Council Regulation (EC) No 1650/2006 of 7 November 2006 extending the definitive anti-dumping duty imposed by Regulation (EC) No 769/2002 on imports of coumarin originating in the People's Republic of China to imports of coumarin consigned from Indonesia or Malaysia, whether declared as originating in Indonesia or Malaysia or not

COUNCIL REGULATION (EC) No 1650/2006

of 7 November 2006

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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 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures

(1) Following an expiry review, by Regulation (EC) No 769/2002[(2)] (the original Regulation), the Council imposed a definitive anti-dumping duty of EUR 3 479 per tonne on imports of coumarin, falling within CN code ex 2932 21 00 originating in the People's Republic of China (PRC).

(2) In December 2004, after circumvention practices via India and Thailand were found, the measures were extended by Regulation (EC) No 2272/2004[(3)] to imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not.

2. Request

(3) On 13 February 2006, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of coumarin originating in the PRC (the request). The request was submitted by the European Chemical Industry Council (CEFIC) (the applicant) on behalf of the sole producer in the Community.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1650/2006. (See end of Document for details)*

(4) The request contained sufficient prima facie evidence that there had been a change in the pattern of trade following the imposition of the existing anti-dumping measures and anti-circumvention measures on imports of coumarin originating in the PRC, as shown by a significant increase in imports of the same product from Indonesia and Malaysia.

(5) This change in the pattern of trade was alleged to stem from the transhipment of coumarin originating in the PRC via Indonesia and Malaysia. It was further alleged that there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping measures on imports of coumarin originating in the PRC.

(6) Finally, the applicant submitted evidence that the remedial effects of the existing anti-dumping measures on coumarin originating in the PRC were being undermined both in terms of quantities and prices. Significant volumes of imports of coumarin from Indonesia and Malaysia appeared to have replaced imports of coumarin from the PRC. In addition, there was sufficient evidence that the increase in imports was made at prices well below the non-injurious price established in the investigation that led to the existing measures, and that dumping was taking place in relation to the normal values previously established for coumarin originating in the PRC.

3. Initiation

(7) The Commission initiated an investigation by Regulation (EC) No 499/2006[(4)] (the initiating Regulation) into the alleged circumvention of the anti-dumping measures imposed on imports of coumarin originating in the PRC by imports of coumarin consigned from Indonesia or Malaysia, whether declared as originating in Indonesia or Malaysia or not and, pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports of coumarin consigned from Indonesia or Malaysia, whether declared as originating in Indonesia or Malaysia or not, falling within CN code ex 2932 21 00 (TARIC code 2932 21 00 16).

4. Investigation

(8) The Commission officially advised the authorities of the PRC, Indonesia and Malaysia, the producers/exporters, the importers in the Community known to be concerned and the applicant of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC as well as to the importers in the Community named in the request. There were no known producers in Indonesia and Malaysia. 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 initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and findings being made on the basis of the facts available.

(9) No producer or exporter in the PRC, Indonesia or Malaysia submitted a reply to the questionnaire. Indonesian authorities replied that there was no producer of coumarin known in Indonesia.

5. Investigation period

(10) The investigation period covered the period from 1 March 2005 to 28 February 2006 (IP). Data from 2002 up to the end of the investigation period were collected to investigate the alleged change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(a) Indonesia and Malaysia

(11) No producers or exporters of coumarin in Indonesia and Malaysia made themselves known or cooperated in the investigation. Accordingly, findings in respect of the exports of coumarin consigned from Indonesia and Malaysia to the Community had to be made on the basis of the facts available in accordance with Article 18 of the basic Regulation. At the outset of the investigation, the authorities of Indonesia and Malaysia had been informed of the consequences of non-cooperation, as set out in Article 18(6) of the basic Regulation.

(b) PRC

(12) No Chinese producers or exporters cooperated in the investigation.

(13) It was made clear to the known companies that non-cooperation may lead to the application of Article 18 of the basic Regulation.

2. Product concerned and like product

(14) The product concerned by the alleged circumvention is, as defined in the original Regulation, coumarin currently classifiable within CN code ex 2932 21 00. Coumarin is 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 can be manufactured following two different production processes: the Phenol route which involves Perkin reaction and the o-Cresol route which involves Rasching reaction. However, coumarin produced through these two processes has the same basic physical and chemical characteristics and has the same uses.

