COMMISSION REGULATION (EC) No 573/2002
of 3 April 2002
imposing a provisional countervailing duty on imports of sulphanilic acid originating in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 12 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* [2], the initiation of an anti-subsidy proceeding concerning imports into the Community of sulphanilic acid originating in India.

(2) The 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 subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in the People's Republic of China and India was announced by a notice published in the *Official Journal of the European Communities* [3] on the same date.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 ('basic Regulation'), the Commission notified the Government of India ('GOI') that it had received a properly documented complaint alleging that subsidised imports of sulphanilic acid originating in India are causing material injury to the Community industry. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were subsequently held with the Commission at its offices in Brussels, where no conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. However, due note was taken of the comments made by the GOI in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

(5) The Commission officially advised the exporting producers and importers/traders known to be concerned, the representatives of the exporting country, users, suppliers and Community producers of sulphanilic acid of the initiation of the proceeding. 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.

(6) The GOI and the exporting producers, as well as Community producers, Community users and importers/traders 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.

(7) In view of the apparent large number of exporting producers of the product concerned in India, known from the complaint, the application of sampling techniques for the investigation of subsidisation was envisaged in the notice of initiation.

(8) However, only a limited number of exporting producers made themselves known and provided the information requested in the notice of initiation. Therefore, the use of sampling techniques was not considered necessary.

(9) 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, the GOI and one Indian exporting producer and its related importer in the Community. The Commission also received replies from seven users, one supplier and one distributor 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.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ C 190, 6.7.2001, p. 5.
[3] OJ C 190, 6.7.2001, p. 2.

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

(a) *Community producers*

— Sorochimie Chimie Fine, Givet, France,

— Quimigal SA, Estarreja, Portugal;

(b) *Exporting producer in India*

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

(c) *Users*

— Bayer AG, Leverkusen, Germany.

(11) The investigation of subsidisation 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**

(12) 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**

(13) The product sold in the domestic market of India and the one exported to the Community from India as well as the product 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(5) of the basic Regulation.

C. **SUBSIDIES**

1. **Introduction**

(14) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following four schemes, which allegedly involve the granting of export subsidies, were investigated:

(i) Export Processing Zones/Export Oriented Units (EPZ/EOU);

(ii) Duty Entitlement Passbook Scheme (DEPB);

(iii) Export Promotion Capital Goods Scheme (EPCG);

(iv) Income Tax Exemption Scheme.

(15) Moreover, two other schemes which were not initially alleged in the complaint, were discovered during the verification visit and appeared to have conferred countervailable benefits to the cooperating exporting producer. The schemes in question are the:

(v) Advance Licence — Advance Release Orders scheme;

(vi) Package Scheme of Incentives of the Government of Maharashtra.

On the basis of these findings the GOI was offered consultations which took place on 22 January 2002. Following these consultations, the Commission included these schemes in the investigation concerning subsidisation.

(16) The schemes (i), (ii), (iii) specified in recital 14 and (v) of recital 15 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The Foreign Trade Act (Section 5) authorises the Government of India ('GOI') to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated annually. One Export and Import Policy document is relevant to the investigation period of this case, i.e. the five-year plan relating to the period 1.4.1997 to 31.3.2002. In addition, the GOI also set out the procedures governing India's foreign trade in the 'Handbook of Procedures for Exports and Imports — 1.4.1997 — 31.3.2002' (Volume 1).

The Income Tax Exemption Scheme (iv) specified in recital 14, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act. Scheme (vi) mentioned in recital 15, is based on the Government of Maharashtra's Package of Incentives to new/expansion units set up in developing regions of the State which was first introduced in 1964.

(17) It is to be noted that at least two companies are producing and exporting the product concerned. Only one of those companies, Kokan Synthetics & Chemicals Pvt. Ltd. cooperated with the Commission services in this proceeding. However, this company represents more than 80 % of imports of the product concerned from India.

2. **Export Processing Zones (EPZ)/Export Oriented Units (EOU)**

(a) *Legal basis*

(18) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the 'Export Import Policy' involving export-related incentives. During the IP the scheme was regulated by Customs Notification No 53/97, 133/94 and 126/94. Details of the schemes are contained in Chapter 9 of the 1997/2002 'Export and Import Policy' document, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

(19) In principle, companies undertaking to export their entire production of goods and services may be set up under the EPZ/EOU scheme. Once the status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. The cooperating exporting producer has been granted the status of EOU for two of its three production units. Although companies operating within the EOU/EPZ scheme are normally expected to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.

(c) *Practical implementation*

(20) Companies requesting treatment as EOUs or located in an EPZ must apply to the relevant authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement to be recognised as a company in an EPZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

(21) EPZ/EOU units are entitled to the following benefits:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith, provided they are not prohibited items in the Negative List of Imports;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) exemption from income tax normally due on profits realised on export sales in accordance with Section 10A or 10B of the Income Tax Act, up to 2010;

(iv) reimbursement of central sales tax paid on goods procured locally;

(v) 100 % foreign equity ownership;

(vi) facility to sell a part of production on the domestic market.

(22) EOUs or companies located in an EPZ should maintain, in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of all exports made. These should be submitted periodically, as may be required, to the Development Commissioner.

(23) They must also ensure minimum net foreign exchange earnings as a percentage of exports and export performance as stipulated in the Policy. The entire operations of an EOU/EPZ must take place in customs bonded premises.

