COMMISSION REGULATION (EC) No 575/2002

of 3 March 2002

imposing a provisional anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and in India

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 2238/2000 [2] and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) On 6 July 2001, the Commission announced, by a notice ('notice of initiation') 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 sulphanilic acid originating in the People's Republic of China ('PRC') and India. A parallel anti-subsidy investigation concerning imports of the same product originating in India was initiated on the same date [4].

(2) The anti-dumping proceeding was initiated as a result of a complaint lodged in May 2001 by Sorochimie Chimie Fine, representing a major proportion, in the current case more than 65 %, of the Community production of sulphanilic acid. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(3) The Commission officially advised the exporting producers and importers/traders known to be concerned as well their associations, the representatives of the exporting countries concerned, users, suppliers and Community producers. Interested parties were given an 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 countries concerned, as well as Community producers, Community users and a trader made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) In view of the apparent large number of exporting producers of the product concerned in the countries subject to the investigation, known from the complaint, the application of sampling for the investigation of dumping was envisaged in the notice of initiation.

(6) However, only a limited number of exporting producers from the PRC and India made themselves known and provided the information requested in the notice of initiation. Therefore, sampling was not considered necessary for either of the countries concerned.

(7) The Commission sent questionnaires to all parties known to be concerned and to all other companies who made themselves known within the deadlines set in the notice of initiation. Replies were received from two Community producers, one Indian exporting producer and its related importer in the Community, one Chinese exporting producer, one Chinese trading company and one producer in a market economy third country. The Commission also received replies from seven users, one supplier and one trader providing information which was sufficiently complete and representative to use in the assessment of Community interest. Several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.

(8) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment, if they so wished, the Commission sent to the Chinese companies known to be concerned a market economy status and an individual treatment claim form. One company requested MET pursuant to Article 2(7)(b) of Regulation (EC) No 384/96 ('the basic Regulation') or individual treatment should the investigation establish that it did not meet the conditions for MET.

(9) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Community producers*

— Sorochimie Chimie Fine, Givet, France,

— Quimigal SA, Estarreja, Portugal;

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 190, 6.7.2001, p. 2.
[4] OJ C 190, 6.7.2001, p. 5.

(b) *Exporting producer in India*

— Kokan Synthetics and Chemical Private Ltd, Dapoli, Ratnagiri, Maharashtra;

(c) *Market economy third country producer*

— Nation Ford Chemical Company, South Carolina, USA;

(d) *Users*

— Bayer AG, Leverkusen, Germany.

(10) The investigation of dumping and injury covered the period from 1 July 2000 to 30 June 2001 ('IP'). The examination of trends relevant for the assessment of injury covered the period from January 1997 to the end of the IP ('analysis period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(11) The product under consideration is sulphanilic acid. There are basically two grades of sulphanilic acid which are determined according to their purity: a technical grade and a purified grade. In addition, the purified grade is sometimes commercialised as a salt of sulphanilic acid. Technical and purified acid share the same basic chemical characteristics in terms of chemical formula ($C_6H_7NO_3S$) and molecular structure although they differ slightly in terms of purity (the range of purity may start from 96 % for the technical grade and from 99 % for the purified grade and for the acid content of its salt; the major impurities being residual aniline and alkali insoluble materials ranging from 2 % to less than 0,1 %). Technical and purified grades of sulphanilic acid are available as dry free flowing powders. The salt of purified sulphanilic acid is sold in powder or solution form according to customer requirements. Sulphanilic acid is used as raw material in the production of optical brighteners, concrete additives, food colorants and speciality dyes. Although there are different uses of sulphanilic acid, all grades and forms are perceived by users to be reasonably substitutable, are used interchangeably in most applications and should be, therefore, treated for the purpose of the present proceeding as one single product.

2. Like product

(12) The product exported to the Community from the PRC and India, the product sold domestically in India as well as the one manufactured and sold in the Community by the Community producers were found to have basically the same chemical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. India

1.1. *Normal value*

(13) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of sulphanilic acid were representative, i.e. whether the total volume of such sales was at least 5 % of the total export sales volume to the Community. The investigation showed that the domestic sales were representative.

(14) The Commission subsequently identified those product types of sulphanilic acid sold domestically as being identical or directly comparable with the types sold for export to the Community when they were of the same grade and form.

(15) For each product type sold by the exporting producer on its domestic market which was found to be directly comparable with the type sold for export to the Community it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community. The investigation showed that out of three exported types, two were sold in representative quantities on the domestic market.

(16) The Commission subsequently examined whether the domestic sales of the company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(17) This was done 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. For these product types, since more than 80 % by volume was 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, as set out in Article 2(1) of the basic Regulation.

