Commission Regulation (EC) No 1069/2007 of 17 September 2007 imposing a provisional anti-dumping duty on imports of polyvinyl alcohol (PVA) originating in the People's Republic of China

COMMISSION REGULATION (EC) No 1069/2007

of 17 September 2007

imposing a provisional anti-dumping duty on imports of polyvinyl alcohol (PVA) originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 19 December 2006, pursuant to Article 5 of the basic Regulation, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of polyvinyl alcohol (PVA), originating in the People's Republic of China (PRC) and Taiwan (the countries concerned).

(2) The proceeding was initiated following a complaint lodged on 6 November 2006 by Kuraray Specialties Europe GmbH (the complainant), since January 2007 referred to as Kuraray Europe GmbH, representing a major proportion, in this case more than 25 %, of the total Community production of polyvinyl alcohol (PVA). The complaint contained prima facie evidence of dumping of PVA originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant producer and other known Community producers, exporting producers in the countries concerned, importer/traders and users known to be concerned and the representatives of the exporting countries concerned, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1069/2007. (See end of Document for details)*

so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(4) 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 exporting producers known to be concerned as well as to the authorities of the PRC. One exporting producer in the PRC claimed MET pursuant to Article 2(7)(b) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.

(5) In view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling for those parties was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.

(6) However, as far as the exporting producers in the PRC are concerned, given that only three exporting producers cooperated, it was subsequently decided that sampling would not be necessary.

(7) As concerns the importers of PVA, the Commission requested all known importers to provide information concerning imports and sales of the product concerned. On the basis of the information received from 14 cooperating importers, the Commission selected a sample of five importers, of which two were based in Germany, one in Italy, one in the Netherlands and one in the United States of America. These importers represented the largest representative volume of sales in the Community (around 80 %) of the cooperating importers, which could be reasonably investigated within the time available.

(8) The Commission sent questionnaires 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. Questionnaire replies were received from two Community producers, three exporting producers in the PRC, one exporting producer in Taiwan, the five sampled importers and seven users in the Community.

(9) As concerns the questionnaire replies received from users, two of those were incomplete and therefore had to be disregarded. In addition, several users submitted comments without replying to the questionnaire.

(10) One of the sampled importers cancelled twice at a very late stage an agreed verification visit. As a consequence, the data submitted by this company could not be verified and it provisionally had to be disregarded.

(11) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT in the case of the PRC and for a preliminary determination of dumping, resulting injury and Community interest for both countries concerned. Verification visits were carried out at the premises of the following companies:

(a) Community producers:

— Kuraray Europe GmbH, Frankfurt, Germany,

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 1069/2007. (See end of Document for details)*

— Celanese Chemicals Ibérica S.L., Tarragona, Spain;

(b) Exporting producer in Taiwan:

— Chang Chun Petrochemical Co. Ltd., Taipei;

(c) Exporting producer in the PRC:

— Shanxi Sanwei Group Co., Ltd., Hongdong;

(d) Unrelated importers in the Community:

— Cordial Beheer en Registergoederen BV, Winschoten, the Netherlands,

— Menssing Chemiehandel & Consultants GmbH, Hamburg, Germany,

— Omya Peralta GmbH, Hamburg, Germany;

(e) Users in the Community:

— Cordial Beheer en Registergoederen BV, Winschoten, the Netherlands,

— Wacker Chemie AG, Burghausen, Germany.

(12) In light of the need to establish a normal value for the exporting producers in the PRC which did not request MET or to which MET might not be granted, a verification to establish normal value on the basis of data from the analogue country envisaged in the notice of initiation, Japan, took place at the premises of the following producer:

— Kuraray Japan, Tokyo.

1.3. Investigation period

(13) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the investigation period (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(14) The product concerned is certain polyvinyl alcohols (PVA) in the form of homopolymer resins with a viscosity (measured in 4 % solution) of 3 mPas or more but not exceeding 61 mPas and a degree of hydrolysis of 84,0 mol % or more but not exceeding 99,9 mol % originating in the People's Republic of China and Taiwan (‘the product concerned’), normally declared within CN code ex 3905 30 00.

(15) PVA is produced by the hydrolysis of polyvinyl acetate which is manufactured by the polymerisation of vinyl acetate monomer (the latter being produced from, mainly, ethylene and acetic acid). PVA has a wide variety of applications. In the Community, it is mainly used for the production of polyvinyl butyral (PVB) (25 %-29 % of

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1069/2007. (See end of Document for details)*

consumption), polymerisation aids (21 %-25 %), paper coatings (17 %-21 %), adhesives (13 %-17 %) and for textile sizing (8 %-12 %).

(16) One Community user claimed that a specific product it purchased from the PRC should not be considered as the product concerned, as (i) it is not a standard PVA model and has different and very specific chemical and physical characteristics; and (ii) it has different uses or applications from commodity PVA.

(17) As concerns the first argument, it was found that this model falls within the product description as described in recital 14 and that it shares its basic physical and technical characteristics with the other models falling within the product definition. As concerns the second argument, this particular PVA model was used for the production of PVB, which is not only, as indicated in recital 15, the most important application but also the fastest growing market for PVA in the Community. It would be unrealistic to characterise such a market as not standard. Moreover, it was found that the average prices paid for PVA for the different applications were within the same range. In view of all these findings, it was considered that there were no grounds to exclude this model from the product definition and therefore the claim was dismissed.

2.2. Like product

(18) The investigation showed that PVA produced and sold in the Community by the Community industry, PVA produced and sold on the domestic markets of Taiwan and the PRC, and PVA produced in the PRC and Taiwan and exported to the Community, as well as that produced and sold in Japan, have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Taiwan

3.1.1. Normal value

(19) For the determination of normal value, it was first established whether domestic sales of the like product to independent customers of the sole exporting producer in Taiwan were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume of the product concerned to the Community, in accordance with Article 2(2) of the basic Regulation.

(20) For each product type sold by the exporting producer on its domestic market and found to be directly comparable with the product type sold for export to the Community, it was established whether domestic sales were sufficiently representative. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Community.

(21) The Commission subsequently examined whether the domestic sales of each product type sold domestically in representative quantities could be regarded as being

sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exported product type the proportion of profitable domestic sales to independent customers during the IP.

(22) For those product types where more than 80 % by volume of sales on the domestic market were not below unit cost and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.

(23) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(24) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(25) Wherever domestic prices of a particular product type sold by the exporting producer could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(26) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation.

3.1.2. Export price

(27) The sole exporting producer exported the product concerned directly to independent customers in the Community. Export prices were therefore established on the basis of the prices actually paid or payable by these independents customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.1.3. Comparison

(28) The normal values and the export prices of the sole exporting producer were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export prices, due allowance in the form of adjustments was made for differences in transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, after sales costs (warranty and guarantee) and other factors (bank charges) where applicable and justified, in accordance with Article 2(10) of the basic Regulation.

3.1.4. Dumping margin