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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1338/2002

of 22 July 2002

imposing a definitive countervailing duty and collecting definitively the provisional countervailing duty imposed on imports of sulphanilic acid originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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 15 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 573/2002 [2] ('provisional Regulation') imposed a provisional countervailing duty on imports of sulphanilic acid originating in India. The Commission by Regulation (EC) No 575/2002 [3] ('provisional anti-dumping Regulation') also imposed a provisional anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and 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 a provisional countervailing duty, 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 a definitive countervailing duty and the definitive collection of amounts secured by way of the provisional countervailing duty. 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.

(6) Having reviewed the provisional findings on the basis of the information gathered since then, 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 sulphanilic 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 some 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 country 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 provi-

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 87, 4.4.2002, p. 5.
[3] OJ L 87, 4.4.2002, p. 28.

sional 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 India and exported to the Community are like products.

(11) The provisional findings concerning the like product as set out in recital 13 of the provisional Regulation are hereby confirmed.

D. **SUBSIDY**

(12) The findings made in the provisional Regulation concerning the countervailable subsidies obtained by the exporting producers are hereby confirmed, unless it is otherwise expressly stated bellow.

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

(13) No new comments were received under this heading. The findings as set out in recitals 18 to 28 of the provisional Regulation are hereby confirmed.

2. **Duty Entitlement Passbook Scheme (DEPB) — post-export**

(14) The Government of India ('GOI') claimed that the Agreement on subsidies and countervailing measures (ASCM) is infringed both in spirit and letter by the Commission not investigating the practical utilisation of the DEPB in each case. They argued that the Commission's assessment of the benefits under these schemes was incorrect since only the excess duty drawback could be considered a subsidy in accordance with Article 2 of Regulation (EC) No 2026/97 ('basic Regulation'). Therefore, in order to establish whether a subsidy exists, an examination as to whether an excess exists must be undertaken.

(15) The Commission used the following approach in order to establish whether the DEPB on post–exportbasis constitutes a countervailable subsidy and if so, to calculate the amount of benefit.

(16) Pursuant to Article 2(1)(a)(ii) of the basic Regulation, it is concluded that this scheme involves a financial contribution by the GOI since government revenue (i.e. import duties on imports) otherwise due is not collected. There is also a benefit conferred, within the meaning of Article 2(2) of the basic Regulation, to the recipient since the exporting producers were relieved of having to pay normal import duties. The DEPB subsidy is contingent upon export performance and is thus countervailable under Article 3(4) of the basic Regulation unless one of the exceptions provided for by the basic Regulation applies.

(17) Article 2(1)(a)(ii) provides for such an exception for, *inter alia*, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback).

(18) The analysis revealed that DEPB on post-export basis is not a drawback or a substitution drawback scheme. This scheme lacks a built-in obligation to import only goods that are consumed in the production of the exported goods (Annex II of the basic Regulation) which would ensure that the requirements of Annex I item (i) were met. Additionally, there is no verification system in place to check whether the imports are actually consumed in the production process. It is also not a substitution drawback scheme because the imported goods do not need to be of the same quantity and characteristics as the domestically sourced inputs that were used for export production (Annex III of the basic Regulation). Lastly, exporting producers are eligible for the DEPB benefits regardless of whether they import any inputs at all. In order to obtain the benefit, it is enough for an exporter to simply export goods without showing that any input material was imported. Thus, exporting producers which procure all of their inputs locally and do not import goods which can be used as inputs are still entitled to the DEPB benefits. Hence, the DEPB on post-export basis does not conform to any of the provisions of Annexes I to III. Since the above exception to the subsidy definition does not therefore apply, the countervailable benefit is the remission of total import duties normally due on all imports.

(19) From the above it clearly follows, according to the basic Regulation, that the excess remission of import duties is the basis for calculating the amount of the benefit only in the case of bona fide drawback and substitution drawback schemes. Since it is established that the DEPB on post-export basis does not fall in one of these two categories, the benefit is the total remission of import duties, not any supposed excess remission, since all duty remission is deemed to be in excess in such cases.

