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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 435/2004

of 8 March 2004

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia

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:

A. **PROCEDURE**

(1) On 18 September 2003, the Commission imposed, by Regulation (EC) No 1627/2003 [2], a provisional anti-dumping duty on the imports into the Community of sodium cyclamate originating in the People's Republic of China ('PRC') and Indonesia (the 'provisional Regulation').

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to the end of the IP (the 'period considered').

B. **SUBSEQUENT PROCEDURE**

(3) Following the imposition of a provisional anti-dumping duty on imports of sodium cyclamate originating in the PRC and Indonesia, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) As explained under recital 5 of the provisional Regulation, the dumping verification visits to the PRC and Indonesia which normally take place before provisional findings are made, were cancelled due to the introduction of travel restrictions because of SARS. A notice concerning the consequences of SARS on anti-dumping and anti-subsidy investigations has been published in the *Official Journal of the European Union* [3].

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. After the travel restrictions relating to SARS were lifted, verification visits were carried out at the premises of the following companies:

(a) *Exporting producers and their related companies in PRC and Hong Kong,*

— Zhong Hua Fang Da (H.K.) Limited, Hong Kong,

— Fang Da Food Additive (Shen Zhen) Limited, Shenzhen, PRC,

— Shanghai Shumi Co. Ltd., Shanghai, PRC,

— Rainbow Rich Industrial Ltd., Hong Kong,

— Golden Time Enterprise (Shenzhen) Co. Ltd., Shenzhen, PRC;

(b) *Exporting producer in Indonesia*

— PT. Golden Sari (Chemical Industry), Bandar Lampung, Indonesia.

(6) Following the expiry of the deadline for comments on the provisional findings and well after the verification visits, another Indonesian company made itself known and requested the exporting producers' questionnaire in order to reply. The company was informed that it should have made itself known and request the questionnaire at the time of initiation of the investigation. It was further informed that at such advanced stage of the investigation no new information could be considered and that findings would be based for it on facts available. It was, nevertheless, given an opportunity to comment and its comments were considered, but they have not changed the above conclusion.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 232, 18.9.2003, p. 12.
[3] OJ C 191, 13.8.2003, p. 2.

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, taken into account for the definitive findings.

C. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

(8) No comments regarding the product concerned and like product were received and, therefore, the conclusions set out in recitals 7 to 13 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. GENERAL METHODOLOGY

(9) This section explains the general methodology used to establish whether the imports into the Community of the product concerned have been dumped. Specific issues raised by the investigation for each country concerned are described in recitals 23 to 49.

1.1. **Normal value**

For cooperating exporting producers in Indonesia and exporting producers in the PRC for which market economy treatment ('MET') has been granted

1.1.1. Overall representativity of domestic sales

(10) In accordance with Article 2(2) of the basic Regulation, it was first examined whether the domestic sales of sodium cyclamate to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was at least 5 % of the total volume of its corresponding export sales to the Community.

1.1.2. Product type specific representativity

(11) Subsequently, it was examined whether the domestic sales of the exported product types could be considered as representative. For this purpose, the comparable types sold on the domestic market had to be identified first. The investigation considered those product types of sodium cyclamate sold domestically as being identical or directly comparable with the types sold for export to the Community when they were of the same form as defined in recital 8 of the provisional Regulation.

(12) Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type sold to independent customers during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.

1.1.3. Ordinary course of trade test

(13) It was examined whether the domestic sales of each exporting producer could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(14) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, not sold at a loss on the domestic market during the IP:

(a) For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs 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 during the IP, paid or payable by independent customers, of the type in question irrespective of whether these sales were profitable or not.

(b) For those product types where at least 10 %, but not more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs only, of the type in question.

1.1.4. Normal value based on actual domestic price

(15) When the requirements set out in recitals 10 to 14(b) were met, normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of the exporting country during the IP, as provided for in Article 2(1) of the basic Regulation.

For exporting producers in the PRC without MET

(16) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that are not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country) for the like product.

1.2. **Export price**

(17) According to Article 2(8) of the basic Regulation, the export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.

1.3. **Comparison**

(18) In order to ensure a fair comparison between the normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, level of trade, packing costs, credit costs, commissions, discounts and bank charges have been granted where applicable and justified.

(19) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade.

