

Council Regulation (EC) No 2272/2004 of 22 December 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 769/2002 on imports of coumarin originating in the People's Republic of China to imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not

COUNCIL REGULATION (EC) No 2272/2004

of 22 December 2004

extending the definitive anti-dumping duty imposed by Regulation (EC) No 769/2002 on imports of coumarin originating in the People's Republic of China to imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not

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 Regulation', and in particular Article 13 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures
 - (1) Following an expiry review, by Regulation (EC) No 769/2002⁽²⁾ ('the original Regulation') the Council imposed a definitive anti-dumping duty of EUR 3 479 per tonne on imports of coumarin, falling within CN code ex 2932 21 00 originating in the People's Republic of China ('PRC').
2. Request
 - (2) On 24 February 2004, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping measures imposed on imports of coumarin originating in the PRC ('the request'). The request was submitted by the European Chemical Industry Council (CEFIC) ('the applicant') on behalf of the sole producer in the Community.
 - (3) The request alleged that there had been a change in the pattern of trade following the imposition of the anti-dumping measures on imports of coumarin originating in the PRC, as shown by a significant increase in imports of the same product from India and Thailand.

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- (4) This change in the pattern of trade was alleged to stem from the transshipment of coumarin originating in the PRC via India and Thailand. It was further alleged that there was insufficient due cause or economic justification for these practices other than the existence of the anti-dumping measures on imports of coumarin originating in the PRC.
- (5) Finally, the applicant alleged that the remedial effects of the existing anti-dumping measures on coumarin originating in the PRC were being undermined both in terms of quantities and prices. Significant volumes of imports of coumarin from India and Thailand appeared to have replaced imports of coumarin from the PRC. In addition, there was sufficient evidence that the increase in imports was made at prices well below the non-injurious price established in the investigation that led to the existing measures, and that dumping was taking place in relation to the normal values previously established for coumarin originating in the PRC.
3. Initiation
- (6) The Commission initiated an investigation by Regulation (EC) No 661/2004⁽⁹⁾ ('the initiating Regulation') into the alleged circumvention of the anti-dumping measures imposed on imports of coumarin originating in the PRC by imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not and, pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports of coumarin consigned from India or Thailand, whether declared as originating in India or Thailand or not, falling within CN code ex 2932 21 00 (TARIC codes 2932 21 00 11 and 2932 21 00 15), as from 9 April 2004. The Commission advised the authorities of the PRC, India and Thailand of the initiation of the investigation.
4. Investigation
- (7) The Commission officially advised the authorities of the PRC, India and Thailand, the producers/exporters, the importers in the Community known to be concerned and the applicant of the initiation of the investigation. Questionnaires were sent to the producers/exporters in the PRC and India (there were no known producers in Thailand), as well as to the importers in the Community named in the request or known to the Commission from the investigation which led to the imposition of the existing measures. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and findings being made on the basis of the facts available.
- (8) No producer or exporter in the PRC or Thailand submitted a reply to the questionnaire. Replies to the questionnaire were received within the

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prescribed time limits from one exporting producer in India and one unrelated importer in the Community. The Commission carried out a verification visit at the premises of the following Indian exporting producer:

— Atlas Fine Chemicals Pvt. Ltd, Nasik, India

5. Investigation period

(9) The investigation period covered the period from 1 April 2003 to 31 March 2004 ('IP'). Data from 2000 up to the end of the IP were collected to investigate the change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(a) Thailand

(10) No producers or exporters of coumarin in Thailand made themselves known or cooperated in the investigation. Accordingly, findings in respect of the exports of coumarin consigned from Thailand to the Community had to be made on the basis of the facts available in accordance with Article 18 of the basic Regulation. At the outset of the investigation, the authorities of Thailand had been informed of the consequences of non-cooperation, as set out in Article 18(6) of the basic Regulation.

(b) India

(11) One exporting producer in India, Atlas Fine Chemicals Pvt. Ltd, India ('Atlas'), cooperated, representing more than 90 % in volume and value of the total imports of coumarin from India during the IP.

(12) Atlas had stated in its questionnaire reply that none of its related companies are involved, either directly or indirectly, in the trade and manufacturing of coumarin. However, the verification visit revealed that Atlas has two related companies in India: Monolith Chemicals Pvt. Ltd. and Aims Impex Pvt. Ltd. that import coumarin originating in the PRC into India and then sell the imported products to Atlas.

(c) PRC

(13) No Chinese producers or exporters cooperated in the investigation.

(14) It was made clear to these companies that non-cooperation may lead to the application of Article 18 of the basic Regulation. They were also informed of the consequences of non cooperation.