(20) For the above reasons, the claim of the GOI cannot be accepted and the provisional findings regarding the countervailability of this scheme and the calculation of the benefit, as set out in recitals 35 to 40 of the provisional Regulation, are confirmed.

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

(21) The cooperating company claimed that when calculating the benefit under this scheme, the actual amount of tax paid by the company was not fully taken into account because only the Minimum Alternative Tax (MAT) was included in the original calculation and not the prepaid income taxes of previous years.

(22) This claim was found to be valid. The benefit to the company was recalculated and was found to be negligible.

4. **Advance Licence — Advance Release Orders (ARO) Scheme**

(23) The GOI submitted that the ARO is merely a legitimate extension of a legitimate substitution drawback scheme (Advance Licence). According to the GOI this is proved by the fact that there is an unbreakable link between the licences gained (even if subsequently exchanged for AROs) and the importation of the necessary inputs for the manufacture of exported goods. Furthermore, the system is organised and administered by the GOI in such a way as to prevent there being any possibility of excess drawback occurring.

(24) In this respect, the GOI argued that a substitution drawback scheme does not require that a company obtaining duty drawback benefits against imported inputs need consume those exact inputs in the production of the relevant exported goods. According to the GOI, the company may consume domestically procured inputs in the manufacture of the exported product provided they are consumed in equivalent volumes as the inputs on which the benefit of remission of import duty is taken. The GOI further argued that a user of an ARO may only exchange it for the input product (procured indigenously) indicated on the advance licence and that the advance licence was obtained by reference to an exported product which has already consumed a matching quantity of the same input.

(25) When addressing these arguments, it should be recalled that advance licences are available to exporters (manufacturer-exporters or merchant-exporters) to enable them to import inputs used in the production of exports, duty-free. The advance licences measure the units of authorised imports either in terms of their quantity or in terms of their value. In both cases the rates used to determine the allowed duty free purchases are established, for most products including the product covered by this investigation, on the basis of the Standard Input Output Norms (SION). The input items specified in the advance licences are items used in the production of the relevant exported finished product.

(26) The advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the advance licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. In accordance with the 'export and import policy' document, the endorsement of the ARO entitles the supplier to the benefits of deemed export such as deemed exports drawback and refund of terminal excise duty.

(27) In this case, the cooperating company made very limited use of advance licences to import duty-free inputs. Instead, the company converted the licences into AROs and endorsed them to local suppliers obtaining commercial benefits. The commercial benefits of the AROs correspond to the amount of duties that the AROs enable the supplier to forgo under the deemed export drawback facility.

(28) It is acknowledged that duty drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of the latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. It would for instance be allowed for a company, in case of a shortage of duty-free inputs, to use domestic inputs and incorporate these in the exported goods, and then, at a later stage, import the corresponding quantity of duty-free inputs. In this context, the existence of a verification system or procedure is important because it enables, in this case, the GOI to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

(29) As stated in the provisional Regulation, the verification established that there was no system or procedure in place to confirm whether and which inputs, sourced against AROs, are consumed in the production process of the exported product or whether an excess benefit of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation. In particular, the exporter is under no obligation to actually consume the inputs sourced against AROs in the production process. Since the remission of import duties is not limited to that payable on goods consumed in the production process of the exported products, the condition that only goods actually consumed in the production process of the exported products may benefit from such remission is not fulfilled. It is therefore concluded that the ARO element of the Advance Licence scheme is not a permitted remission/drawback scheme within the meaning of the basic Regulation.

(30) In addition, the AROs cannot be considered as a duty drawback scheme, since there appears to be no requirement of importing inputs. In this context, a scheme could only be considered as a bona fide duty drawback scheme in cases where an import element exists, i.e. when there is a link between the imported inputs and the exported goods. The quantity of imported inputs should be corresponding to exported goods.

(31) For the above reasons, these claims cannot be accepted and the provisional findings as regards the countervailability of this scheme and the calculation of the benefit are confirmed.

