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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1623/2003

of 11 September 2003

extending the definitive anti-dumping duty imposed by Regulation (EC) No 408/2002 on imports of certain zinc oxides originating in the People's Republic of China to imports of certain zinc oxides consigned from Vietnam, whether declared as originating in Vietnam or not, and to imports of certain zinc oxides originating in the People's Republic of China and mixed with silica

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], 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) By Regulation (EC) No 408/2002 [2] (the original Regulation), the Council imposed definitive anti-dumping duties ranging from 6,9 % to 28 % on imports of zinc oxide with a purity of not less than 93 % zinc oxide (zinc oxides) originating in the People's Republic of China (the PRC).

2. Request

(2) On 18 November 2002, the Commission received a request pursuant to Article 13(3) of Regulation (EC) No 384/96 (the basic Regulation) to investigate the alleged circumvention of the anti-dumping measures imposed on imports of zinc oxides originating in the PRC. The request was submitted by Eurometaux on behalf of producers representing a major proportion of the Community production of zinc oxides.

(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 zinc oxides originating in the PRC, as shown by a significant increase in imports of the same product from Vietnam while imports from the PRC had decreased substantially during the same time span.

(4) This change in the pattern of trade was alleged to stem both from the transhipment of zinc oxides originating in the PRC via Vietnam. In addition, it was further alleged that zinc oxides originating in the PRC are being mixed with other substances, such as silica, thereby falling outside the relevant TARIC code. It was further alleged that as the basic characteristics and uses of the product remain unchanged, there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping duties on zinc oxides originating in the PRC.

(5) Finally, the applicant alleged that the remedial effects of the existing anti-dumping duties on zinc oxides originating in the PRC were being undermined both in terms of quantities and prices and that dumping was taking place in relation to the normal values previously established.

3. Initiation

(6) The Commission initiated an investigation by Regulation (EC) No 2261/2002 [3] (the initiating Regulation) and, pursuant to Article 13(3) and Article 14(5) of the basic Regulation, directed the customs authorities to register imports of zinc oxides consigned from Vietnam, whether declared as originating in Vietnam or not, under TARIC code 2817 00 00 11, and imports of the zinc oxides mixed with other substances originating in the PRC under TARIC code 2817 00 00 19, as from 20 December 2002.

[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 62, 5.3.2002, p. 7.
[3] OJ L 344, 19.12.2002, p. 12.

4. **Investigation**

(7) The Commission advised the authorities of the PRC and Vietnam of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC and Vietnam as well as to importers in the Community named in the request or known to the Commission from the original investigation. 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.

(8) Five producers/exporters in the PRC submitted completed replies to the questionnaires whilst no reply was received from producers/exporters in Vietnam. Replies to the questionnaire were also submitted by four importers in the Community. The Commission carried out verification visits at the premises of the following companies:

Unrelated importers:

— Norkem Ltd, Knutsford, United Kingdom,

— Norkem BV, Enkhuizen, The Netherlands,

— Almiberia, SA, San Antonio de Benagéber, Spain,

— Explorer, srl, Sassuolo, Italy.

Chinese producers/exporters:

— Liuzhou Fuxin Chemical Industry Co. Ltd, Liuzhou, China,

— Liuzhou Nonferrous Metals Smelting Co. Ltd, Liuzhou, China, and its related exporter,

— Liuzhou Nonferrous Metals Smelting Import & Export Co. Ltd, Liuzhou, China.

5. **Investigation period**

(9) The investigation period covered the period from 1 October 2001 to 30 September 2002 (the IP). Data was collected from 2000 up to the IP to investigate the change in the pattern of trade.

B. **RESULTS OF THE INVESTIGATION**

1. **General considerations/degree of cooperation**

(a) *Vietnam*

(10) No producers/exporters of zinc oxides in Vietnam cooperated in the investigation. It was made clear to the companies involved that non-cooperation may lead to the application of Article 18 of the basic Regulation. The Vietnamese Government (the Ministry of Trade), in reaction to the initiation of the investigation, made it clear that no exports of zinc oxides of Vietnamese origin to the Community have taken place throughout the year 2002, and that the Vietnamese authorities have not granted any certificates of Vietnamese origin for exports of zinc oxides.

(b) *PRC*

(11) The five Chinese producers/exporters that cooperated in the investigation accounted for close to 100 % in volume of the total imports of zinc oxides declared under CN code 2817 00 00 from the PRC during the IP, as reported by Eurostat.

(12) It should be noted that during the IP of the original investigation the cooperating companies in the current investigation represented only 22 % of the total exports to the Community. This means that the major part of the exported quantities in the original investigation were exported by companies that are non-cooperating in the current investigation. It was made clear to these non-cooperating companies that non-cooperation may lead to the application of Article 18 of the basic Regulation.