2. Product concerned and like product

(15) The product concerned by the alleged circumvention is, as defined in the original Regulation, coumarin currently classifiable within CN code ex 2932 21 00. Coumarin is a whitish crystalline powder with the characteristic odour

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of newly mown hay. Its main uses are as an aroma chemical and as a fixative in the preparation of fragrance compounds, such compounds being used in the production of detergents, cosmetics and fine fragrances.

- (16) Coumarin can be manufactured following two different production processes: the Phenol route which involves Perkin reaction and the *o*-Cresol route which involves Rasching reaction. However, coumarin produced through these two processes has the same basic physical and chemical characteristics and has the same uses.
- (17) Based on the information gathered during the investigation from the sole cooperating Indian producer and in the absence of cooperation by any other Indian producers and by any parties in Thailand, it must be inferred, in the absence of any contrary evidence, that coumarin exported to the Community from the PRC and coumarin consigned from India and Thailand have the same basic physical and chemical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. Change in the pattern of trade

- (18) As stated above, the change in the pattern of the trade was alleged to stem from transshipment via India and Thailand.

Thailand

- (19) As no Thai company cooperated in the investigation, exports from Thailand to the Community had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data, which were the most appropriate information available, were therefore used to establish the export prices and quantities of imports from Thailand.
- (20) Imports of coumarin from Thailand increased from 0 tonne in 2000 to 211 tonnes in the IP. These imports from Thailand commenced in October 2001, some months after the initiation of expiry review concluded in 2002 ('the previous investigation'), when it could not be excluded that the measures imposed by Council Regulation (EC) No 600/96 of 25 March 1996 imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China⁽⁴⁾ would be maintained. The share of the imports consigned from Thailand in the total volume of imports of coumarin into the Community increased from 0 % in 2000 to 50 % in the IP, while the share of imports into the Community of coumarin from the PRC remained stable at 7 % during the same period. In addition, Chinese export statistics at CN code level show that during the same period exports of coumarin from the PRC in Thailand substantially increased from 1 tonne in 2000 to 270 tonnes in the IP. It was also noted that imports from Thailand have compensated to some extent for the decrease in imports from the PRC since measures were originally imposed by Regulation (EC) No 600/96.

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- (21) In the absence of cooperation and of any contrary evidence it is concluded that there was a change in the pattern of trade between the PRC, Thailand and the Community from 2000 to the IP which stemmed from transshipment of coumarin originating in the PRC via Thailand.

India

- (22) The share of the imports consigned from India in the total volume of imports of coumarin into the Community increased from 11 % in 2000 to 35 % in the IP, while the share of imports into the Community of coumarin from the PRC remained stable at 7 % during the same period. Furthermore, Chinese export statistics at CN code level show that during the same period exports of coumarin from the PRC to India substantially increased from 88 tonnes in 2000 to 687 tonnes in the IP. It was also noted that imports from India have compensated to some extent for the decrease in imports from the PRC since measures were originally imposed by Regulation (EC) No 600/96.

- (a) Cooperating exporting producer in India

- (23) Atlas substantially and continuously increased its exports to the Community from 100⁽⁵⁾ in the financial year ('FY') 2000/2001⁽⁶⁾ to 1 957 in the IP. During the same period Atlas increased substantially its purchase of coumarin originating in the PRC from 100 in the FY 2000/2001 to 1 411 in the IP. It is therefore concluded that Atlas decided to import coumarin of Chinese origin, and after a slight modification re-export it to the Community thereby increasing substantially the share of imports consigned from India to the Community.

- (b) Non-cooperating companies

- (24) The request mentioned one other producer in India. As far as this non-cooperating company is concerned, and indeed any other producers that may exist but have chosen not to cooperate, the export volume and value had to be established on the basis of the facts available pursuant to Article 18 of the basic Regulation. Eurostat data, which were the most appropriate information available, were therefore used to establish the export prices and quantities of the non-cooperating companies. On that basis, it was found that imports from the non-cooperating companies slightly decreased. Moreover, it should be noted that the imports from the non-cooperating companies only represented 4-7 %⁽⁷⁾ in volume and value of the total imports of coumarin from India during the IP. Given the non-cooperation and the small market share of the non-cooperating companies, it was found that the information available for the non-cooperating companies was not such as to invalidate the finding of a change in the pattern of trade.

- (c) Conclusion for India

- (25) On the basis of the above findings, it is concluded that there was a change in the pattern of trade between India, the PRC and the Community from 2000 to

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the IP which stemmed from re-export after a slight modification of coumarin originating in the PRC via India by the cooperating company and transshipment of coumarin originating in the PRC via India by non-cooperating companies.