5. **Package Scheme of Incentives (PSI) of the Government of Maharashtra**

(32) As stated in the provisional Regulation, the PSI scheme is only available to companies having invested in certain designated geographical areas within the jurisdiction of the State of Maharashtra. It is not available to companies located outside these areas. The level of the benefit is different according to the area concerned. The scheme is therefore specific in accordance with Article 3(2)(a) and Article 3(3) of the basic Regulation.

(33) The GOI and the company concerned claimed that this scheme is a non-countervailable subsidy since it meets the criteria of Article 4(3) of the basic Regulation, and thus qualifies as a 'green-light' regional subsidy granted within the State of Maharashtra.

(34) Under this Article, in order not to be subject to countervailing measures, subsidies to disadvantaged regions within the territory of the country of origin and/or export would have to comply with certain criteria; most notably, they would have to be: (i) pursuant to a general framework of regional development, (ii) the regions concerned would have to be clearly designated contiguous geographical areas with a definable economic and administrative identity, and (iii) be regarded as disadvantaged on the basis of neutral and objective criteria which must be clearly spelled out by law or other official document. These criteria shall include a measurement of economic development which shall be based on at least one of the following factors: income per capita, or household income per capita, or GDP per capita (in each case, not above 85 % of the average for the territory of the country of origin or export concerned), or unemployment rate as measured over a three-year period (at least 110 % of the average for the territory of the country of origin or export concerned).

(35) The Government of Maharashtra has in a letter to the Ministry of Commerce and Industry of the GOI stated that the PSI applies to the entire contiguous region outside the relatively advanced region comprised in the Mumbai-Thane belt of the State of Maharashtra, and that the disadvantaged region outside this belt is characterised by a per capita income which is below the State average. Figures were provided which showed that per capita income for the region to which the PSI applies was 74,54 % of the figure for the whole Maharashtra State in 1982/83 and 74,81 % by 1998/99. However, these figures were not substantiated by supporting evidence.

(36) In any event, the examination of the green-light claim has revealed that the per capita income in the State of Maharashtra, as measured over a period of three years (1996/97 to 1998/99), is more than 60 % higher than the national average of India. It should be clear that the 85 % benchmark is measured against the per capita income for the whole of the country of origin or export and not that of a particular State or region. On this basis, it is clear that the income per capita of the eligible region in Maharashtra, although less than 85 % of the regional average, is well above the national average income per capita, and the region therefore does not fall into the green-light category on the basis of this criterion. As regards the unemployment criterion, no information was provided by the Indian authorities.

(37) On the basis of the above, it is concluded that, in this case, this scheme does not meet the criteria of Article 4(3) of the basic Regulation. The provisional findings as regards the countervailability of this scheme are, therefore, confirmed.

(38) Concerning the calculation of the subsidy amount as set out in recitals 72 to 74 of the provisional Regulation, the GOI and the company concerned claimed that the amount of benefit obtained under the tax deferral incentive should be allocated over the total sales during the investigation period ('IP') rather than over the total domestic sales during the IP as it was provisionally allocated, because it is a benefit to the company as a whole and should for this reason not solely be attributed to its domestic sales.

(39) In addition, they brought to the attention of the Commission certain factors by which the calculations of the benefit obtained by the company concerned under the sales tax exemption incentive were inflated.

(40) The claim concerning the basis of allocation of the benefit obtained under the tax deferral incentive was considered valid and the Commission amended the calculations of the subsidy amount accordingly.

(41) In relation to the sales tax exemption incentive, after taking into account the comments of the interested parties and after a detailed review of the provisional findings, the provisional calculations were adjusted resulting in an overall reduction of the amount of subsidy.

(42) On the basis of the revised calculations described above, the amount of subsidy that the company has obtained under this scheme is 0,8 %.

6. **Amount of countervailable subsidies**

(43) The amount of countervailable subsidies, calculated in accordance with the provisions of the basic Regulation, expressed *ad valorem*, is 7,1 %, for the investigated exporting producer.