(d) *Conclusions on EPZ/EOU*

(24) In the present proceeding, the EPZ/EOU scheme was used for the import of raw materials and for the procurement of goods on the domestic market. The Commission found that only concessions related to the exemption from customs duties on raw materials, the

exemption from excise duty on goods procured from indigenous sources and the reimbursement of central sales tax paid on goods procured locally were used by the exporting producer. Therefore, the Commission only examined the countervailability of these concessions. In this regard, the exemption from customs duties on raw materials and the reimbursement of central sales tax involves the granting of subsidies as these concessions constitute financial contributions by the GOI, since government revenues otherwise due are forgone and a benefit is conferred on the recipient. In the case of the excise duty exemption, it was found that the duty paid on purchases by a non-EOU unit is credited as a drawback (CENVAT/MODVAT) and is utilised towards payment of excise duty on domestic sales. Thus, by exempting excise duty on purchases by an EOU unit, no additional government revenue is forgone and consequently no additional benefit accrues to the EOU.

(25) This subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it cannot be obtained without the company accepting an export obligation, and it is therefore deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount*

Exemption from import duties on raw materials

(26) During the verification visit, the nature and quantities of these imported materials were verified. The company was able, for all raw materials which were imported during the IP and were exempted from import duties, to demonstrate that they were used in the production of exported goods. Moreover, the company demonstrated that no imports in excess of imported quantities of inputs actually used in the exported products had taken place.

(27) In view of the above, it was concluded that the exemption from import duties on raw materials was granted to the company concerned in accordance with the provisions of Annexes I to III of the basic Regulation since all the raw materials which were imported free of duty were incorporated into the exported product and no excess remissions of import duty have occurred.

Reimbursement of central sales tax paid on goods procured locally

(28) The benefit was calculated on the basis of the amount of central sales tax refundable for purchases during the IP. The amount of subsidy has been allocated over total exports during the IP. The company obtained a benefit of 1,4 %.

3. **Duty Entitlement Passbook Scheme (DEPB)**

(a) *Legal basis*

(29) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 7.14 to 7.17 of the 'Export and Import Policy' document and paragraphs 7.32 to 7.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme (PBS) which was terminated on 31 March 1997. There are two types of the DEPB:

— DEPB on pre-export basis,

— DEPB on post-export basis.

DEPB on pre-export basis

(30) The GOI states that the DEPB on pre-export basis was abolished on 1 April 2000 and therefore the scheme is not applicable during the period of investigation. It was established that the company did not avail of any benefit under DEPB on pre-export scheme. Therefore, it is not necessary to establish the countervailability of this scheme.

DEPB on post-export basis

(b) *Eligibility*

(31) The DEPB on post-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(c) *Practical implementation of DEPB post-export basis*

(32) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of the Standard Input-Output Norms (SION). A licence stating the amount of credit granted is issued automatically.

(33) DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) except for those goods whose importation is restricted or prohibited. Goods which are imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.

(34) DEPB licences are freely transferable and, as a consequence, are frequently sold. A DEPB licence is valid for a period of 12 months from the date on which it is granted. The company has to pay a fee equivalent to 0,5 % of the DEPB credit received to the relevant authority.

(d) *Conclusions on DEPB on post-export basis*

(35) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods (whether raw materials or capital goods) or can just be sold.

(36) The credit is automatically calculated on the basis of a formula, using SION rates, independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed a company can apply for a licence irrespective of whether it makes any imports or purchases imported goods from other sources.

(37) DEPB on post-export basis is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. It appears therefore that an excess remission is involved, in accordance with the meaning in Article 2(1)(a)(ii) of the basic Regulation. In fact, the remission of import duties is not limited to that payable on goods consumed in the production process of the exported product.

(38) In this case, the company concerned did not use the licences to import duty-free goods but obtained benefits by selling the licences.

(39) On the basis of the above, the scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the DEPB holder who can import goods duty free using credits earned on exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount for DEPB post-export basis*

(40) The benefit for the company was calculated on the basis of the amount of credit granted in the licence regardless of the sales price of the licence, since the sale of a licence is a pure commercial decision which does not alter the amount of benefit received from the scheme. The amount of subsidy has been allocated over total exports during the IP. The company obtained a subsidy of 1,7 %. In calculating the benefit, the necessary fees incurred to obtain the subsidy were deducted.

4. **Export Promotion Capital Goods Scheme (EPCGS)**

(a) *Legal basis*

(41) The EPCG scheme was announced on 1 April 1992. During the IP the scheme was regulated by Customs Notifications No 28/1997, 29/1997 and 49/2000. Details of the schemes are contained in Chapter 6 of the 1997/2002 'Export and Import Policy' documents, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

(42) The EPCGS is available to manufacturers/exporters (i.e. every manufacturer in India who exports) or merchants/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchants/exporters can also avail themselves of the scheme.

(c) *Findings*

(43) It was established that the cooperating exporting producer of the product concerned did not avail itself of this scheme. Therefore, this scheme was not considered further in the context of this investigation.

5. **Income Tax Exemption Scheme (ITES)**

(a) *Legal basis*

(44) The Income Tax Act 1961 is the legal basis under which ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as the various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Eligibility*

(45) Exemption under Section 10A can be claimed by firms located in Free Trade Zones. Exemption under Section 10B can be claimed by Export Oriented Units. Exemption under Section 80HHC can be claimed by any firm which exports goods.