4. Insufficient due cause or economic justification

Thailand

- (26) As to imports from Thailand, in the absence of cooperation and of any contrary evidence, it is concluded that, given that the imports started some months after the initiation of the previous investigation, probably in anticipation of a renewed imposition of the existing anti-dumping measures, the change in the pattern of trade stemmed from the existence of the anti-dumping measures rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation.

India

- (27) For the cooperating Indian exporting producer, Atlas, it was found that it imported coumarin produced via the *o*-Cresol route from the PRC via two related Indian companies. The imported product was further purified by Atlas and this further purified coumarin was then re-exported to the Community. In the IP, the volume of coumarin subject to this production process represented 75 %⁽⁸⁾ of Atlas' total production volume. The remaining volume of 25 %⁽⁸⁾ represented genuine production in India of coumarin from the Phenol route. As the CN code declared for the coumarin imported from the PRC and the one declared for the further purified coumarin re-exported by Atlas to the Community is the same, it is concluded that both products are the same and therefore the product re-exported to the Community keeps its Chinese origin.
- (28) Atlas claimed that a CN code is just an indicative element to establish the origin of a product and that the further purification of coumarin has to be considered as a last substantial processing in an undertaking equipped for that purpose and resulting in the manufacture of a new product. Therefore in Atlas' view, coumarin further purified by the company had Indian origin.
- (29) It was found that the further purification of coumarin, already suitable for the cosmetics industry, does not change the origin of that coumarin.
- (30) Moreover, the investigation revealed that the cost of further purification of coumarin was not high and it was therefore concluded that this process only consisted in a slight modification of coumarin to improve its purity and not in the manufacture of a new product. Indeed, the further purified coumarin falls under the definition of the product concerned. This was not contested by Atlas.
- (31) Atlas also claimed that in assessing whether the processing was to be considered substantial, the value of coumarin imported from the PRC that was lost in the further purification process should be treated as a cost generated by the purification process. However, the value of coumarin lost in the purification process is incurred at the moment when such coumarin

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is purchased. Therefore it cannot be considered as a cost generated by the purification process itself.

- (32) The company also added that the main reason to export coumarin originating in the PRC was the insecurity due to the risk of strikes in India. However, even if the risk of strikes were, as such, considered to be a possible justification for company decisions, strikes can influence both production processes applied by Atlas, i.e. the production of Indian coumarin from the Phenol route and the purification of coumarin from the *o*-Cresol route originating in the PRC. Strikes therefore do not appear to be a sufficient justification for the fact that the portion of the coumarin originating in the PRC and used by Atlas in the production process increased from around 25 % in 2000 to more than 70 % in the IP⁽⁸⁾.
- (33) It is therefore concluded that the change in the pattern of trade stemmed from the existence of the anti-dumping measures rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation.
- (34) As far as the non-cooperating companies in India are concerned, their exports decreased after the FY 2001/2002, as Atlas sharply increased its market share, but, given the small quantities involved, this was found not to affect the finding of a change in the pattern of trade.
5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like products

Thailand

- (35) Based on the trade flow analysis made above, it was found that a change in the pattern of the Community imports is linked to the fact that there were anti-dumping measures in place. While imports declared as originating in Thailand were absent on the Community market until October 2001, they amounted to 211 tonnes in the IP. This volume represented 30,7 % of the Community consumption during the IP of the previous investigation.
- (36) The investigation revealed that the average prices of imports from Thailand were even lower than the prices of imports from the PRC in the previous investigation and therefore lower than the prices of the Community industry. Average prices of imports from Thailand were also 20 % lower than the Chinese export prices during the IP of the current investigation.
- (37) On the basis of the above, it is concluded that the change in trade flows, together with the abnormally low prices of exports from Thailand have undermined the remedial effects of the anti-dumping measures both in terms of quantities and prices of the like products.

India

- (38) Based on the trade flow analysis made above, it was found that a change in the pattern of trade is linked to the fact that there were anti-dumping measures in

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place. While imports consigned from India represented only 11 % of the total volume of imports of coumarin into the Community in 2000, they amounted to 35 % in the IP. This volume represented 18-22 %⁽⁹⁾ of the Community consumption during the IP of the previous investigation.