(44) The level of cooperation for India was high (above 80 %). In view of the high level of cooperation, it was decided to set the residual subsidy margin at the level of the subsidy found for the cooperating exporting producer, i.e. 7,1 %.

Type of subsidy	EOU (*)	DEPB (*)	EPCGS	ITES	Advance Licence/ARO (*)	Maharashtra State scheme	TOTAL
Kokan Synthetics and Chemicals Private Limited	1,4 %	1,7 %	0	0	3,2 %	0,8 %	7,1 %
All others							7,1 %

(*) Subsidies marked with an asterisk are export subsidies.

E. **COMMUNITY INDUSTRY**

(45) 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 10(8) 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.

(46) It is recalled that whilst Quimigal was not a party to the original complaint, it did express it 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 78 of the provisional Regulation are hereby confirmed.

F. **INJURY**

1. **Preliminary remarks**

(47) 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 10(2) of the basic Regulation.

(48) It is to be noted that according to Article 29(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 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 an explanatory narrative were made available to interested parties concerning this and related items.

(49) 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**

(50) 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 concerning 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 161 of the provisional Regulation that imports from India 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 subsidised 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 India and the level of price undercutting as noted in recitals 81 to 85 of the provisional Regulation are confirmed.

3. **Situation of the Community industry**

(51) In accordance with Article 8(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Community industry included an evaluation of all relevant economic factors and indices having a bearing on its state.

(52) 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 8(5) of the basic Regulation.

(53) It is recalled that according to Article 8(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 developments. However, this should be seen in the light of the fact that Community consumption of sulphanilic acid increased by some 13 % during the analysis period and that there has been a reduction of the number of suppliers on the market due to the closure of certain Community producers.

(54) More importantly, it should be recalled that the Community industry suffered injury in the form of price depression and price suppression. In particular, its average selling price declined sharply between 1997 and 1998 as the pressure exerted by the increasing volume of imports on the market became evident. Subsequently, although the Community industry was able to increase its average selling price as demand on the Community market also increased, it failed to achieve a level which would enable it to cover its full cost of production and losses continued to be incurred in the IP.

(55) With regard to the argument raised concerning wages, it is noted that although the number of workers employed by Sorochimie decreased during the analysis period, the average employment cost per employee increased. This is due to the fact that there was a change in the mix of employee during the period and also to general wage inflation. With regard to Quimigal, it is to be noted that in the base year for the index (1998) the company was not producing sulphanilic acid. When it began production in 1999, the workers were engaged full time in this activity with an extra day being worked from 2000 onwards. Neither company noted that the wages of those employed in sulphanilic acid activities had been effected by the imports concerned. Therefore, wages were not considered to be an indicator of injury.

(56) In view of the above, the provisional findings that the Community industry suffered material injury within the meaning of Article 8 of the basic Regulation, as detailed in recitals 88 to 107 of the provisional Regulation, are confirmed.

G. **CAUSATION**

1. **General comments on the Commission's conclusions regarding the causation of injury**

(57) Certain interested parties argued that the Community industry was itself partly responsible for the injury it had suffered. Several parties questioned the quality of Sorochimie's management, product and customer service, and highlighted the fact it had itself imported sulphanilic acid during the analysis period. One party also alleged that the injury suffered by Sorochimie should be attributed to its other business activity (glue) which experienced significant difficulties during the IP. With regard to the situation of Quimigal, the second company forming part of the Community industry, it was argued that its decision to enter the market with a low price strategy during its start-up phase had also contributed to the alleged injury. Finally, it was also claimed that the Community industry had to meet stringent environmental regulations and had higher labour and transport costs than exporting producers in India with the implication that imports originating in that country had a competitive advantage and were not made at injurious prices.

(58) The investigation showed that Sorochimie, despite its financial difficulties linked to the excessively low prices prevailing on the market, was able to gain new customers during the analysis period and to adapt its products to meet their needs. The company was obliged to purchase certain quantities of the product concerned during the analysis period in order to meet existing customer requirements while its production equipment was undergoing essential repairs. It cannot thus be considered that Sorochimie contributed to its own injury. Similarly, it is recalled that any exceptional costs relating to the company's difficulties in its glue business have been excluded from the current investigation as they are not linked to the product concerned and thus are not reflected in the injury indicators described in the provisional Regulation.

