Council Regulation (EC) No 1000/2008 of 13 October 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 1000/2008

of 13 October 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 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 Articles 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In July 2002, by Regulation (EC) No 1339/2002[(2)], the Council imposed a definitive anti-dumping duty (the existing measures) of 21 % on imports of sulphanilic acid falling within CN codes ex 2921 42 10 (TARIC code 2921 42 10 60) originating in the People's Republic of China (PRC) and a residual duty rate of 18,3 % on imports originating in India. The measures imposed had been based on the results of an anti-dumping proceeding initiated pursuant to Article 5 of the basic Regulation (the original investigation).

(2) At the same time, by Regulation (EC) No 1338/2002[(3)], the Council imposed a definitive countervailing duty of 7,1 % on imports of the same product originating in India.

(3) Within the framework of the abovementioned anti-dumping and countervailing proceedings, the Commission, by Decision 2002/611/EC[(4)] accepted a price undertaking offered by one Indian exporting producer, Kokan Synthetics and Chemicals Pvt. Ltd (Kokan).

(4) In February 2004, following an anti-absorption reinvestigation pursuant to Article 12 of the basic Regulation, the Council, by Regulation (EC) No 236/2004[(5)],

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1000/2008. (See end of Document for details)*

increased the rate of the definitive anti-dumping duty applicable to imports of sulphanilic acid originating in the PRC from 21 % to 33,7 %.

(5) 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 Accordingly, the Commission Decision accepting the undertaking was repealed by Commission Decision 2004/255/EC[(6)].

(6) In April 2005, following a request lodged by Kokan, the Commission initiated[(7)] a partial interim review pursuant to Article 11(3) of the basic Regulation and Article 19 of Council Regulation (EC) No 2026/97[(8)] on protection against subsidized imports from countries not members of the European Community (the basic anti-subsidy Regulation), limited in scope to the examination of the acceptability of a subsequent undertaking to be offered by Kokan.

(7) By Decision 2006/37/EC[(9)], the Commission accepted the subsequent undertaking offered by Kokan in connection with the anti-dumping and countervailing proceedings concerning imports of sulphanilic acid originating in India.

(8) At the same time, 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 by Council Regulation (EC) No 123/2006[(10)], to take into account the acceptance of the said undertaking.

2. Request for a review

(9) Following the publication of a notice of impending expiry[(11)], the Commission, on 24 April 2007, received a request for an expiry review pursuant to Article 11(2) 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 applicants alleged and provided sufficient *prima facie* evidence that there was a likelihood of continuation and/or recurrence of dumping and recurrence of injury to the Community industry with regard to imports of sulphanilic acid originating in the PRC and India (the countries concerned).

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, 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 11(2) of the basic Regulation.

3. Parallel investigations

(12) By a notice of initiation published in the *Official Journal of the European Union* on 24 July 2007[(13)], the Commission also initiated an expiry review investigation pursuant to Article 18 of the basic anti-subsidy Regulation on the countervailing measures in force on imports of sulphanilic acid originating in India. This investigation is still on-going.

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(13) By a notice of initiation published in the *Official Journal of the European Union* on 29 September 2007[14], the Commission initiated on its own initiative a partial interim review limited to the level of subsidisation, pursuant to Article 19 of the basic anti-subsidy Regulation, 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, had changed and that these changes were of a lasting nature. This investigation is still on-going.

4. Investigation

4.1. Investigation period

(14) The investigation of continuation or recurrence of dumping covered the period from 1 April 2006 to 31 March 2007 (the review investigation period or RIP). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 2003 to the end of the review investigation period (the period considered).

4.2. Parties concerned by the investigation

(15) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting countries and the applicants, of the initiation of the expiry 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.

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

(17) Questionnaires were sent to all parties known to be concerned, namely to the two Community producers and to all known exporting producers, importers and users.

(18) Replies to the questionnaires were received from the two Community producers and from one exporting producer in India, as well as from four users. None of the exporting producers in the PRC and none of the importers replied to the questionnaire nor made themselves known in the course of this investigation.

(19) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Community interest. In this regard, the Commission carried out verification visits at the premises of the following companies:

(a) Exporting producer in India:

— Kokan Synthetics & Chemicals Pvt Ltd, Mumbai, India;

(b) Community producers:

— Ardenity, Givet, France, and

— CUF Químicos Industriais, Estarreja, Portugal;

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(c) Users:

— Kemira Germany GmbH, Leverkusen, Germany, and

— Robama SA, Palafolls, Spain.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(20) The product under review is the same as that of the original investigation, namely sulphanilic acid currently classifiable within CN code ex 2921 42 10. 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. Like product

(21) As established in the original investigation, this review confirmed that sulphanilic acid is a pure commodity product and its 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 in India on its domestic market and 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(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF DUMPING

(22) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place during the RIP and whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.

1. Preliminary remarks

(23) It should be noted that, as the Community expanded to 25 Member States in 2004 and to 27 Member States in 2007, export volumes and market shares of imports in the previous investigation and in the current expiry review cannot be directly compared.

1.1. India

(24) In order to respect confidential business information and in view of the fact that Kokan represents 100 % of imports originating in India, it has been necessary to present the relevant information in ranges or in indexed form.

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(25) This examination was based on the verified questionnaire reply from the cooperating exporting producer in India that fully cooperated with the investigation. It appears from the information provided by the company and available Eurostat data that all imports of the product concerned during the RIP were accounted for by this exporting producer.

(26) It was found that during the RIP around 800 to 1 000 tonnes of sulphanilic acid were imported from India into the Community, i.e. approximately 8-10 % of Community consumption. In the original investigation, imports from India amounted to 1 712 tonnes.

1.2. People's Republic of China

(27) In the absence of cooperation from any of the Chinese exporting producers, the examination of whether or not dumping was currently taking place had to be based on the information available to the Commission from other sources. In this respect, and in accordance with the provisions of Article 18 of the basic Regulation, official Eurostat data was used in order to establish import quantities and prices.

(28) On the basis of available data, it was found that during the RIP, 1 482 tonnes of sulphanilic acid were imported from the PRC into the Community, i.e. approximately 15 % of the Community consumption. In the original investigation period, imports from the PRC amounted to 2 950 tonnes.

2. Likelihood of continuation of dumping

2.1. India

(29) In accordance with Article 11(9) of the basic Regulation, the same methodology as in the previous investigation was used to establish the dumping margin. It is recalled that in the original investigation a dumping margin of 24,6 % was established.

(a) Normal value

(30) For the determination of normal value, it was first established for the cooperating exporting producer whether its total domestic sales of the product concerned were representative in comparison with its export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume was at least 5 % of its total export sales to the Community. The investigation showed that the domestic sales were representative.

(31) Subsequently, those types of the product concerned sold domestically by the exporting producer having overall representative domestic sales, and which were identical or directly comparable to the types sold for export to the Community, were identified. The criteria used for the identification of the different product types were the grade (pure or technical), the form (acid powder or sodium salt) and the acid concentration.