Council Regulation (EC) No 2272/2004 of 22 December 2004 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 India or Thailand, whether declared as originating in India or Thailand or not

COUNCIL REGULATION (EC) No 2272/2004

of 22 December 2004

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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. Request

(2) On 24 February 2004, 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.

(3) The request alleged that there had been a change in the pattern of trade following the imposition of the anti-dumping measures on imports of coumarin originating in the PRC, as shown by a significant increase in imports of the same product from India and Thailand.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 2272/2004. (See end of Document for details)*

(4) This change in the pattern of trade was alleged to stem from the transhipment of coumarin originating in the PRC via India and Thailand. 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.

(5) Finally, the applicant alleged 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 India and Thailand 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

(6) The Commission initiated an investigation by Regulation (EC) No 661/2004[(3)] ('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 India or Thailand, whether declared as originating in India or Thailand 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 India or Thailand, whether declared as originating in India or Thailand or not, falling within CN code ex 2932 21 00 (TARIC codes 2932 21 00 11 and 2932 21 00 15), as from 9 April 2004. The Commission advised the authorities of the PRC, India and Thailand of the initiation of the investigation.

4. Investigation

(7) The Commission officially advised the authorities of the PRC, India and Thailand, 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 and India (there were no known producers in Thailand), as well as to the importers in the Community named in the request or known to the Commission from the investigation which led to the imposition of the existing measures. 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.

(8) No producer or exporter in the PRC or Thailand submitted a reply to the questionnaire. Replies to the questionnaire were received within the prescribed time limits from one exporting producer in India and one unrelated importer in the Community. The Commission carried out a verification visit at the premises of the following Indian exporting producer:

— Atlas Fine Chemicals Pvt. Ltd, Nasik, India

5. Investigation period

(9) The investigation period covered the period from 1 April 2003 to 31 March 2004 ('IP'). Data from 2000 up to the end of the IP were collected to investigate the change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(a) Thailand

(10) No producers or exporters of coumarin in Thailand made themselves known or cooperated in the investigation. Accordingly, findings in respect of the exports of coumarin consigned from Thailand 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 Thailand had been informed of the consequences of non-cooperation, as set out in Article 18(6) of the basic Regulation.

(b) India

(11) One exporting producer in India, Atlas Fine Chemicals Pvt. Ltd, India ('Atlas'), cooperated, representing more than 90 % in volume and value of the total imports of coumarin from India during the IP.

(12) Atlas had stated in its questionnaire reply that none of its related companies are involved, either directly or indirectly, in the trade and manufacturing of coumarin. However, the verification visit revealed that Atlas has two related companies in India: Monolith Chemicals Pvt. Ltd. and Aims Impex Pvt. Ltd. that import coumarin originating in the PRC into India and then sell the imported products to Atlas.

(c) PRC

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

(14) It was made clear to these companies that non-cooperation may lead to the application of Article 18 of the basic Regulation. They were also informed of the consequences of non cooperation.

2. Product concerned and like product

(15) 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.

(16) Coumarin can be manufactured following two different production processes: the Phenol route which involves Perkin reaction and the *o*-Cresol route which involves

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Rasching reaction. However, coumarin produced through these two processes has the same basic physical and chemical characteristics and has the same uses.

(17) Based on the information gathered during the investigation from the sole cooperating Indian producer and in the absence of cooperation by any other Indian producers and by any parties in Thailand, it must be inferred, in the absence of any contrary evidence, that coumarin exported to the Community from the PRC and coumarin consigned from India and Thailand 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

(18) As stated above, the change in the pattern of the trade was alleged to stem from transhipment via India and Thailand.

Thailand

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

(20) Imports of coumarin from Thailand increased from 0 tonne in 2000 to 211 tonnes in the IP. These imports from Thailand commenced in October 2001, some months after the initiation of expiry review concluded in 2002 (‘the previous investigation’), when it could not be excluded that the measures imposed by Council Regulation (EC) No 600/96 of 25 March 1996 imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China[4] would be maintained. The share of the imports consigned from Thailand in the total volume of imports of coumarin into the Community increased from 0 % in 2000 to 50 % in the IP, while the share of imports into the Community of coumarin from the PRC remained stable at 7 % during the same period. In addition, Chinese export statistics at CN code level show that during the same period exports of coumarin from the PRC in Thailand substantially increased from 1 tonne in 2000 to 270 tonnes in the IP. It was also noted that imports from Thailand have compensated to some extent for the decrease in imports from the PRC since measures were originally imposed by Regulation (EC) No 600/96.

(21) 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, Thailand and the Community from 2000 to the IP which stemmed from transhipment of coumarin originating in the PRC via Thailand.

India

(22) The share of the imports consigned from India in the total volume of imports of coumarin into the Community increased from 11 % in 2000 to 35 % in the IP, while the share of imports into the Community of coumarin from the PRC remained stable at 7 % during the same period. Furthermore, Chinese export statistics at CN code level show

that during the same period exports of coumarin from the PRC to India substantially increased from 88 tonnes in 2000 to 687 tonnes in the IP. It was also noted that imports from India have compensated to some extent for the decrease in imports from the PRC since measures were originally imposed by Regulation (EC) No 600/96.

(a) Cooperating exporting producer in India

(23) Atlas substantially and continuously increased its exports to the Community from 100[(5)] in the financial year ('FY') 2000/2001[(6)] to 1 957 in the IP. During the same period Atlas increased substantially its purchase of coumarin originating in the PRC from 100 in the FY 2000/2001 to 1 411 in the IP. It is therefore concluded that Atlas decided to import coumarin of Chinese origin, and after a slight modification re-export it to the Community thereby increasing substantially the share of imports consigned from India to the Community.

(b) Non-cooperating companies

(24) The request mentioned one other producer in India. As far as this non-cooperating company is concerned, and indeed any other producers that may exist but have chosen not to cooperate, the export volume and value had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data, which were the most appropriate information available, were therefore used to establish the export prices and quantities of the non-cooperating companies. On that basis, it was found that imports from the non-cooperating companies slightly decreased. Moreover, it should be noted that the imports from the non-cooperating companies only represented 4-7 %[(7)] in volume and value of the total imports of coumarin from India during the IP. Given the non-cooperation and the small market share of the non-cooperating companies, it was found that the information available for the non-cooperating companies was not such as to invalidate the finding of a change in the pattern of trade.

(c) Conclusion for India

(25) On the basis of the above findings, it is concluded that there was a change in the pattern of trade between India, the PRC and the Community from 2000 to the IP which stemmed from re-export after a slight modification of coumarin originating in the PRC via India by the cooperating company and transhipment of coumarin originating in the PRC via India by non-cooperating companies.

4. Insufficient due cause or economic justification

Thailand

(26) As to imports from Thailand, in the absence of cooperation and of any contrary evidence, it is concluded that, given that the imports started some months after the initiation of the previous investigation, probably in anticipation of a renewed imposition of the existing anti-dumping measures, 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.