Council Regulation (EC) No 123/2006 of 23 January 2006 amending Regulation (EC) No 1338/2002 imposing a definitive countervailing duty on imports of sulphanilic acid originating in India and amending Regulation (EC) No 1339/2002 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating, inter alia, in India

COUNCIL REGULATION (EC) No 123/2006

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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)] ('the basic anti-dumping Regulation'), and in particular Articles 8 and 11(3) thereof,

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[(2)] ('the basic anti-subsidy Regulation'), and in particular Articles 13 and 19 thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and existing measures

(1) In July 2002, the Council, by Regulation (EC) No 1338/2002[(3)] imposed definitive countervailing duties on imports of sulphanilic acid originating in India. On the same day, the Council, by Regulation (EC) No 1339/2002[(4)], imposed definitive anti-dumping duties on imports of sulphanilic acid originating in the People's Republic of China and India ('the measures').

(2) Within the framework of these proceedings, the Commission, by Decision 2002/611/EC[(5)] accepted a price undertaking offered by the Indian company, i.e. Kokan Synthetics & Chemicals Pvt Ltd. ('the company').

(3) In June 2003, the Commission initiated an anti-absorption reinvestigation pursuant to Article 12 of the basic anti-dumping Regulation, concerning imports of sulphanilic acid originating in the People's Republic of China ('PRC')[(6)].

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 123/2006. (See end of Document for details)*

(4) In December 2003, the company informed the Commission that it wished to withdraw its undertaking voluntarily. Accordingly, the Commission Decision accepting the undertaking was repealed by Decision 2004/255/EC[(7)].

(5) In February 2004, an anti-absorption investigation concerning imports of the sulphanilic acid originating in the PRC was concluded by Council Regulation (EC) No 236/2004[(8)], which increased the rate of the definitive anti-dumping duty for the PRC from 21 % to 33,7 % ('the anti-absorption investigation').

2. Request for an interim review

(6) In December 2004, after conclusion of the anti-absorption investigation, the company lodged a request for a partial interim review pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation respectively, limited in scope to the examination of the acceptability of the reinstatement of its undertaking.

(7) The company argued that its original wish to withdraw the undertaking followed from the fact that after imposition of measures in 2002, Chinese exporters absorbed the anti-dumping duties imposed, which resulted in a price depression and made the undertaking unworkable. The company also referred to the fact that as a result of the conclusion of the absorption review, the duty level on imports from the PRC was increased, which had allowed market prices to rise. Therefore, the company informed the Commission that it was prepared to offer its undertaking again under the former terms and conditions, which were considered appropriate to eliminate the relevant injurious effects of dumping and subsidisation.

(8) The company provided sufficient prima facie evidence that No structural changes had occurred in the company since the previous findings that may have an impact on the acceptability and enforceability of an undertaking.

(9) In April 2005, pursuant to a notice published in the *Official Journal of the European Union*[(9)], the Commission initiated a partial interim review of the anti-dumping and countervailing measures applicable to imports of sulphanilic acid originating in India, limited in scope to the examination of the acceptability of an undertaking to be offered by the company.

3. Procedure

(10) The Commission officially advised the representatives of the exporting country, the applicant and the Community industry of the initiation of the partial interim review and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(11) The company re-offered formally its original undertaking.

(12) The Commission sought and verified all the information it deemed necessary for the purpose of examining the re-acceptability of this undertaking.

B. FINDINGS OF THE INVESTIGATION

(13) The investigation has shown that No structural changes occurred in the company since the original investigation that may have a negative impact on the acceptability and workability of an undertaking. Furthermore, experience gained during the application of the original undertaking has shown that the company respected the terms of the undertaking and that the undertaking could effectively be monitored by the Commission.

(14) Nonetheless, it should be noted that significant differences were observed in the price of key ingredients in the production of sulphanilic acid since the original investigation, in particular aniline, and its key feedstock, benzene. In view of the above, the applicant agreed to index the minimum price originally offered in order to address the cyclical nature of sulphanilic acid prices in a way which reasonably eliminates the risk of injurious dumping. In view of the fact that a publicly available and independent database providing reliable international price data exists for benzene but not for aniline and given further the strong correlation between the price of benzene and the price of aniline, the indexation was based on the price of benzene.

(15) The Community industry argued that the applicant should not be allowed to choose the form of the measures and in particular to respect a minimum import price only when the prevailing market prices suit the company. Indeed, a company should not be allowed to have the form of the measures changed based on the evolution of the market. However, due account should be taken of the exceptional circumstances of the case. In this regard, it should be noted that the anti-absorption investigation revealed that the decrease in market prices at the time the company voluntarily withdrew its undertaking was prompted by the absorption of the anti-dumping duty on imports of sulphanilic acid originating in the PRC. Therefore, and in view of the changed circumstances resulting from the outcome of the anti-absorption investigation, the company's wish to reinstall its undertaking is considered appropriate.

(16) The Community industry further claimed that the undertaking offer should be accepted only following a full interim review, since the market evolution which might justify a new undertaking might justify as well a review of the company's dumping margin. In this regard, it should be noted that the current investigation is limited in scope to the examination of acceptability of an undertaking to be offered by the company and that No request for an interim review with a different scope has been received. Therefore, the claim had to be rejected.

(17) A user requested that the anti-dumping duty be lowered or, alternatively that the limited availability of purified sulphanilic acid on the Community market be dealt with by introducing a system of quotas. Here again, in view of the limited scope of the current investigation, the claim had to be rejected.

C. UNDERTAKING

(18) In view of the above, the undertaking was accepted by the Commission in Decision 2006/37/EC[10].

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(19) Further to enable the Commission effectively to monitor compliance by the company with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the duties will be conditional upon the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping and countervailing duty will instead be payable.

(20) Further to ensure the effective respect of the undertaking, importers should be made aware that any violation of the undertaking may lead to the retrospective application of the anti-dumping and countervailing duty for the relevant transactions. Therefore, it is necessary to implement legal provisions providing for the incurrence of a customs debt at the level of the appropriate anti-dumping and countervailing duty whenever one or more conditions for the exemption are not respected. A customs debt should therefore be incurred whenever the declarant has chosen to release the goods for free circulation, i.e. without collection of anti-dumping and countervailing duty, and one or several conditions of that undertaking are found to have been violated.

(21) In the event of a breach, the anti-dumping and countervailing duty may be recovered, provided that the Commission has withdrawn the acceptance of the undertaking in accordance with Article 8(9) of the basic anti-dumping Regulation or Article 13(9) of the basic anti-subsidy Regulation, by referring to that particular transaction and, accordingly, by declaring the relevant undertaking invoice as invalid. Therefore, pursuant to Article 14(7) of the basic anti-dumping Regulation and Article 24(7) of the basic anti-subsidy Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

(22) It should be noted that in the event of a breach or withdrawal of the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping and countervailing duty imposed in accordance with Article 9(4) of the basic anti-dumping Regulation and Article 15(1) of the basic anti-subsidy Regulation shall automatically apply pursuant to Article 8(9) of the former Regulation and Article 13(9) of the latter Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1 The following paragraph shall be inserted in Article 1 of both Regulation (EC) No 1338/2002 and Regulation (EC) No 1339/2002:

3. Notwithstanding paragraph 1, the definitive duty shall not apply to imports released for free circulation in accordance with Article 2..

2 The following Article shall be inserted in Regulation (EC) No 1338/2002: