Council Regulation (EC) No 1339/2002 of 22 July 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sulphanilic acid originating in the People's Republic of China and India

COUNCIL REGULATION (EC) No 1339/2002

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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)], and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission by Regulation (EC) No 575/2002[(2)] ('provisional Regulation') imposed a provisional anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China ('PRC') and India. The Commission by Regulation (EC) No 573/2002[(3)] ('provisional anti-subsidy Regulation') also imposed a provisional countervailing duty on imports of sulphanilic acid originating in India.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, a number of interested parties submitted comments in writing. All interested parties who requested a hearing were granted an opportunity to be heard by the Commission.

(3) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(5) The oral and written arguments submitted by the parties were taken into account.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1339/2002. (See end of Document for details)*

(6) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation are confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(7) Subsequent to the publication of the provisional Regulation, a number of interested parties claimed that the definition of the product concerned was incorrect. They argued that the technical and purified grades of sulphanilic acid were substantially different in terms of their purity and had different properties and applications. It was claimed that the two grades of sulphanilic acid could not be considered as a homogeneous product and should therefore have been treated as distinct products for the purposes of the investigation. In support of this assertion, it was argued that there was insufficient interchangeability between the two grades of sulphanilic acid. Whilst it was accepted that the purified grade could be used in all applications, the same could not be said of technical grade sulphanilic acid because of the level of impurities it contained, most notably aniline residues. These impurities consequently made technical grade acid unsuitable for use in the production of optical brighteners and food dyes.

(8) It is recalled that purified grade sulphanilic acid results from the purification of technical grade sulphanilic acid in a process which removes certain impurities. This purification process does not alter the molecular properties of the compound or the way in which it reacts with other chemicals. Therefore, technical and purified grades share the same basic chemical characteristics. The fact that interchangeability may only be in one direction in certain applications because of concerns about impurities is therefore not considered to be sufficient justification that purified and technical grades constitute different products which should be treated separately in two different investigations. Whilst accepting that the purification process adds certain additional costs to the production process, it is recalled that these were taken into account when making a fair comparison between the different grades produced by the Community industry and those imported from the countries concerned for the purposes of calculating the level of price undercutting and the injury elimination level.

(9) Consequently, it was not considered that the comments made by interested parties concerning the definition of the product concerned were sufficient to alter the findings on this issue that had been reached at the provisional stage. It is therefore definitively concluded that both grades of sulphanilic acid should be treated as one single product for the purpose of the present proceeding.

2. Like product

(10) No new elements were brought to the attention of the Commission that would lead it to alter the conclusions reached at the provisional stage, namely that sulphanilic acid produced and sold by Community producers and that produced in the countries concerned and exported to the Community are like products.

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(11) The provisional findings concerning the like product as set out in recital 12 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. India

1.1. Normal value

(12) The Indian exporting producer contested the methodology for the determination of the profit margin used in the construction of normal value as set out in recital 18 of the provisional Regulation. It claimed that the opening and closing stocks of the like product should be taken into account in this determination.

(13) This claim was rejected because the company suggested taking into account opening and closing stocks only in determining the profit margin and not in determining the cost of manufacturing used to calculate the constructed normal value. Thus, the use of two different costs of manufacturing for the same purpose cannot be accepted. Moreover, the cost of manufacturing used in calculating normal value in the provisional Regulation was that incurred during the investigation period ('IP') and was considered more appropriate since it is not affected by any ad hoc valuation of stocks.

1.2. Export price

(14) The same company claimed that for the sales made via its related importer, the export price should be constructed by using the actual profit margin of its related importer. This claim could not be accepted since the profit margin realised by the related importer is based on transfer prices between associated parties (the company in question and its related importer) and as such these prices cannot be considered to be reliable in accordance with Article 2(9) of Regulation (EC) No 384/96 ('basic Regulation').

(15) On the basis of the above, the findings set in recitals 19 to 21 of the provisional Regulation are confirmed.

1.3. Comparison

(16) No comments were received under this heading. The findings as set out in recitals 22 to 26 of the provisional Regulation are therefore confirmed.

1.4. Dumping margin

(17) As no comments were submitted justifying changes to the dumping findings as set out in the provisional Regulation, the dumping margin (24,6 %) established in recital 29 of the provisional Regulation is confirmed.

