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COUNCIL REGULATION (EC) No 1339/2002

of 22 July 2002

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

(OJ L 196, 25.7.2002, p. 11)

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► <u>M1</u> Council Regulation (EC) No 236/2004 of 10 February 2004	L 40	17	12.2.2004
► <u>M2</u> Council Regulation (EC) No 492/2004 of 8 March 2004	L 80	6	18.3.2004



**COUNCIL REGULATION (EC) No 1339/2002
of 22 July 2002**

**imposing a definitive anti-dumping duty and collecting definitively
the provisional duty imposed on imports of sulphanilic acid origi-
nating in the People's Republic of China and India**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not Members of the European Community ⁽¹⁾, and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

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

B. SUBSEQUENT PROCEDURE

- (2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, a number of interested parties submitted comments in writing. All interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (3) The Commission continued to seek and verify all information deemed necessary for the definitive findings.
- (4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.
- (5) The oral and written arguments submitted by the parties were taken into account.
- (6) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation are confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (7) Subsequent to the publication of the provisional Regulation, a number of interested parties claimed that the definition of the product concerned was incorrect. They argued that the technical and purified grades of sulphanilic acid were substantially different in terms of their purity and had different properties and applications. It was claimed that the two grades of sulpha-

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ OJ L 87, 4.4.2002, p. 28.

⁽³⁾ OJ L 87, 4.4.2002, p. 5.

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nilic acid could not be considered as a homogeneous product and should therefore have been treated as distinct products for the purposes of the investigation. In support of this assertion, it was argued that there was insufficient interchangeability between the two grades of sulphanilic acid. Whilst it was accepted that the purified grade could be used in all applications, the same could not be said of technical grade sulphanilic acid because of the level of impurities it contained, most notably aniline residues. These impurities consequently made technical grade acid unsuitable for use in the production of optical brighteners and food dyes.

- (8) It is recalled that purified grade sulphanilic acid results from the purification of technical grade sulphanilic acid in a process which removes certain impurities. This purification process does not alter the molecular properties of the compound or the way in which it reacts with other chemicals. Therefore, technical and purified grades share the same basic chemical characteristics. The fact that interchangeability may only be in one direction in certain applications because of concerns about impurities is therefore not considered to be sufficient justification that purified and technical grades constitute different products which should be treated separately in two different investigations. Whilst accepting that the purification process adds certain additional costs to the production process, it is recalled that these were taken into account when making a fair comparison between the different grades produced by the Community industry and those imported from the countries concerned for the purposes of calculating the level of price undercutting and the injury elimination level.
- (9) Consequently, it was not considered that the comments made by interested parties concerning the definition of the product concerned were sufficient to alter the findings on this issue that had been reached at the provisional stage. It is therefore definitively concluded that both grades of sulphanilic acid should be treated as one single product for the purpose of the present proceeding.

2. Like product

- (10) No new elements were brought to the attention of the Commission that would lead it to alter the conclusions reached at the provisional stage, namely that sulphanilic acid produced and sold by Community producers and that produced in the countries concerned and exported to the Community are like products.
- (11) The provisional findings concerning the like product as set out in recital 12 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. India

1.1. Normal value

- (12) The Indian exporting producer contested the methodology for the determination of the profit margin used in the construction of normal value as set out in recital 18 of the provisional Regulation. It claimed that the opening and closing stocks of the like product should be taken into account in this determination.
- (13) This claim was rejected because the company suggested taking into account opening and closing stocks only in determining the profit margin and not in determining the cost of manufacturing used to calculate the constructed normal value. Thus, the use of two different costs of manufacturing for the same purpose cannot be accepted. Moreover, the cost of manufacturing used in calculating normal value in the provisional Regulation was that incurred during the investigation period ('IP') and was consid-

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ered more appropriate since it is not affected by any ad hoc valuation of stocks.

1.2. *Export price*

- (14) The same company claimed that for the sales made via its related importer, the export price should be constructed by using the actual profit margin of its related importer. This claim could not be accepted since the profit margin realised by the related importer is based on transfer prices between associated parties (the company in question and its related importer) and as such these prices cannot be considered to be reliable in accordance with Article 2(9) of Regulation (EC) No 384/96 ('basic Regulation').
- (15) On the basis of the above, the findings set in recitals 19 to 21 of the provisional Regulation are confirmed.

