Council Regulation (EC) No 1331/2007 of 13 November 2007 imposing a definitive anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China

COUNCIL REGULATION (EC) No 1331/2007

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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 Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 3 July 2006 the Commission received a complaint lodged pursuant to Article 5 of the basic Regulation by AlzChem GmbH ('the complainant') representing 100 % of the Community production of 1-cyanoguanidine (dicyandiamide) ('DCD').

(2) This complaint contained evidence of dumping of DCD from the People's Republic of China ('PRC') and of material injury resulting there from which was considered sufficient to justify the opening of a proceeding.

(3) On 17 August 2006 the proceeding was opened by the publication of a notice of initiation[(2)] in the *Official Journal of the European Union*.

1.2. Parties concerned by the proceeding and verification visits

(4) The Commission officially advised the complainant Community producer, the exporting producers, importers, users, suppliers and associations known to be concerned and the representatives of the exporting country concerned of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The complainant Community producer, exporting producers, importers and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1331/2007. (See end of Document for details)*

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned. Three exporting producers in the PRC requested MET pursuant to Article 2(7) of the basic Regulation and IT, should the investigation establish that they do not meet the conditions for MET.

(7) In view of the apparent high number of exporting producers in the PRC, in the notice of initiation the Commission indicated that sampling might be applied in this investigation for the determination of dumping in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC were asked to make themselves known to the Commission and provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 July 2005 to 30 June 2006).

(9) However, given that only three exporting producers cooperated in the investigation, it was decided that sampling was not required.

(10) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the three cooperating exporting producers in the PRC and from the sole Community producer, as well as from two users and four importers.

(11) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producer*
- AlzChem GmbH, Germany,

(b) *Exporting producers in the PRC*
- Ningxia Darong Chemical & Metallurgy Co., Ltd., PRC,
- Ningxia Xingping Fine Chemical Co., Ltd., PRC,
- Ningxia Yinglite Chemicals Co., Ltd, PRC,

(c) *Unrelated importers*
- Lanxess GmbH, Germany,
- Helm AG, Germany,

(d) *Community users*
- Merck Santé, France,
- Lanxess GmbH, Germany.

1.3. Investigation period

(12) The investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(13) The product concerned is 1-cyanoguanidine (dicyandiamide) ('DCD'), falling within CN code 2926 20 00. It is a solid substance in the form of a fine, white, crystalline powder, usually odourless. It is produced from quick lime and carbon black, and appears after several production steps.

(14) DCD is usually used as an intermediate to produce a broad range of other chemical intermediates, such as pharmaceuticals, various industrial applications — water, pulp and paper, textile, leather — and diverse fields of epoxy applications. It is a key element of the nitrogen — carbon — nitrogen (NCN) chain, with niche end-products such as guanidine nitrate and other NCN derivatives.

(15) More than 90 % of the DCD sold on the Community market is standard. The rest, so-called micro DCD, is of a smaller particle size. The Chinese exporting producers provided data for the standard type only.

2.2. Like product

(16) One importer argued that the standard type of DCD produced by the Community industry is of higher quality than that produced by the Chinese exporting producers, since the water content of the Chinese DCD is significantly higher and more volatile compared to the water content of the DCD produced in the Community. Allegedly, the Chinese DCD also has a higher content of impurities.

(17) The investigation showed, however, that while there may be certain quality differences, these cannot be quantified and moreover, do not affect the basic chemical, physical and technical characteristics of DCD produced and sold by the Community industry in the Community, and DCD imported into the Community from the PRC, which were found to be the same and to have the same end-uses.

(18) It was therefore concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Market economy treatment ('MET')

(19) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

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(20) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions and without significant State interference;

2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. bankruptcy and property laws guarantee legal certainty and stability;

5. exchange rate conversions are carried out at market rates.

(21) Three exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadline. The Commission sought and verified at the premises of these companies all necessary information submitted in the MET applications as deemed necessary.

(22) The investigation revealed that the MET claim had to be rejected for all three exporting producers. The determination for the companies against each of the five criteria set out in Article 2(7)(c) of the basic Regulation showed that the companies did not meet the requirements of criteria one, two and three.

(23) As the main shareholder is in one case a State-owned enterprise and in the second a member of the People's Congress, it was found that the State could exert significant influence over the companies' business decisions relating to management decisions such as profit distribution, the issuing of new shares, capital increases and the amendment of the Articles of Association, therefore such decisions were not made in response to market signals. Significant differences in the electricity unit consumption and unit price between the three companies were found and none of the three companies could demonstrate that its electricity costs are the result of supply and demand, and that they substantially reflect market values.

(24) Furthermore, in all three cases, the companies' accounts failed to reflect the true financial situation. In particular, there were numerous breaches of basic accounting principles which are part of the International Accounting Standards (IAS) and as none of these issues were mentioned in the auditor's report, the companies cannot be considered to have one clear set of accounts in line with IAS and to be independently audited in line with IAS.

(25) As to the valuation of initial assets, the three companies were unable to provide any explanation of the basis on which such valuation was made. Finally, in two cases, the companies were unable to provide proof of all payments for land-use rights. Both

deficiencies indicated that there were significant distortions carried over from the non-market economy system.

(26) The Advisory Committee was consulted and the parties directly concerned were given an opportunity to comment on the above findings. The Community industry and the three exporting producers all received disclosure of the MET assessment and were given the opportunity to comment. The exporting producers made a number of comments against the findings and the Commission replied to them without, however, amending the overall assessment. The exporting producers claimed in particular that their business decisions were free of State intervention. Furthermore, they objected to specific findings concerning costs and evaluation of assets. However, no evidence was submitted to substantiate the claims, which had therefore to be rejected.

(27) Following the above, it was concluded that MET should not be granted to the PRC producers.

3.2. Individual treatment ('IT')

(28) Article 9(5) of the basic Regulation provides that, where Article 2(7)(a) of the basic Regulation applies, an individual duty shall be specified for companies that are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation for receiving individual treatment.

(29) The PRC producers to which MET could not be granted also claimed IT in the event that they were not granted MET. However, the State was found to exert significant influence in such a way that, in two cases, company decisions could not be considered to be taken freely and State interference could be such that there would be a high risk of circumvention. As far as the third, collectively-owned, former State-owned company is concerned, there are strong indications that there is still substantial potential interference from the State leading to possible risks of circumvention.

(30) The latter exporting producer claimed that potential State interference would not be sufficient reason to reject individual treatment because such conclusion would be merely based on assumptions.

(31) In accordance with Article 9(5)(e) of the basic Regulation, where Article 2(7)(a) applies, an individual duty can only be specified where an exporter can demonstrate, on the basis of properly substantiated claims, that State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty. First, the company in question could not clarify the precise role and responsibilities of its General Manager. It could neither clarify whether the current shareholders indeed paid for the shares that they own in the former State-owned company. On this basis, it was a reasonable conclusion that significant State interference could not be sufficiently excluded. The risk of circumvention was therefore considered too high and the exporting producer's claims in this regard had to be rejected.

(32) Consequently, since it was found that the PRC producers did not meet all of the requirements for being granted IT in accordance with Article 9(5) of the basic Regulation, IT had to be rejected and a single country-wide duty imposed.