countervailing proceedings concerning imports of sulphanilic acid originating in India.

(7) In January 2006, as a result of the investigation referred to above in recital 6, by Council Regulation (EC) No 123/2006[(9)], Regulation (EC) No 1338/2002 imposing a definitive countervailing duty on imports of sulphanilic acid originating in India and Regulation (EC) No 1339/2002 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating, *inter alia*, in India, were amended to take into account the acceptance of the said undertaking.

(8) Following a review in accordance with the provisions of Article 11(2) of Regulation (EC) No 384/96, the Council, by Regulation (EC) No 1000/2008[(10)], imposed an anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and India.

1.2. Request for a review

(9) Following the publication of a notice of impending expiry[(11)] of the existing measures, the Commission, on 24 April 2007, received a request for an expiry review pursuant to Article 18 of the basic Regulation. This request was lodged by two Community producers (the applicants) representing 100 % of the Community production of sulphanilic acid.

(10) The request for an expiry review was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of subsidisation and injury to the Community industry.

(11) The Commission examined the evidence submitted by the applicants and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 18 of the basic Regulation. After consultation of the Advisory Committee, the Commission announced on 24 July 2007, by a notice of initiation published in the *Official Journal of the European Union*[(12)], the initiation of an expiry review pursuant to Article 18 of the basic Regulation.

(12) It should be noted that prior to the initiation of the expiry review, and in accordance with Articles 10(9) and 22(1) of the basic Regulation, the Commission notified the Government of India (hereinafter referred to as GOI) that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The GOI did not react to this offer of consultations. Consultations were likewise offered and held with the Indian authorities in the context of the partial interim review referred to below. These consultations did not arrive at a mutually agreed solution that would have warranted that the review not be initiated.

1.3. Partial interim review

(13) By a notice of initiation published in the *Official Journal of the European Union* on 29 September 2007[13] (the Article 19 notice of initiation), the Commission, pursuant to Article 19 of the basic Regulation, initiated on its own initiative a partial interim review limited to the level of subsidisation, since there was sufficient *prima facie* evidence available to the Commission that the circumstances with regard to subsidisation on the basis of which measures had been established have changed and that these changes were of a lasting nature.

(14) The review was limited to the level of subsidisation of the company Kokan listed in the Annex to the Article 19 notice of initiation as well as to other exporters that were invited to make themselves known under the conditions and within the time limit set out in the notice of initiation.

1.4. Investigation

1.4.1. Investigation period

(15) The investigation of continuation or recurrence of subsidisation covered the period from 1 April 2006 to 31 March 2007 (review investigation period or RIP). This period was also used for the examination of the alleged changed circumstances that led to the initiation of the partial interim review. The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2003 to the end of the review investigation period (the period considered).

1.4.2. Parties concerned by the investigation

(16) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the Community producers of the initiation of the expiry review and the partial interim review. 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.

(17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

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(18) Questionnaires were sent in the expiry review to all parties known to be concerned, namely to the two Community producers, to the exporting producer in India and to the known importers and users and to the GOI. In regard to the partial interim review, questionnaires were sent to the exporting producer in India and to the GOI.

(19) Replies to the questionnaires were received from the GOI, both of the Community producers and the exporting producer from the country concerned, as well as from four users. None of the importers replied to the questionnaire and no other importers supplied the Commission with any information or made themselves known in the course of the investigations.

(20) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidisation and resulting injury and of the Community interest as well as of alleged changed level of subsidisation. In this regard the Commission carried out verification visits at the premises of the GOI in Delhi, the Government of Maharashtra in Mumbai, the Reserve Bank of India in Mumbai, and the following companies:

(a) Exporting producer in India:
- Kokan Synthetics & Chemicals Pvt Ltd, Mumbai, India;

(b) Community producers:
- Ardenity, Givet, France,
- CUF Químicos Industriais, Estarreja, Portugal;

(c) Users:
- Kemira Germany GmbH, Leverkusen, Germany,
- Robama SA, Palafolls, Spain.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(21) The product under review is sulphanilic acid originating in India (the product concerned), currently classifiable within CN code ex 2921 42 10 (TARIC 2921 42 10 60). There are basically two grades of sulphanilic acid, which are determined according to their purity: a technical grade and a purified grade. In addition, the purified grade is sometimes commercialised in the form of a salt of sulphanilic acid. Sulphanilic acid is used as a raw material in the production of optical brighteners, concrete additives, food colourants and speciality dyes. While there are different uses of sulphanilic acid, all grades and forms are perceived by users to be reasonably substitutable, are used interchangeably in most applications and are therefore, treated, as was the case in the original investigation, as one single product.

2.2. Like product

(22) As established in the original investigation, these review investigations confirmed that sulphanilic acid and its salts are pure commodity products, and their

quality and basic physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producer concerned on its domestic market and exported to third countries, as well as those manufactured and sold by the Community producers on the Community market have thus been found to have the same basic physical and chemical characteristics and essentially the same uses and are therefore considered to be like products within the meaning of Article 1(5) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

3.1. Introduction

(23) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

— Subsidy schemes investigated in original investigation:

  — Nationwide schemes:

    (a) Export Processing Zones Scheme (EPZS)/Special Economic Zones Scheme (SEZS)/Export Oriented Units Scheme (EOUS);

    (b) Duty Entitlement Passbook Scheme (DEPBS);

    (c) Export Promotion Capital Goods Scheme (EPCGS);

    (d) Income Tax Exemption Scheme (ITES);

    (e) Advance Licence Scheme (ALS)/Advance Authorisation Scheme (AAS),

  — Regional schemes:

    (f) Package Scheme of Incentives (PSI) of the Government of Maharashtra,

— Subsidy schemes not investigated in original investigation:

  — Nationwide schemes:

    (g) Export Credit Scheme (pre-shipment and post-shipment) (ECS).

(24) The schemes (a), (b), (c) and (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Export and Import Policy' documents, which, since 1 September 2004, has been named 'Foreign Trade Policy', and are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the review investigation period of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM-policy 2004-2009). In addition, the GOI