1.4. **Dumping margin**

For cooperating exporting producers in Indonesia and exporting producers in the PRC granted MET

(20) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type, as determined under recitals 10 to 15, was compared with the adjusted weighted average export price, as determined under recital 17.

For non-cooperating companies

(21) For those exporting producers which neither replied to the questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation. The above approach was also considered necessary in respect of non-cooperating exporting producers, in order to prevent such non-cooperating exporting producers benefiting from their non-cooperation.

(22) Where the overall level of cooperation found was low, it was considered appropriate to set a country wide dumping margin for the non-cooperating companies at a higher level than the highest dumping margin established for a cooperating company. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating exporting producers in the country concerned generally having dumped at a higher level than any cooperating exporting producer in the same country.

2. SPECIFIC ISSUES RAISED BY THE INVESTIGATION WITH REGARD TO THE ESTABLISHMENT OF THE DUMPING MARGIN FOR EACH OF THE COUNTRIES CONCERNED

2.1. **Indonesia**

(23) In total, one exporting producer cooperated in the investigation.

2.1.1. Normal value

(24) It was first established that the domestic sales of sodium cyclamate of the sole cooperating exporting producer were representative during the IP (see recital 10 above). It was further established that the sole product type of sodium cyclamate sold on the domestic market by the cooperating exporting producer was identical to the sole type sold for export to the Community.

(25) For this product type, since more than 80 % by volume was not sold at a loss on the domestic market and its weighted average sales price was higher than its weighted average production cost, the normal value was calculated as the weighted average price of all domestic sales made during the IP, paid or payable by independent customers, of the type in question, as set out in Article 2(1) of the basic Regulation.

2.1.2. Export price

(26) Exports were made only to unrelated customers in the Community and, therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable during the IP.

2.1.3. Comparison

(27) In order to ensure a fair comparison, allowances were made for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, level of trade, packing costs, credit costs and commissions, where applicable and justified.

(28) The exporting producer claimed an adjustment to the normal value for an amount corresponding to import charges, indirect taxes and income taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in Indonesia and not collected or refunded in respect of the product exported to the Community. However, the company concerned could neither demonstrate that those taxes were actually not paid or refunded in respect of the export sales to the Community nor that any such taxes not paid or refunded were included in the domestic prices. Therefore, the claim was rejected.

(29) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the exporting producer concerned claimed an adjustment for certain advertising expenses and an adjustment for the expenses of certain representative offices involved in some domestic sales. However, it was established that the exporting producer had already included these expenses in the quantification of the level of trade adjustment it had claimed earlier. Furthermore, the level of trade adjustment granted covered any price difference between sales through different channels due to different functions, including those concerning advertising and the sales representative offices. Consequently, and in order to avoid duplication when making adjustments as provided for in Article 2(10) of the basic Regulation, it was not considered appropriate to grant any further adjustment for such expenses. Therefore, the claim was rejected.

2.1.4. Dumping margin

(30) The definitive dumping margin expressed as a percentage of the cif Community frontier price duty unpaid is for PT. Golden Sari (Chemical Industry) 16,3 %.

(31) The residual definitive dumping margin for Indonesia was set at a higher level than the dumping margin established for the cooperating company as the overall level of cooperation in Indonesia was low. In order to establish the overall level of non-cooperation, the volume of exports to the Community reported by the cooperating exporting producer was compared with the equivalent Eurostat import statistics. This showed a level of non-cooperation of around 40 % of the total volume of imports.

(32) In order to calculate the residual definitive dumping margin, and since the cooperating company only exported one product type, the average import price into the Community for Indonesia, as reported in the Eurostat statistics, adjusted for ocean freight and insurance costs was compared to the normal value, as established for the cooperating exporting producer, adjusted for freight and packing costs. The residual definitive dumping margin thus established is 18,1 %.

2.2. **The People's Republic of China**

(33) In total, three exporting producers cooperated in the investigation.

2.2.1. Market Economy Treatment (MET)

(34) As set out in recitals 21 to 25 of the provisional Regulation, MET was granted to all three exporting producers in the PRC who applied for it.