(59) It was noted in recital 118 of the provisional Regulation that Quimigal's decision to enter the market was taken at a time when prices for sulphanilic acid on the Community market were higher. Quimigal was able to establish itself on the market at a time of both increasing demand in the Community and changes in the number of suppliers of sulphanilic acid both in the Community and outside. It was also noted that the company was obliged to offer prices similar to those of the dumped and subsidised imports in order to establish itself on the market and gain market share in 1999 and 2000 in that its relatively small size meant that it was a price taker rather than a price setter. Nevertheless, its market share decreased slightly in the IP as imports from India increased in volume. No indication has therefore been found that the deterioration of the situation of the Community industry is due to excessive intra-Community industry competition.

(60) With regard to the allegedly higher costs that the Community industry is obliged to meet in terms of complying with environmental regulations and other items, it should be recalled that the competitive advantage of the imports concerned was taken into account in the determination of normal value. Consequently, the provisional findings concerning causation as set out in recitals 121 to 123 of the provisional Regulation are confirmed.

H. **COMMUNITY INTEREST**

(61) Following the publication of the provisional Regulation, one interested party questioned how the Commission could determine, in the light of Sorochimie being in administration, that the Community industry was viable and competitive. It is recalled that Sorochimie was obliged to seek protection from its creditors following certain difficulties in its glue business and other pressures in its sulphanilic acid activities. The Commercial Court of Charleville Mézières has appointed an administrator to oversee the company's trading activities and has granted the company a period of time in which to prepare a restructuring plan. This period of time has recently been extended until 31 January 2003. In the absence of other unforeseen events, the company should continue to be in existence for the immediate future and therefore be in a position to benefit from the imposition of definitive measures. Consequently, the provisional findings that the imposition of measures is in the interest of the Community industry as noted in recital 134 of the provisional Regulation are confirmed.

(62) A number of interested parties claimed that the Commission had failed to make an objective assessment of the situation of users in not taking into account any increase in the Community industry's prices that would likely follow the imposition of measures. It was also claimed that measures were against the Community interest as the production capacity of the Community industry was insufficient to meet Community demand and as a possible duopolistic situation based on the two Community producers could result from the closure of the market to imports from India and also from the PRC, which is itself subject to the parallel anti-dumping investigation.

(63) In respect of the claim that the Commission failed to take account of the various interests in an objective manner when determining the imposition of measures, it is recalled that at the provisional stage, the Commission made a detailed analysis of each of the main user sectors (optical brighteners, concrete additives, dyes and colorant producers). This analysis included an assessment of the impact of measures on their costs on the basis that the prices of the imports concerned would increase in line with the proposed measures. At the same time, due allowance was made in this calculation for a maximum possible increase in the price of sulphanilic acid sold by the Community industry of 10 % on the basis that its prices would increase to a level similar to that of the imports concerned following the imposition of measures taking into account that it was already operating at a fairly high rate of capacity utilisation in the IP. As such, no new elements were submitted by interested parties which would alter the provisional findings concerning the possible increase in the manufacturing costs of the different user industries.

(64) Regarding the supply and competition situation on the Community market, it is to be noted that the current production capacity of the Community industry could satisfy in the region of 50 % of Community demand. The purpose of the measures is in any event not to close the market to imports from India but to ensure that they are made at non-subsidised and non-injurious prices. It is therefore expected that imports from third countries including India will continue to enter the market. At the same time, measures should ensure continued sulphanilic acid production in the Community with the result that users will have more choice between domestic and foreign suppliers and competition between all suppliers should be maintained. It should also be stressed that the Community industry has plans to increase its output by investing in new facilities if the capital expenditure can be justified. For this to occur, the injurious effects of the subsidised imports need to be removed.

