COMMISSION REGULATION (EC) No 1627/2003

of 17 September 2003

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

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], as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) On 19 December 2002, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of sodium cyclamate originating in the People's Republic of China ('PRC') and Indonesia.

(2) The proceeding was initiated as a result of a complaint lodged in November 2002 by a Spanish producer, Productos aditivos SA, representing the total Community production. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the applicant Community producer, the exporting producers, importers and users known to be concerned and the representatives of the PRC and Indonesia 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.

(4) A number of exporting producers in the PRC and Indonesia, as well as the sole Community producer, importers, users and suppliers, made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(5) The Commission sought, by means of questionnaires sent to all known parties, and verified to the possible extent the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest. In this regard, the Commission received questionnaire responses from the following companies:

(a) *producer in the Community*

— Productos aditivos SA, Barcelona, Spain;

(b) *importers/traders and users in the Community*

— La Casera, SA (Cadbury Schweppes), Madrid

— Palatinit GmbH, Mannheim

Verification visits were also carried out at the premises of the abovementioned companies;

(c) *exporting producers in the People's Republic of China*

— Fang Da Food Additive (Shen Zhen) Limited

— Fang Da Food Additive (Yang Quan) Limited

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 318, 19.12.2002, p. 7.

— Zhong Hua Fang Da (HK) Ltd (related exporter in Hong Kong)

— Golden Time Enterprise (Shenzhen) Co. Ltd

— Rainbow Rich Industrial Ltd (related exporter in Hong Kong);

(d) *exporting producer in Indonesia*

— PT. Golden Sari, Bandar Lampung

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* ([1]). Verification visits were, however, carried out in respect of those exporting producers which requested market economy treatment ('MET') before those travel restrictions had been adopted.

(6) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period ('period considered').

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **General**

(7) Sodium cyclamate is a commodity product used as a food additive, permitted in the European Community and in many other countries as a sweetener for low-caloric and dietetic food and beverages. It is widely used as an additive by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.

(8) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. This content, limited by legislation (Directive 94/35/EC), defines the quality of the cyclamate. Cyclamate can be found in two different forms: hydrated (HC), with 15 % of water of crystallisation; and anhydrous (AC), with a content of up to 1 % of moisture. These two degrees of moisture do not modify the main characteristics and uses of cyclamate; it only varies in degree of sweetening power; the HC is less sweet due to the water content. Prices vary due to the same reason. The anhydrous is approximately 15 % more expensive than the hydrated form. Both forms should be therefore considered as one product for the purposes of this proceeding.

2. **The product concerned**

(9) The product under consideration is sodium cyclamate originating in the PRC and Indonesia, currently classifiable under CN code ex 2929 90 00.

(10) The investigation has shown that all types of the product concerned, despite differences in the form of presentation, have the same physical, and chemical characteristics and are used for the same purposes. Therefore and for the purpose of the present anti-dumping proceeding all types of the product concerned are regarded as one product concerned.

3. **Like product**

(11) No differences were found between the product concerned and the sodium cyclamate produced and sold on the domestic market in the PRC and Indonesia, which also served as an analogue country for the purpose of establishing the normal value with respect of the PRC. Indeed, that cyclamate has the same basic physical and chemical characteristics and uses compared with that exported from these countries to the Community.

(12) Likewise, no differences were found between the product concerned and the sodium cyclamate produced by the applicant and sold on the Community market. They both share the same physical and chemical characteristics and uses.

(13) Consequently, sodium cyclamate sold on the domestic market of the PRC and Indonesia and exported to the Community as well as sodium cyclamate produced and sold in the Community are considered as alike to the product concerned within the meaning of Article 1(4) of Regulation (EC) No 384/96 ('the basic Regulation').

([1]) OJ C 191, 13.8.2003, p. 2.

C. **DUMPING**

1. **Indonesia**

1.1. *Normal value*

(14) One exporting producer in Indonesia responded to the Commission's questionnaire. The dumping verification visits, which were planned for May 2003, had to be cancelled due to the introduction of travel restrictions because of SARS.

(15) In these circumstances, it was examined whether the information provided in the questionnaire response concerning domestic prices and costs could form a basis for a provisional calculation of the normal value. It was found that the information provided in this regard by this exporting producer was deficient and unclear to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producer to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available which the Commission services could have had recourse to enabling them to verify and complete the data submitted by the exporting producer. It was therefore concluded that, failing any other alternative, the facts available to the Commission had to be used for the provisional determination of the normal value. In this respect, the information submitted in the complaint was considered the most appropriate basis to provisionally establish the normal value.

(16) The average Indonesian price reported in the complaint has therefore been used to establish the provisional normal value. The cooperating exporting producer was informed and was given an opportunity to comment. Furthermore, the investigation continues and therefore, should the information provided by the exporting producer be completed and clarified, the Commission will calculate a revised normal value based on the questionnaire reply.