1.3. *Comparison*

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

1.4. *Dumping margin*

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

2. People's Republic of China2.1. *Normal value*

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

2.2. *Export price*

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

2.3. *Comparison*

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

2.4. *Dumping margin*

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

E. COMMUNITY INDUSTRY

- (22) Following the publication of the provisional Regulation, a number of interested parties queried the definition of the Community industry and its standing in terms of Article 5(4) of the basic Regulation. In particular, it was suggested that the complainant producer, Sorochimie Chime Fine did not have the support of the second Community producer, Quimigal S.A. when it lodged its complaint.
- (23) It is recalled that whilst Quimigal was not a party to the original complaint, it did express its support for the proceeding at the initiation stage and has fully cooperated in the investigation. In response to the claims of certain interested parties, it has also reiterated its support for the proceeding during the course of the investigation. Therefore, as no new elements were brought to the

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attention of the Commission that would lead it to alter its earlier findings, the provisional findings concerning the definition of the Community industry and its standing as detailed in recital 44 of the provisional Regulation are hereby confirmed.

F. INJURY**1. Preliminary remarks**

- (24) Several interested parties questioned the way in which the Commission had established figures for imports of sulphanilic acid into the Community, Community consumption and market shares. They claimed that there had been insufficient disclosure of the Commission's findings regarding imports, in both volume and value terms, and that consequently their rights of defence had been impeded. It was noted that some of this information was also missing from the public version of the complaint with the result that the complaint did not meet the standards detailed in Article 5(2) of the basic Regulation.
- (25) It is to be noted that according to Article 19(1) of the basic Regulation, information which is submitted in confidence by parties to an investigation shall be treated as such by the investigation authority so long as the information concerned warrants such treatment. It is recalled that sulphanilic acid is manufactured by a relatively small number of producers around the world. Consequently, it was not possible for reasons of confidentiality to disclose precise information relating to imports of the product into the Community, especially for those countries where there is only one exporting producer. Therefore, for the purposes of disclosure, indexed figures and explanatory narrative were made available to interested parties concerning this and related items.
- (26) As none of the interested parties which raised the issue of insufficient disclosure were able to demonstrate that the information made available to them in a summarised form did not enable them to defend their rights, their arguments in this respect had to be rejected.

2. Imports concerned

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

3. Situation of the Community industry

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

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- (29) Subsequent to provisional disclosure, a number of interested parties questioned the manner in which the Commission had reached its provisional determination concerning injury as certain indicators were showing positive developments. In particular, it was suggested that the increase in the Community industry's production, sales and capacity utilisation during the analysis period (1 January 1997 to 30 June 2001) proved that it had not suffered injury. One interested party also claimed that the Commission had failed to make a proper assessment of wage costs as required by the Article 3(5) of the basic Regulation.
- (30) It is recalled that according to Article 3(5) of the basic Regulation, none of the economic factors or indices listed in the aforementioned article shall necessarily be decisive in the determination of injury. It is indeed true that certain indicators relating to quantities produced and sold by the community industry showed positive developments. 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.
- (31) 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 the imports concerned 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.
- (32) 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.
- (33) In view of the above, the provisional findings that the Community industry suffered material injury within the meaning of Article 3 of the basic Regulation, as detailed in recitals 57 to 76 of the provisional Regulation, are confirmed.

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

- (34) 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

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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.

- (35) 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.
- (36) It was noted in recital 85 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 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 the countries concerned 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.
- (37) 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 88 and 89 of the provisional Regulation are confirmed.

H. COMMUNITY INTEREST

- (38) 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 100 of the provisional Regulation are confirmed.
- (39) 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 ran counter to the Community

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interest as the production capacity of the Community industry was insufficient to meet Community demand and a possible duopolistic situation based on the two Community producers could result from the closure of the market to imports from India and the PRC.

- (40) In respect of the claim that the Commission failed to take account of the various interests in an objective manner when determining whether the imposition of measures ran counter to the Community interest, 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 and 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.
- (41) 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. In any event, the purpose of the measures is not to close the market to imports from the countries concerned but to ensure that they are made at non-dumped and non-injurious prices. It is therefore expected that imports from third countries including India and the PRC 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 and competition between suppliers. 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 dumped imports need to be removed.
- (42) 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 130 of the provisional Regulation is confirmed.

I. ANTI-DUMPING MEASURES

1. Injury elimination level

- (43) The methodology to establish the injury margin as set out at recitals 131 to 133 of the provisional Regulation is hereby confirmed.

