Council Regulation (EC) No 649/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China

COUNCIL REGULATION (EC) No 649/2008

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imposing a definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China

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:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 1006/96[(2)], following an anti-dumping investigation, the Council imposed a definitive anti-dumping duty of EUR 323 per tonne on imports on powdered activated carbon originating in the People's Republic of China (PRC) (the original investigation).

(2) By Regulation (EC) No 1011/2002[(3)], following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council renewed the imposition of the definitive anti-dumping duty on imports on powdered activated carbon originating in the PRC (the first expiry review investigation).

1.2. Request for a review (Present investigation)

(3) Following the publication of a notice of impending expiry[(4)], the Commission received a request on 12 March 2007 for an expiry review pursuant to Article 11(2) of the basic Regulation.

(4) The request was lodged by the European Chemical Industry Council (CEFIC) (the applicant) on behalf of two producers representing a major proportion, in this case more than 50 %, of the total Community production of powdered activated carbon. The request was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Community industry.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 649/2008. (See end of Document for details)*

(5) Having determined, after consulting the advisory committee, that sufficient evidence existed for the initiation of the expiry review, the Commission initiated this review on 13 June 2007, by a notice published in the *Official Journal of the European Union* (the notice of initiation)[(5)].

1.3. Parties concerned by the investigation

(6) The Commission officially advised the exporters/producers, the representatives of the exporting country, importers, suppliers, producers, users in the Community and the applicant 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. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(a) Sampling of exporters/producers in the PRC

(7) In view of the apparent large number of exporters/producers in the PRC (132 listed in the review request), it was considered appropriate to examine whether sampling should be used in the expiry review in conformity with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the exporters/producers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the expiry review and provide the Commission with the information requested in the notice of initiation. However, no exporter/producer replied to the sampling questions or otherwise made itself known in response to the notice of initiation and, thus, sampling for exporters/producers was not at issue.

(b) Sampling of Community importers

(8) In view of the apparent large number of importers in the Community (33 listed in the review request), it was considered appropriate to examine whether sampling should be used in the expiry review in conformity with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, importers in the Community were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the expiry review and provide the Commission with the information requested in the notice of initiation.

(9) However, since only three out of the 33 importers which were contacted replied to the sampling questions and agreed to cooperate, it was decided that sampling was not warranted in this case.

1.4. Questionnaires and verification

(10) Questionnaires were sent to the representatives of the exporting country and to all known importers, suppliers, producers, users in the Community and producers in the analogue country, the United States of America (USA) (see recitals 22 to 24).

(11) Complete replies to the questionnaires were received from three suppliers of raw materials to the Community industry, three users, two Community producers supporting the request for the review, one additional producer opposing the proceeding and one producer in the analogue country. No exporting producer in the PRC cooperated.

(12) The Commission sought and verified all the information deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) *Community producers*

— Norit BV, Amersfoort, the Netherlands, and Glasgow, United Kingdom,

— CECA SA, Paris and Bordeaux, France,

(b) *Other producer*

— Chemviron Carbon SA, Feluy, Belgium,

(c) *Community suppliers*

— Klasmann & Deilmann GmbH, Geeste, Niedersachsen, Germany,

— Rheinbraun Brennstoff GmbH, Cologne, Germany,

— WTL International Ltd, Macclesfield, Cheshire, United Kingdom,

(d) *Producer in the analogue country*

— Norit Americas Inc., Marshall, Texas, USA.

1.5. Review investigation period

(13) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 April 2006 to 31 March 2007 (review investigation period or RIP).

(14) The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the RIP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

(15) The product under consideration is the same as in the original investigation and the subsequent expiry review, i.e. powdered activated carbon (PAC) currently classifiable within CN code ex 3802 10 00. PAC is a micro-porous form of carbon, obtained from a variety of raw materials such as coal, lignite, peat, wood, olive stones or coconut shells, which are activated by means of steam or chemical processes. PAC is a very fine powder. Activated carbons are also sold in granular forms (granulated activated carbon GAC) which are not covered by the measures in force or by this review.

(16) As confirmed by the previous expiry review PAC is defined as consisting of at least 90 % by mass (% m/m) of particles with a size less than 0,5 mm.

