Council Regulation (EC) No 654/2008 of 29 April 2008 imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China, as extended to imports of coumarin consigned from India, Thailand, Indonesia and Malaysia, whether declared as originating in India, Thailand, Indonesia and Malaysia or not following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 654/2008

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THE COUNCIL OF THE EUROPEAN UNION,

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)], and in particular Articles 9, 11(2), 8 and 13 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, by Regulation (EC) No 769/2002[(2)] imposed a definitive anti-dumping duty of EUR 3 479 per tonne on imports of coumarin originating in the People's Republic of China and extended to imports consigned from India and Thailand by Council Regulation (EC) No 2272/2004[(3)] and to imports consigned from Indonesia and Malaysia by Council Regulation (EC) No 1650/2006[(4)].

(2) The Commission, by a Decision[(5)] dated 3 January 2005, accepted an undertaking offered by an Indian producer in connection with the investigation into alleged circumvention of the anti-dumping measures by imports of coumarin consigned from India or Thailand.

2. Request for a review

(3) The request was lodged on 8 February 2007 by the European Chemical Industry Council (CEFIC) (the applicant) on behalf of the sole producer in the Community, representing the totality of the Community production of coumarin.

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(4) The applicants alleged and provided sufficient *prima facie* evidence that: (a) there is a likelihood of continuation or recurrence of dumping and injury to the Community industry, and (b) the imports of the product concerned from the People's Republic of China have continued to enter the Community in significant quantities and at dumped prices.

(5) It was also alleged that the volumes and the prices of the imported product concerned have continued, among other consequences, to have a negative impact on the level of prices charged by the Community industry, resulting in substantial adverse effects on its financial situation and its employment.

(6) Furthermore, the applicant pointed out that during the period of imposition of measures, the exporters/producers of the product concerned from the People's Republic of China has undermined the existing measures by circumvention practices, which have been counteracted by the extension of measures as enacted by Council Regulation (EC) No 2272/2004 and Council Regulation (EC) No 1650/2006.

3. Initiation

(7) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation pursuant to Article 11(2) of the basic Regulation by a notice published in the *Official Journal of the European Union*[(6)].

4. Period of investigation

(8) The review investigation period (RIP) for the examination of continuation or recurrence of dumping and injury covered the period from 1 April 2006 to 31 March 2007. The examination of trends relevant for the assessment of continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the RIP (period under review).

5. Parties concerned by the investigation

(9) The Commission officially advised the applicant Community producer, the exporting producers in the PRC and their representatives, the Chinese authorities and the importers, users and associations known to be concerned, of the initiation of the review. The Commission sent questionnaires to exporting producers, a producer in India (analogue country as mentioned at recital (26)), the sole Community producer, known importers and users and to those parties which made themselves known within the time limit set in the notice of initiation of the review.

Sampling for exporters/producers in the People's Republic of China

(10) In view of the apparent number of exporting producers involved in this proceeding, the use of sampling techniques was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation. In order to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known and to provide, as specified in the notice of initiation, basic

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information on their activities related to coumarin during the investigation period. Two companies in the People's Republic of China replied to the sampling questionnaire but only one indicated its willingness to cooperate and replied to the dumping questionnaire, as follows:

— Nanjing Jingqiao Perfumery/China Tuhsu Flavours & Fragrances Imp. & Exp. Corp.

(11) The Community producer and four importers/users replied to the questionnaires. With respect to the analogue country, the Indian producer contacted by the Commission services refused to cooperate.

6. Verification of information received

(12) The Commission sought and verified all information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and of Community interest. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(13) Verification visits were carried out at the premises of the following companies:

Community producer:

— Rhodia Organics, (Lyon) France,

importers/users:

— Henkel KGaA, (Krefeld) Germany.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) The product concerned is the same as in the original investigation, i.e. coumarin, a whitish crystalline powder with the characteristic odour of newly mown hay. Its main uses are as an aroma chemical and as a fixative in the preparation of fragrance compounds, such compounds being used in the production of detergents, cosmetics and fine fragrances.