(65) In the light of the above, the provisional findings that the imposition of measures is not contrary to the interest of the Community as noted in recital 164 of the provisional Regulation is confirmed.

I. **ANTI-SUBSIDY MEASURES**

1. **Injury elimination level**

(66) In the absence of any new submissions on this point, the methodology used to establish the injury margin as set out at recitals 165 to 167 of the provisional Regulation is hereby confirmed.

2. **Definitive measures**

(67) As the injury elimination level is higher than the subsidy margin established, the definitive measures should be based on the latter. The following duty therefore applies:

India (all companies): 7,1 %.

3. **Definitive collection of provisional duties**

(68) In view of the magnitude of subsidisation found and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional countervailing duty shall be definitively collected at the rate of the duty definitively imposed. Amounts secured under the provisional duty in excess of the definitive duty shall be released.

J. **UNDERTAKING**

(69) Subsequent to the imposition of provisional measures, the sole cooperating exporting producer in India offered a price undertaking in accordance with Article 13(1) of the basic Regulation. By doing so, it agreed to sell the product concerned at or above price levels which would have the effect of eliminating the injurious effects of subsidisation. The company will also provide the Commission with regular and detailed information concerning its exports to the Community, meaning that the undertaking can be monitored effectively by the Commission. Furthermore, the sales structure of the exporting producer is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(70) In view of this, the offer of an undertaking was accepted by the Commission in Decision 2002/611/EC [1].

(71) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented to the relevant customs authority, exemption from the duty should be conditional upon presentation of a commercial invoice containing the information listed in the Annex to this Regulation. Where no such invoice is presented, or when it does not correspond to the product concerned presented to customs, the appropriate rate of countervailing duty should instead be payable.

(72) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, a countervailing duty may be imposed pursuant to Article 13(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of sulphanilic acid, falling within CN code ex 2921 42 10 (TARIC code 2921 42 10*60) and originating in India.

2. The rate of the definitive countervailing duty applicable to the net, free-at-Community-frontier price, before duty shall be 7,1 %.

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

4. Unless otherwise specified, the provisions in force concerning custom duties shall apply.

Article 2

1. Imports under the following TARIC additional code which are produced and directly exported (i.e. shipped and invoiced) by the company named below to a company in the Community acting as an importer shall be exempt from the countervailing duty imposed by Article 1 provided that they are imported in conformity with paragraph 2.

Country	Company	TARIC additional code
India	Kokan Synthetics & Chemicals Pvt Ltd, 14 Guruprasad, Gokhale Road (N), Dadar (W), Mumbai 400 028, India	A398

[1] See page 36 of this Official Journal.

2. Imports mentioned in paragraph 1 shall be exempt from the duty on condition that:

(i) a commercial invoice containing at least the elements of the necessary information listed in the Annex is presented to Member States customs authorities upon presentation of the declaration for release into free circulation; and

(ii) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

Article 3

The amounts secured by way of the provisional countervailing duty imposed pursuant to Regulation (EC) No 573/2002 shall be definitively collected at the rate of duties definitively imposed. Amounts secured in excess of the definitive rate of countervailing duty shall be released.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 July 2002.

For the Council

The President

P. S. MØLLER

ANNEX

Elements to be indicated in the commercial invoice referred to in Article 2(2)

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 2(1) issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
   — the Product Code Number (PCN), i.e. 'PA99', 'PS85' or 'TA98',
   — the technical/physical specifications of the PCN, i.e. for 'PA99' and 'PS85' white free-flowing powder and for 'TA98' grey free-flowing powder,
   — the company product code number (CPC) (if applicable),
   — CN code,
   — quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
   — price per tonne,
   — the applicable payment terms,
   — the applicable delivery terms,
   — total discounts and rebates.
8. Name of the company acting as an importer to which the invoice is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by Kokan Synthetics & Chemicals Pvt Ltd, 14 Guruprasad, Gokhale Road (N), Dadar (W), Mumbai 400 028, India, and accepted by the European Commission through Decision 2002/611/EC. I declare that the information provided on this invoice is complete and correct.'