2. People's Republic of China

2.1. Normal value

(18) As no new information was submitted under this heading, the findings as set out in recitals 30 to 35 of the provisional Regulation are confirmed.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1339/2002. (See end of Document for details)*

2.2. Export price

(19) As no new information was submitted under this heading, the findings as set out in recitals 36 to 39 of the provisional Regulation are confirmed.

2.3. Comparison

(20) As no new information was submitted under this heading, the findings as set out in recital 40 of the provisional Regulation are confirmed.

2.4. Dumping margin

(21) The dumping margin (21,0 %) established in recitals 41 and 42 of the provisional Regulation is confirmed.

E. COMMUNITY INDUSTRY

(22) Following the publication of the provisional Regulation, a number of interested parties queried the definition of the Community industry and its standing in terms of Article 5(4) of the basic Regulation. In particular, it was suggested that the complainant producer, Sorochimie Chime Fine did not have the support of the second Community producer, Quimigal S.A. when it lodged its complaint.

(23) It is recalled that whilst Quimigal was not a party to the original complaint, it did express its support for the proceeding at the initiation stage and has fully cooperated in the investigation. In response to the claims of certain interested parties, it has also reiterated its support for the proceeding during the course of the investigation. Therefore, as no new elements were brought to the attention of the Commission that would lead it to alter its earlier findings, the provisional findings concerning the definition of the Community industry and its standing as detailed in recital 44 of the provisional Regulation are hereby confirmed.

F. INJURY

1. Preliminary remarks

(24) Several interested parties questioned the way in which the Commission had established figures for imports of sulphanilic acid into the Community, Community consumption and market shares. They claimed that there had been insufficient disclosure of the Commission's findings regarding imports, in both volume and value terms, and that consequently their rights of defence had been impeded. It was noted that some of this information was also missing from the public version of the complaint with the result that the complaint did not meet the standards detailed in Article 5(2) of the basic Regulation.

(25) It is to be noted that according to Article 19(1) of the basic Regulation, information which is submitted in confidence by parties to an investigation shall be treated as such by the investigation authority so long as the information concerned warrants such treatment. It is recalled that sulphanilic acid is manufactured by a relatively small number of producers around the world. Consequently, it was not

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possible for reasons of confidentiality to disclose precise information relating to imports of the product into the Community, especially for those countries where there is only one exporting producer. Therefore, for the purposes of disclosure, indexed figures and explanatory narrative were made available to interested parties concerning this and related items.

(26) As none of the interested parties which raised the issue of insufficient disclosure were able to demonstrate that the information made available to them in a summarised form did not enable them to defend their rights, their arguments in this respect had to be rejected.

2. Imports concerned

(27) One interested party suggested that the figure for the increase in imports noted in the provisional Regulation was misleading. It was claimed that as a number of other producers had withdrawn from the market, users in the Community were obliged to purchase sulphanilic acid on the world market, thereby leading to the sharp rise in import volumes. This claim had to be rejected for a number of reasons. In the first instance, no additional evidence oncerning the level of imports was submitted so as to alter the findings reached at the provisional stage on this point. Similarly, whilst it was acknowledged in recital 127 of the provisional Regulation that imports were expected to continue to play a significant role in meeting demand in the Community, it was also noted that had the Community industry not been subject to the injurious effects of the dumped imports, it would have been able to put into effect certain expansion plans, thereby satisfying a larger part of Community demand. In the light of the above, the provisional findings concerning imports into the Community from the countries concerned and their level of price undercutting as noted in recitals 47 to 54 of the provisional Regulation are confirmed.

3. Situation of the Community industry

(28) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all relevant economic factors and indices having a bearing on its state.

(29) Subsequent to provisional disclosure, a number of interested parties questioned the manner in which the Commission had reached its provisional determination concerning injury as certain indicators were showing positive developments. In particular, it was suggested that the increase in the Community industry's production, sales and capacity utilisation during the analysis period (1 January 1997 to 30 June 2001) proved that it had not suffered injury. One interested party also claimed that the Commission had failed to make a proper assessment of wage costs as required by the Article 3(5) of the basic Regulation.

(30) It is recalled that according to Article 3(5) of the basic Regulation, none of the economic factors or indices listed in the aforementioned article shall necessarily be decisive in the determination of injury. It is indeed true that certain indicators relating to quantities produced and sold by the community industry showed positive