(16) In the absence of cooperation by parties in Indonesia or Malaysia, it must be inferred, on the basis of the information available and in the absence of any contrary evidence, that coumarin exported to the Community from the PRC and coumarin consigned from Indonesia and Malaysia have the same basic physical and chemical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. Change in the pattern of trade

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(17) As stated above, the change in the pattern of the trade was alleged to stem from transhipment via Indonesia and Malaysia.

Indonesia

(18) As no Indonesian company cooperated in the investigation, exports from Indonesia to the Community had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data, the most appropriate information available, were therefore used to establish the export prices and quantities of imports from Indonesia.

(19) Significant imports from Indonesia into the Community started immediately after the initiation of the previous anti-circumvention investigation against India and Thailand, at the level of 12,5 tonnes in 2004, 15 tonnes in 2005 and 10 tonnes in the investigation period (representing 1,7 % of the EU consumption). In parallel, Chinese exports into Indonesia have developed from 57 tonnes in 2003 to 83,8 tonnes in the investigation period.

(20) In the absence of cooperation and of any contrary evidence, it is concluded that there was a change in the pattern of trade between the PRC, Indonesia and the Community from 2004 to the end of the investigation period, which stemmed from transhipment of coumarin originating in the PRC via Indonesia.

Malaysia

(21) As no Malaysian company cooperated in the investigation, exports from Malaysia to the Community had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data, the most appropriate information available, were therefore used to establish the export prices and quantities of imports from Malaysia.

(22) Imports from Malaysia into the Community started in 2005, reaching a level of 13 tonnes in 2005 and 23 tonnes in the investigation period (representing 3,9 % of the EU consumption). At the same time, the Chinese exports into Malaysia have grown from 23,6 tonnes in 2004 to 43,76 tonnes in the investigation period.

(23) In the absence of cooperation and of any contrary evidence, it is concluded that there was a change in the pattern of trade between the PRC, Malaysia and the Community from 2005 to the end of the investigation period, which stemmed from transhipment of coumarin originating in the PRC via Malaysia.

4. Insufficient due cause or economic justification

Indonesia

(24) In the absence of cooperation and of any contrary evidence, it is concluded that, given that significant imports started immediately after the initiation of the previous anti-circumvention investigation against India and Thailand, in parallel with an increase of Chinese exports of coumarin to Indonesia, the change in the pattern of trade stemmed from the existence of the anti-dumping measures rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1)

of the basic Regulation. In this respect, it is also noted that there is no evidence of genuine production of coumarin in Indonesia.

Malaysia

(25) In the absence of cooperation and of any contrary evidence, it is concluded that, given that the imports started in 2005, after the extension of the measures on imports of coumarin consigned from India or Thailand and that, in parallel, the Chinese exports into Malaysia have grown from 23,6 tonnes in 2004 to 43,76 tonnes in 2005, the change in the pattern of trade stemmed from the existence of the anti-dumping measures rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation. In this respect, it is also noted that there is no evidence of genuine production of coumarin in Malaysia.

5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like products

Indonesia

(26) Based on the trade flow analysis made above, it was found that a change in the pattern of the Community imports is linked to the fact that there were anti-dumping and anti-circumvention measures in place. While imports declared as originating in Indonesia were absent on the Community market until 2003, they amounted to 4 tonnes in 2003, to 12,5 tonnes in 2004, to 15 tonnes in 2005 and to 10 tonnes in the investigation period, representing 1,7 % of Community consumption.

(27) The investigation revealed that the imports from Indonesia have taken place at price levels below the export price in the original investigation and well below the original normal value.

(28) On the basis of the above, it is concluded that the change in trade flows, together with the abnormally low prices of exports from Indonesia have undermined the remedial effects of the anti-dumping measures both in terms of quantities and prices of the like products.

Malaysia

(29) Based on the trade flow analysis made above, it was found that a change in the pattern of trade is linked to the fact that there were anti-dumping and anti-circumvention measures in place. While there were no imports of coumarin into the Community before 2005, they amounted to 13 tonnes in 2005 and to 23 tonnes in the investigation period.

(30) The investigation revealed that the imports from Malaysia have taken place at price levels below the export price in the original investigation and well below the original normal value.

(31) On the basis of the above, it is concluded that the change in trade flows, together with the abnormally low prices of exports from Malaysia have undermined the remedial effects of the anti-dumping measures both in terms of quantities and prices of the like products.