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(17) The general applications of PAC are water treatment (potable water as well as treatment of waste water), gas and air purification, solvent recovery, decolourisation of sugar, vegetable oils and fats, deodorisation and purification of different products in the chemical (i.e. organic acids), pharmaceutical (i.e. gastrointestinal capsules) and food industries (i.e. alcoholic and soft drinks).

(18) The present investigation has confirmed that PAC produced and sold by Community producers and PAC imported from the PRC as well as PAC produced and sold in the analogue country (USA) share the same basic physical and technical characteristics and are in all respects identical. Therefore, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

(19) In accordance with Article 11(2) of the basic Regulation, the purpose of an expiry review is to determine whether the expiry of the measures is likely to lead to a continuation or recurrence of dumping.

(20) At the outset, the volumes exported to the Community during the RIP were examined. It should be noted that, since none of the Chinese exporting producers or any importer in the Community cooperated with the present investigation, export data were established in accordance with Article 18 of the basic Regulation, i.e. on the basis of information available. In this respect, it is recalled that no Chinese exporting producer or Community importer had also cooperated with the first expiry review investigation. However, since the imposition of a definitive anti-dumping duty in 1996, Eurostat statistics have been available for imports of PAC. These statistics have been confirmed by market research information submitted by the Community industry. On this basis, and in the absence of any other more reliable information, these statistics were used. They showed that during the RIP some 529 tonnes of PAC were imported from the PRC into the Community. This quantity is small in comparison with the quantity imported into the Community before the imposition of measures, but it still represented more that 1 % of the PAC consumption in the Community during the RIP. However, an indicative dumping calculation was made.

3.2. Likelihood of continuation of dumping

(21) In the context of the likelihood of a continuation of dumping, it was investigated whether dumping of exports from the PRC was currently taking place. This was done on the grounds that, if dumping was taking place now, it could be an important indication that dumping would be likely to continue in the future, should the measures be allowed to expire.

(a) Analogue country

(22) Since the PRC is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country selected in accordance with Article 2(7) of the basic Regulation.

(23) The USA was selected as an appropriate analogue country in the original and the first expiry review investigation. As indicated in the Notice of Initiation, the Commission envisaged using the USA as an appropriate analogue country also in the present expiry review investigation. In this respect, the investigation revealed that the USA was the most appropriate analogue country for the following reasons:

The USA is one of the largest producing countries of PAC worldwide. Figures submitted by the cooperating producer in the USA and the Community producers in the request for review showed that the production volume of both countries is comparable. Furthermore, as mentioned in recital 18, PAC produced and sold in the USA was found to be a like product to PAC produced in the PRC and exported to the Community. Domestic sales made by the cooperating US-producer (in terms of volume) were representative when compared to the imports of PAC from the PRC into the Community. Finally, the level of competition in the USA was found to be very high. Indeed, in addition to the competition amongst several producers in the USA, there was also competition from imported PAC (mainly from the PRC, Sri Lanka and the Philippines), which could be imported during the RIP without quantitative restrictions or import duties. Furthermore, the main US producer of PAC was willing to cooperate.

(24) Given the above, and as no comments were received on the choice of the analogue country by any of the interested parties, the USA was consequently selected as the most appropriate analogue country.

(b) Normal value

(25) In accordance with Article 2(1) of the basic Regulation, it was considered whether the representative domestic sales of PAC in the USA were, considering the prices charged, made in the ordinary course of trade. In this respect, it was examined whether domestic sales were profitable. For this purpose, the full cost of production of each grade during the RIP was compared to the average price of the sales transactions of each grade made during the same period. It was found that the majority of sales were made at a profit. The investigation also revealed that all sales were made to independent customers. As a result the prices paid or payable for PAC by independent customers on the US domestic market in the ordinary course of trade were used to determine the normal value in accordance with Article 2(1) of the basic Regulation.

(c) Export price

(26) As mentioned above, no Chinese exporting producer or any importer of PAC in the Community cooperated with this expiry review investigation. Therefore, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. As already mentioned in recital 20 above and in the absence of any other more reliable information, this was done by reference to the average price from the Eurostat (TARIC) import statistics during the RIP.

(d) Comparison