(13) One Chinese Company, for which an individual duty had been established in the original investigation and which was subject to a periodical monitoring by the Commission [1] on a six-monthly basis, argued that it was not necessary for it to fill in the questionnaire since the Commission had previously visited the company in the context of the periodical monitoring and all the data requested in the present investigation were already available. It was informed that it should nevertheless reply to the questionnaire, since data collected for other purposes and for a different period were not sufficient for the purpose of the present investigation. The export data requested in the present investigation were not completely covered by the previously submitted monitoring reports. As the company did not submit any questionnaire response, they were informed that it would be treated as a non-cooperating party and that therefore, in their respect, findings would be made on the basis of the facts available in accordance with Article 18 of the basic Regulation.

2. **Product concerned and like product**

(14) The product concerned is, as defined in the original investigation, zinc oxide (chemical formula ZnO) with a purity of not less than 93 % zinc oxide, currently classifiable within CN code ex 2817 00 00 (TARIC code 2817 00 00 12).

(15) The investigation has shown that the product concerned, zinc oxides, are imported into the Community presented in two different forms: either as zinc oxides or as zinc oxides mixed with silica. The investigation has also shown that the mixing of zinc oxides with silica does not alter the basic physical and chemical characteristics of the product concerned, as the zinc oxides maintain their molecular structure and their chemical properties intact. Furthermore, the investigation has shown that for instance in the case of the ceramic tile industry, which is one of the major users of zinc oxides, the product concerned must in any event be mixed with several other substances, including silica, in order to be used in the production of tiles.

[1] Recital 59 of the original Regulation.

(16) In the absence of cooperation and considering the change in the pattern of trade as described in recitals 20 and 21 it must be inferred that the zinc oxides exported to the Community from the PRC and those consigned from Vietnam 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.

(17) On the basis of the information available, it is considered that zinc oxides presented mixed with silica still maintain their individual characteristics and should therefore be considered the same product as zinc oxides which are not presented in a mixed form. Consequently, zinc oxide mixed with silica and zinc oxide originating in the PRC are 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 in recital 4 the change in the pattern of the trade was alleged to stem from two practices, either transhipment via Vietnam or by mixing of zinc oxides with other substances, such as silica.

(a) *Zinc oxides consigned from Vietnam*

(19) As no Vietnamese company cooperated in the investigation, exports from Vietnam to the Community had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data at CN level, which were the most appropriate information available in such a situation, were therefore used to establish the export prices and quantities from Vietnam to the Community.

(20) Imports of zinc oxides from Vietnam increased from 0 tonnes both in 2000 and 2001 to 6 523 tonnes at the end of the IP (September 2002). These imports from Vietnam commenced in fact in March 2002, thus at the same time as the imposition of the definitive duty. Imports into the Community of zinc oxides from the PRC decreased substantially, from 47 326 tonnes in 2000 (the IP of the original investigation) to 35 732 tonnes in 2001, and to 16 873 tonnes during the IP. This shows that a strong decrease of exports from the PRC has occurred after the initiation of the original anti-dumping investigation.

(21) According to data collected from Chinese trade statistics, before the imposition of the measures the exports of the product concerned from the PRC to Vietnam have been relatively stable, amounting to 1 643 tonnes in the year 2000 and to 2 029 tonnes in the year 2001. However, in the year 2002 these exports increased dramatically to 12 609 tonnes. In the period between the imposition of the duties in March 2002 and the end of the IP in September 2002, the exports amounted to 8 482 tonnes. As indicated above, in the same time period, 6 523 tonnes have been exported to the Community from Vietnam. This shows that imports of zinc oxides originating in the PRC into Vietnam have increased substantially in the year 2002, at a pace very similar to the increase of exports from Vietnam to the Community in the same period.

(22) From the figures above it can be concluded that a clear change in the pattern of trade is established and coincided, in the case of both exporting countries, with the entry into force of the anti-dumping measures on the product concerned originating in the PRC in March 2002.

(b) *Zinc oxides mixed with silica*

(23) In the request it was alleged that zinc oxides originating in the PRC were presented mixed with other substances and declared under another customs heading when imported into the Community. The verification of the data of one cooperating importer has confirmed the fact that zinc oxides have been imported mixed with silica. These imports were purchased from a Chinese producer/exporter which did not cooperate in the investigation and they were declared, on the basis of binding tariff information (BTI) from the customs authorities of one Member State, under CN code 3824 90 99, which makes the imports concerned not subject to anti-dumping duties.

(24) For this importer, it has been established that the imports of zinc oxides presented mixed with silica started after the imposition of the measures in March 2002. However, in consideration of the fact that the cooperating importers only cover 65 % of the total imports to the Community it cannot be excluded that other non-cooperating importers have used the same practice. Indeed the request contained evidence that this practice may have been applied by at least another importer which did not cooperate in the investigation.

(25) Considering that the exporting companies cooperating in this investigation only represented 22 % of the exports during the IP of the original, but close to 100 % in the current investigation and that the total exports from the PRC into the Community have dropped from 47 367 tonnes to 16 873 tonnes, it is reasonable to conclude that part of this decrease could be explained by the imports of zinc oxides presented mixed with silica. Given the high percentage of non-cooperation, it was considered that significant quantities of zinc oxides presented mixed with silica may have been exported from China to the Community, declared under CN codes not subject to the duties.