(18) For the product type which was not sold in representative quantities on the domestic market, normal value had to be constructed. In order to determine the constructed normal value, the cooperating exporting producer's own sales, general and administrative (SG&A) costs incurred and weighted average profit realised on domestic sales of the like product, in the ordinary course of trade, during the IP, were added to the average cost of manufacturing during the IP, pursuant to Article 2(6) of the basic Regulation.

1.2. *Export price*

(19) The investigation showed that the exports of the Indian exporting producer were made both to unrelated and to related customers in the Community.

(20) Therefore, for those sales made to unrelated customers in the Community, 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.

(21) For sales made via its related importer, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including SG&A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

1.3. *Comparison*

(22) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(23) Accordingly, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, commissions and discounts have been granted where applicable and justified.

(24) The company claimed a duty drawback adjustment for notional duties that would have been paid for imports of the principle raw material (aniline) had the company used imported aniline for its entire production of sulphanilic acid sold on the domestic market. This claim was rejected because it was based on notional assumptions and, as such, no amounts of duty were borne by the material (aniline) incorporated in the like product, when intended for consumption in India.

(25) The company also claimed notional quantity discounts with the argument that, had its domestic customers purchased the same quantities as the customers in the export market, then its domestic customers would qualify for a discount in-built in the price which is given to Community customers. This claim could not be accepted under the provisions of Article 2(10)(c) of the basic Regulation since quantity discounts can only be considered for an adjustment when they are actually given for differences in quantities and not on the basis of notional assumptions. It was, therefore, examined under the provisions of Article 2(10)(k) of the same Regulation ('Other factors'), where it was found that the pattern claimed by the company regarding the in-built discounts was not consistently applied to its sales on the domestic market. Indeed, it was established that smaller quantities and/or orders were sold occasionally at lower prices than larger quantity/orders. On this basis, since it was not demonstrated that domestic customers pay consistently different prices because of different quantities purchased, this adjustment could not be accepted.

(26) The company claimed credit costs for a number of its domestic sales transactions that were based on verbal agreements. However, these credit costs could not be accepted since the company was not able to provide proof of any agreements concerning the payment terms of these sales. Moreover, for the remaining domestic sales transactions for which written sales orders/contracts defined their payment terms, the credit costs that were accepted were adjusted downwards. This was because the company had calculated the credit costs on the total invoice value (including indirect taxes such as sales tax and excise duty) and not on the basis of the net invoice value. In this respect, it was found that the payment of the sales tax which the company collected from its customers was deferred, interest free, for a period of 12 years and, thus, the claim of credit costs associated with the sales tax was unfounded. Secondly, the amount of excise duties, which was a modified VAT system ('CENVAT'), paid to the tax authorities was calculated on the balance between the CENVAT on goods purchased and the same tax on sales to customers. Of this amount, the CENVAT paid for sales of the product under consideration could not be identified separately. It was therefore concluded that credit (finance) costs for CENVAT, if any, should be considered as normal operational overheads and that no adjustment should be made concerning such costs.

1.4. *Dumping margin*

(27) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type was compared with the adjusted weighted average export price, as determined above.

(28) On this basis, the provisional weighted average dumping margin expressed as a percentage to the cif Community frontier price duty unpaid is 24,6 %.

(29) Since the level of cooperation was high, the residual provisional margin was set at the same level as the one established for the cooperating company, i.e. 24,6 %.

2. **China**

2.1. *Normal value*

2.1.1. Market economy treatment ('MET')

(30) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value should 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 product concerned.

(31) The sole Chinese cooperating producer requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim for exporting producers.

(32) The claim was rejected because it was not submitted by the whole group involved in the production and sale of the product but only by one company within the group. Therefore, it was not possible to verify whether the group as a whole merited market economy status. Moreover, the claimant company was subject to restrictions in its buying and selling activities. In fact, the company was not licensed to import nor to export which meant that decisions regarding prices, costs and inputs were not taken in response to market signals reflecting supply and demand or without significant State interference (see also recital 37 below).

(33) Consequently, after a specific consultation of the Advisory Committee, the applicant company was informed that its MET application could not be granted.

2.1.2. Analogue country

(34) According to Article 2(7) of the basic Regulation, for companies to which MET could not be granted, normal value has to be established on the basis of the price or constructed value in an analogue country. In the notice of initiation, the Commission indicated the use of the United States of America ('USA'), which was also the proposal made in the complaint, as an appropriate analogue country for the purpose of establishing normal value for the PRC. However, after investigating this possibility the Commission decided that it was more appropriate to use India as an analogue country, due to the similarities in the market conditions of this country and those of the PRC. It also noted that this choice was suggested by the cooperating Chinese exporter who objected to the initial proposal indicated in the notice of initiation.

2.1.3. Determination of normal value in the analogue country

(35) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the cooperating exporting producer in China was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of the prices paid or payable on the domestic market of India for products comparable to those sold by the Chinese exporting producer to the Community.