1.2. *Export price*

(17) Due to the introduction of travel restrictions because of SARS, the details provided by the cooperating exporting producer could not be verified. It was examined whether the information provided in the questionnaire response concerning export prices could form a basis for a provisional dumping calculation. It was found that the information provided in this regard by this exporting producer was deficient to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producer to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available to the Commission services which could have enable the Commission's services to verify and complete the data submitted by the exporting producer. It was therefore concluded that, failing any other alternative, facts available had also to be used for the provisional determination of the export price. In this respect, the average import price for Indonesia as reported in Eurostat statistics was used to establish export price. Furthermore, the investigation continues and therefore, should the information provided by the exporting producer be completed and clarified, the Commission will calculate an individual export price based on the questionnaire reply.

1.3. *Comparison*

(18) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which could affect prices and price comparability. Given that no reliable or verified information concerning costs and expenses was available at this stage of the investigation, and failing any other available more reliable data being available, the relevant costs reported in the complaint had to be used as facts available in order to make the necessary adjustments for differences in transport and insurance costs.

1.4. *Dumping margin*

(19) The normal value and export price established as explained above were compared in accordance with Article 2(11) of the basic Regulation on an weighted average to weighted average basis.

(20) The provisional dumping margin expressed as a percentage of the cif Community frontier price duty unpaid is for Indonesia 25,5 %.

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

2.1. *Market economy treatment ('MET')*

(21) 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), i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions;
2. accounting records are independently audited and applied for all purposes;
3. there are no significant distortions carried over from former non-market economy system;
4. legal environment and stability is provided by bankruptcy and property law;
5. currency exchanges are carried out at the market rate.

(22) Three Chinese producers 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 deadlines. Two of them were related companies.

(23) The Commission sought all information deemed necessary and verified all information submitted in the MET applications at the premises of the companies in question.

(24) For all three companies it was established that, overall, their decisions regarding prices and costs were made without significant State interference within the meaning of Article 2(7)(c) and that costs and prices reflected market values. These companies had accounts independently audited in line with international accounting standards and their production costs and financial situation was not subject to significant distortions carried over from the former non-market economy system. Finally, there were bankruptcy and property laws guaranteeing legal certainty and stability and the exchange rate conversions were carried out at the market rate. Consequently, it was concluded that the following three companies fulfilled the conditions set out in Article 2(7)(c) of the basic Regulation:

— Fang Da Food Additive (Shen Zhen) Limited

— Fang Da Food Additive (Yang Quan) Limited

— Golden Time Enterprise (Shenzhen) Co. Ltd.

(25) It was therefore decided to grant MET to all three companies. The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The Community industry has been given an opportunity to comment. However, no comments were received concerning the MET decision.

2.2. *Normal value for MET companies*

(26) Following the decision to grant MET, the companies were requested to submit a full questionnaire reply including domestic sales information and information on cost of production of the product concerned and the like product. The verification visits, which were planned for May 2003, had to be cancelled due to the introduction of travel restrictions because of SARS.

(27) In these circumstances, it was examined whether the information provided in the questionnaire responses concerning domestic prices and costs could form a basis for a provisional calculation of the normal value. It was found that the information provided in this regard by all Chinese producers was deficient to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producers to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available which the Commission services could have had recourse to enabling them to verify and complete the data submitted by the exporting producers. It was therefore concluded that, failing any other alternative, the facts available to the Commission had to be used for the provisional determination of the normal value. In this respect, the information submitted in the complaint was considered the most appropriate basis to provisionally establish the normal value.

(28) Therefore, in line with the usual practice with regard to economies in transition, like the PRC, an analogue country was selected. Prices in Indonesia were considered a reasonable surrogate for prices in the PRC because Indonesia has a competitive domestic market where at least three producers operate. Since the product under investigation is only produced in the Community, the PRC and Indonesia, the Commission concluded that Indonesia can provisionally be used as an analogue country in this case.

(29) The average Indonesian price reported in the complaint has therefore been used to establish provisional normal values for all Chinese exporting producers. The cooperating exporting producers were informed and were given an opportunity to comment. However, the investigation continues and should the information they provided be completed and clarified, the Commission will calculate individual normal values for each exporting producer for which market economy treatment has been granted.

2.3. *Export prices for MET companies*

(30) Due to the introduction of travel restrictions because of SARS, the details provided by the cooperating exporting producers could not be verified on spot. However, it was found that all cooperating exporting producers sold the product concerned to independent customers in the Community via related companies in Hong Kong. Furthermore, the Commission established that the average export price as reported in their questionnaire responses was in line with the average import price obtained from Eurostat statistics.

(31) It was therefore considered appropriate to establish export price on the basis of the average price reported by each one of the cooperating exporting producers for which market economy treatment was granted. Thus, an individual dumping margin for each one of these exporting producers could be provisionally calculated.

2.4. *Comparison for MET companies*

(32) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which could affect prices and price comparability. Given that no verified or other reliable information concerning costs and expenses was available at this stage of the investigation, the relevant costs reported in the complaint had to be considered to be the best facts available and they were used to make the necessary adjustments for differences in transport and insurance costs.

2.5. *Dumping margin for MET companies*

(33) For the three exporting producers which were granted MET, the normal value as established above, was compared with the export price of the product concerned on an average to average basis for each company, as provided for under Article 2(11) of the basic Regulation. Given that two of the three exporting producers were related companies, an average dumping margin was calculated in accordance with the standard practise of the Commission for these related exporting producers.