2. Definitive measures

- (44) Since for both India and the PRC the dumping margin has been found to be lower than the injury elimination level, the definitive duties to be imposed should correspond to the dumping margins established, in accordance with Article 9(4) of the basic Regulation.
- (45) However, with regard to the parallel anti-subsidy proceeding in respect of India, in accordance with Article 24(1) of Council Regulation (EC) No 2026/97 ⁽¹⁾ ('the basic anti-subsidy Regulation') and Article 14(1) of the basic Regulation, no product shall

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

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be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It is therefore necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.

- (46) With regard to India, a definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 15(1) of the basic anti-subsidy Regulation. Certain of the subsidy schemes investigated, which were found to be countervailable in India, constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies could only affect the export price of the Indian exporting producer, thus leading to an increased margin of dumping. In other words, the definitive dumping margin established for the sole cooperating Indian producer is partly due to the existence of export subsidies. In these circumstances, it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant export subsidy amount and dumping margin definitively established. Therefore, the definitive anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies. Consequently, the definitive anti-dumping duty rate for India has been set at the level of the dumping margin (24,6 %) minus the rate of definitive countervailing duty of the export subsidies (6,3 %).
- (47) The Government of India and the Indian exporting producer opposed this approach and claimed that the definitive anti-dumping duty should be reduced by the total level of subsidisation found (7,1 %) and not only by the amount export subsidies. They argued that in practice any benefit may be used to cross-subsidise any area of activity the exporter so chooses, which would mean that if the subsidy is not used to lower the export prices it should not be countervailed. Alternatively, they argued, if the subsidy is used to lower domestic prices then only part of that subsidy which enables unfair export pricing should be countervailed.
- (48) In this respect, it is noted that subsidies which are not contingent upon export performance ('domestic subsidies') are considered to affect equally the export price and the normal value of the Indian exporting producer, which means that they have a neutral effect on the margin of dumping. It is, therefore, concluded that the amounts of domestic subsidies and the dumping margins do not arise from the same situation and consequently no adjustment to the dumping duty is warranted from the existence of such subsidisation.
- (49) For the PRC, the anti-dumping duty rate has been set at the level of the dumping margin.

3. Definitive collection of provisional duties

- (50) In view of the magnitude of the dumping found for the exporting producers, 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 provisional anti-dumping duties shall be collected at the rate of the duty definitively imposed.

J. UNDERTAKING

- (51) The sole cooperating company in the PRC, Mancheng Gold Star Chemical Industry Co., Ltd of Baoding ('Mancheng'), has proposed a joint undertaking together with the state controlled trading company, Sinochem Hebei Import & Export Corporation. However, it is recalled that Mancheng was a producer which did not meet the requirements to be granted individual treatment because it was not licensed to export and all its exports were

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made via the said state controlled trading company. Moreover, due to the very low level of cooperation obtained from exporting producers in the PRC, the Commission is not a position to consider further an undertaking proposed by a trading company because of the high inherent risk of circumvention of such an undertaking. The Chinese parties concerned were informed accordingly.

- (52) Subsequent to the imposition of provisional measures, the sole cooperating exporting producer in India of the product concerned offered a price undertaking in accordance with Article 8(1) of the basic Regulation. By doing so, it agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. 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.
- (53) In view of this, the offer of an undertaking was accepted by the Commission in Decision 2002/611/EC ⁽¹⁾.
- (54) 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 which is necessary for customs to ascertain that shipments correspond to the commercial documents at the required level of detail. Where no such invoice is presented, or when it does not correspond to the product concerned presented to customs, the appropriate rate of anti-dumping duty should instead be payable.
- (55) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed pursuant to Article 8(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sulphanilic acid falling within CN codes ex 2921 42 10 (TARIC code 2921 42 10*60) originating in the People's Republic of China and India.

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2. The rate of definitive anti-dumping duty applicable, before duty, to the net free-at-Community frontier price of the products described in paragraph 1, shall be as follows:

Country	Definitive duty (%)
The People's Republic of China	33,7
India	18,3

⁽¹⁾ See page 36 of this Official Journal.

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

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Article 3

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EC) No 575/2002 shall be definitively collected at the rate of the duties definitively imposed on imports of sulphanic acid originating in the People's Republic of China and India, as defined in that Regulation.

The amounts secured in excess of the definitive rate of anti-dumping duties 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.

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