(15) Coumarin, which was originally a natural product obtained from Tonka beans, is now produced synthetically. It can be obtained by a synthesis process starting from phenol to obtain salicilaldehyde (Perkin reaction) or by a synthesis from orthocresol (Raschig reaction). The main physical specification of coumarin is its purity, of which the melting point is the indicator. The standard quality coumarin marketed in the Community has a melting point varying between 68 °C and 70 °C which corresponds to 99 % purity.

(16) The product concerned falls within CN code ex 2932 21 00.

2. Like product

(17) As in the original investigation, coumarin exported to the Community from the PRC as well as coumarin produced and sold by the Community industry in the

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Community market were found to have effectively identical physical characteristics and uses and are thus like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. General issues

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

(19) In accordance with Article 11(9) of the basic Regulation, the same methodology was used as in the original investigation. As an expiry review does not provide for any examination of changed circumstances, it was not reconsidered whether producers were entitled to market economy treatment ('MET').

(20) Statistical data showed that about 214 tonnes were imported to the EU from all sources, out of which about 137 tonnes originated in China, representing around 20 % of EU consumption.

2. Sampling (exporters) and cooperation

(21) It is recalled that, in the previous investigation, the results of which were published in May 2002, there was no cooperation from Chinese exporting producers and none were awarded MET or IT.

(22) Sampling forms were sent out to 21 potential producers/exporters in the PRC but only two companies responded, only one of which cooperated with the investigation by completing a questionnaire response; sampling, therefore, was not warranted. This single response covered around 5 % of Chinese imports in the RIP. In terms of capacity this cooperator possessed around 17 % of total Chinese capacity.

(23) In light of this very low level of cooperation and the limited representativeness of one company of the Chinese market and production, it was determined that no reliable information on imports of the product concerned to the Community during the RIP could be gathered directly from the exporting producers. Under these circumstances, and in accordance with Article 18 of the basic Regulation, the Commission resorted to the use of the facts available, i.e. CN code data. Nevertheless, the information in the single questionnaire response was used to the extent possible to cross check the results based on the data available pursuant to Article 18.

(24) It was established that the CN code data were the best facts available for most of the aspects of this investigation. TARIC data and data collected under Article 14(6) of the basic Regulation confirmed the accuracy of the CN code figures.

(25) Wherever warranted, export price data from cooperating producers and Chinese export statistics available to the Commission (which also included products other than the product concerned) used as a complement.

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3. Analogue country

(26) Coumarin is a fragrance produced in only a few countries around the world and therefore the choice for an analogue country was extremely limited. According to the information available to the investigation, the only producing countries during the RIP were France, China and India. The USA was used in the previous review investigation but the company had since ceased its production. India was suggested in the Notice of Initiation but no Indian producer agreed to cooperate.

(27) In light of these findings the normal value had to be established 'on any other reasonable basis' in accordance with Article 2(7)(a) of the basic Regulation. The Community industry data was considered reasonable for such a purpose.

4. Dumping during the review investigation period

(28) For the reasons explained at recital (23), dumping margins were calculated using CN code data which were cross-checked with the information received from the sole cooperating Chinese exporting producer. The export prices of the imports from China were adjusted to ensure that they were on a comparable basis to the normal value. These adjustments ensured that the calculations were made on the ex works basis and the difference between the export price and the normal value was expressed as a percentage of the CIF export price. On this basis, the margin of dumping was around 45 % during the RIP.

5. Price comparisons

(29) It was clear that should the measures be allowed to lapse that there was a clear incentive for the Chinese exporters to sell high volumes on the very large EU market. This conclusion is based on the following information calculated during the investigation:

(i) Chinese domestic prices in the RIP were around 25 % lower than those on the EU market;

(ii) the Chinese producers sell most of their production on export markets because their domestic market is not large enough to absorb all their production and because domestic prices are similar to those achievable in third country markets;

(iii) Community market prices were higher than the export prices to third countries achieved by the Chinese exporting producers, which would signal that dumping exists also in other third country markets and that there would be a significant incentive for producers in the PRC to re-direct their exports to the Community.

6. Unused capacity and stocks in the PRC

(30) In the previous investigation which concluded in May 2002, it was established that there was an enormous availability of unused Chinese production capacity (between