2.2.2. Normal value for exporting producers granted MET

(35) During the verification visit to Rainbow Rich Industrial Ltd., the mother company of Golden Time Enterprise (Shenzhen) Co. Ltd., it was found out that the production and sales of sodium cyclamate during the IP of another related producing company in the PRC, San Lian Industrial, situated in Nanjing [1], had neither been reported in the questionnaire responses nor subsequently during the course of the investigation. Neither was MET requested in respect of this related company. Therefore, domestic sales information and cost of production of this company could not be verified during the on-spot verification. It was found that these non-reported domestic sales were significant, i.e. around 45 % of the total domestic sales of the related companies in question.

[1] As of October 2002, the company is called Jintian Enterprises Nanjing Co. Ltd.

(36) According to Article 18 of the basic Regulation, provisional or final findings may be made on the basis of facts available when an interested party refuses access to, or otherwise does not provide necessary information within the time limits provided in the basic Regulation. It is noted that the production costs and the domestic sales information of San Lian Industrial are necessary information in order to establish the normal value to be compared with the export price established for Golden Time Enterprise (Shenzhen) Co. Ltd. Since neither MET was granted to San Lian Industrial, nor information concerning its domestic sales and cost of production was provided and verified during the investigation, the determination of the normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. shall be based on facts available. The party concerned was informed accordingly of the consequences of this partial non-cooperation and given an opportunity to comment. The comments confirmed that San Lian Industrial produced and sold in the domestic market during the IP sodium cyclamate on behalf of its mother company Rainbow Rich Industrial Ltd. and that the details have never been reported. Therefore, the conclusion to establish normal value on the basis of the facts available is hereby confirmed.

(37) Since the normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. would normally include all domestic sales of the related companies and one related company is considered as not having cooperated and MET was not granted to it, an analogue country was selected as the best facts available for the establishment of normal value. In this respect, it is noted that following the imposition of provisional measures no comments were received concerning the selection of Indonesia as an analogue country as set out in recital 28 of the provisional Regulation. Therefore, prices in Indonesia were considered a reasonable surrogate for prices in the PRC. The average domestic prices of the cooperating Indonesian exporting producer, as verified during the on-spot verification visit, have therefore been used to establish normal value for the Chinese exporting producer Golden Time Enterprise (Shenzhen) Co. Ltd.

(38) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the cooperating Indonesian exporting producer and the Indonesian Government argued that normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. and for any other non-cooperating Chinese exporting producer (see recital 49) should not be based on data from the sole cooperating Indonesian exporting producer, but on data from the complaint. They further argued that it would be discriminatory to use the data of the cooperating Indonesian exporting producer to calculate normal value for non-cooperating Chinese exporting producers, because the dumping margin established for one Chinese exporting producer, which has partially cooperated during the investigation, was found lower than that for the cooperating Indonesian exporting producer. Firstly, it is noted that the dumping margin is the result of the comparison of a normal value with an export price. Therefore, the level of the dumping margin depends on two parameters (normal value and export price) and conclusions, including the abovementioned discrimination, cannot be drawn by comparing only one of these parameters, i.e. the normal value. Furthermore, in accordance with the provisions of Article 18(5) of the basic Regulation, if determinations, including those regarding normal value, are based on the facts available, any such facts, including the information supplied in the complaint, shall be checked by reference to official import statistics or information obtained from other interested parties during the investigation. Therefore, since there was on the record verified information concerning normal value obtained from the sole cooperating Indonesian exporting producer, it was not considered appropriate to disregard this information and use instead as facts available information supplied in the complaint.

(39) As regards the exporting producer Fang Da Food Additives situated in both Shenzhen and Yang Quan, when examining whether the domestic sales were made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, the selling, general and administrative expenses as reported by Fang Da Food Additives and its related companies for their domestic sales were adjusted in order to take into account expenses which were recorded in the accounting of the related company, Zhong Hua Fang Da Ltd. in Hong Kong. The verification confirmed that these expenses were closely linked to the operations in the domestic market and not to the export activities as initially claimed by the company.

(40) The examination whether the domestic sales were made in the ordinary course of trade was then carried out by establishing the proportion of domestic sales to independent customers, of each of the two representative types, not sold at a loss on the domestic market during the IP.

(41) For those product types where more than 80 %, by volume, of sales were not sold at a loss on the domestic market, and 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, paid or payable by independent customers, of the type in question.