2.2. *Export price*

2.2.1. Individual treatment

(36) The company that was not granted MET applied for individual treatment, i.e. the determination of an individual dumping margin on the basis of its individual export prices. The Commission verified whether this company enjoyed, both in fact and in law, the necessary degree of independence from the State.

(37) In this respect, it was established that the company was not licensed to export and that all its exports were made via a trading company controlled by state authorities. It was, therefore, concluded that the applicant company did not meet the necessary requirements for individual treatment.

2.2.2. Determination of export price

(38) All export sales of the cooperating Chinese producer to the Community, which were made via the trading company, were made directly to independent customers in the Community and the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices paid or payable.

(39) The comparison of the data concerning exports to the Community provided by the cooperating Chinese exporter and the import volume as determined in recital 47 below, indicated that these exports represented less than 20 % of total Chinese imports into the Community during the IP. Thus, the export price for non-cooperating exporting producers had to be based on facts available in accordance with Article 18 of the basic Regulation. In this respect, in order not to reward non-cooperation, it was considered appropriate to use the lowest export prices established for certain representative transactions of the cooperating exporter.

2.3. *Comparison*

(40) For the purposes of a fair comparison by product type between the normal value at fob Indian frontier level and the export price at fob Chinese frontier level, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport and insurance costs in accordance with Article 2(10) of the basic Regulation.

2.4. *Dumping margin*

(41) In the absence of individual treatment being granted to the sole cooperating exporter, an overall dumping margin was calculated for the whole of the PRC. The comparison of normal value and export price revealed the existence of dumping with regard to imports of the product concerned originating in the PRC, the dumping margin being equal to the amount by which the normal value exceeded the export price to the Community.

(42) The provisional dumping margin for imports originating in the PRC expressed as a percentage of the cif price at Community frontier level, duty unpaid, is 21,0 %.

D. **COMMUNITY INDUSTRY**

(43) Sulphanilic acid is manufactured in the Community by two companies: the complainant, Sorochimie Chimie Fine ('Sorochimie') and Quimigal S.A. ('Quimigal'). It should be noted that Sorochimie manufactured sulphanilic acid throughout the analysis period. Quimigal, however, only began to produce and sell sulphanilic acid in 1999. There were several other Community producers of sulphanilic acid active on the market at the start of the analysis period. However, all these other producers ceased production during the period either to focus on their other activities or to source sulphanilic acid from external sources. They have therefore not been taken into account when determining 'Community production'. It should be borne in mind that these important developments on the Community market allowed both Sorochimie and Quimigal to increase their production and sales.

(44) Although Quimigal is not a party to the complaint, it has expressed its support for the proceeding and fully cooperated in the investigation. It is therefore considered that Quimigal and Sorochimie fulfil the requirements of Article 5(4) of the basic Regulation, since they accounted for 100 % of the Community production of sulphanilic acid on the date the proceeding was initiated. They are therefore provisionally deemed to constitute the 'Community industry' within the meaning of Article 4(1) of the same Regulation and will hereinafter be referred to as such.

E. **INJURY**

1. **Community consumption**

(45) Apparent consumption of sulphanilic acid in the Community was established on the basis of:

— imports of the product concerned into the Community as established according to recital 47 below,

— the total verified sales of the Community industry on the Community market,

— the verified responses of former Community producers of the product concerned which cooperated in the investigation and

— evidence contained in the complaint for other former producers which did not cooperate.

(46) Community consumption of sulphanilic acid in the IP was approximately 11 000 tonnes. This figure is some 13 % higher than at the start of the analysis period. After two years of relative stability in 1997 and 1998, there was a slight decline in consumption in 1999 before a clear upturn in 2000 and the IP.

2. **Imports into the Community from the countries concerned**

2.1. *Import data*

(47) The CN heading, under which the product under investigation is currently classified covers a variety of other products. The Commission therefore made use of the best facts available and established figures for both the volumes and prices of imports of sulphanilic acid on the following basis. Data for imports from India were established on the basis of the reply of the cooperating exporting producer to the Commission's questionnaire. The volumes of imports from the PRC and the USA were taken from information contained in the complaint given the low level of cooperation from producers in the PRC and the fact that the sole exporting producer in the USA gave an estimate in confidence of its exports to the Community for the analysis period. The prices of these imports were predominantly derived from Eurostat data with the response of the cooperating Chinese producer to the Commission's questionnaire also being taken into account for the IP only. Information concerning the volume and prices of imports originating in Hungary and Japan was derived by comparing Eurostat data to responses of users to the Commission's questionnaires. With the exception of the countries noted above, the investigation established that there were no imports from other third countries during the analysis period.

2.2. *Cumulative assessment of the effects of the imports concerned*

(48) In accordance with Article 3(4) of the basic Regulation, it was examined whether imports from the countries concerned should be assessed cumulatively for the purposes of the determination of injury.