- (39) The investigation revealed that the average prices of imports from India were even lower than the prices of imports from the PRC in the previous investigation and therefore lower than the prices of the Community industry. Average prices of imports from India were also 14 % lower than the Chinese export prices during the IP of the current investigation.
- (40) On the basis of the above, it is concluded that the change in trade flows, together with the abnormally low prices of exports from India have undermined the remedial effects of the anti-dumping measures both in terms of quantities and prices of the like products.
- (41) Atlas claimed that it is unreasonable to compare Chinese export prices to the Community in 1994 (i.e. the IP used in the investigation which led to the imposition of the original measures in 1996) with Indian export prices to the same market today because ten years have lapsed between the two IPs.
- (42) However, the reality is that Indian export prices were compared with the Chinese export prices established in the IP of the expiry review concluded in 2002.
6. Evidence of dumping in relation to the normal value previously established for like or similar products

Thailand

- (43) In order to determine whether evidence of dumping could be found with respect to the product concerned exported to the Community from Thailand during the IP, Eurostat data were used pursuant to Article 18 of the basic Regulation.
- (44) Article 13(1) of the basic Regulation requires evidence of dumping in relation to the normal value previously established for the like or similar products.
- (45) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of transport and insurance, on the basis of the facts available, i.e. as given in the request, in accordance with Article 18 of the basic Regulation.
- (46) In accordance with Articles 2(11) and 2(12) of the basic Regulation, the comparison of the weighted average normal value as established in the previous investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, showed dumping for the imports of coumarin to the

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Community from Thailand. The dumping margin found, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, was above 100 %.

India

- (47) In order to determine whether evidence of dumping could be found with respect to the product concerned exported to the Community from India during the IP, export prices provided by the Indian cooperating producer and, for the non-cooperating companies Eurostat data were used pursuant to Article 18 of the basic Regulation.
- (a) Cooperating exporting producer
- (48) For the purpose of a fair comparison between the normal value and the export price for Atlas, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of transport, insurance, handling and ancillary costs, packing and currency conversions, on the basis of data provided by Atlas.
- (49) In accordance with Articles 2(11) and 2(12) of the basic Regulation, the comparison of the weighted average normal value as established in the previous investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, showed dumping for the imports of coumarin consigned by Atlas. The dumping margin found, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, was above 80 %.
- (50) Atlas claimed that the comparison of the weighted average normal value as established in the previous investigation and weighted average of export prices during this investigation's IP gave incorrect conclusion because the time difference between the IPs of the two investigations is ten years.
- (51) However, the Commission took data for the weighted average normal value from the expiry review which was concluded in 2002 and therefore the time difference between the IPs of the two investigations is only two years. This is in line with the requirements of Article 13(1) of the basic Regulation.
- (b) Non-cooperating companies
- (52) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation in respect of transport, insurance, handling and ancillary costs, packing and currency conversions, on the basis of data given by Atlas.
- (53) In accordance with Articles 2(11) and 2(12) of the basic Regulation, the comparison of the weighted average normal value as established in the

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previous investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, showed dumping for the imports of coumarin to the Community from the non-cooperating companies in India. The dumping margin found, expressed as a percentage of the CIF price at the Community frontier, duty unpaid, was above 60 %.

C. MEASURES

- (54) In view of the above findings of circumvention within the meaning of Article 13(1) of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC should be extended to the same product consigned from India and Thailand, whether declared as originating in India or Thailand or not.
- (55) The duty extended should be the one established in Article 1(2) of the original Regulation.
- (56) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measures shall be applied against registered imports from the date of registration, the anti-dumping duty should be collected on imports of coumarin consigned from India and Thailand which entered the Community under registration imposed by the initiating Regulation. However, given the fungible nature of the product and the particular circumstances of this case, it was not possible to segregate with certainty transactions relating to coumarin genuinely produced in India from those relating to coumarin imported from China, further purified and subsequently re-exported to the Community. Consequently, the retroactive collection of the extended anti-dumping duty on imports of coumarin consigned from India should not be applicable to imports of coumarin exported by Atlas during the registration period.

D. REQUEST FOR EXEMPTION FROM REGISTRATION OR EXTENSION OF THE DUTY

- (57) The sole cooperating exporting producer, Atlas, lodged a request for the exemption from the registration and the envisaged extended anti-dumping measures, pursuant to Article 13(4) of the basic Regulation.
- (58) The investigation revealed that Atlas had circumvented the anti-dumping measures in force through re-export, after a slight modification, of coumarin originating in the PRC. It was also found that Atlas had exported to the Community coumarin genuinely produced in India from the Phenol route (see recital 27). According to Article 13(4) of the basic Regulation, the fact that Atlas was involved in circumventing practices disqualifies it for the obtention of an exemption.

E. UNDERTAKING

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- (59) However, given the fungible nature of the product and the difficulties encountered by Atlas during the IP to distinguish products manufactured in India from the Phenol route and Chinese originating coumarin further purified and re-exported to the Community, it is exceptionally considered appropriate to accept an undertaking from Atlas, whereby the company would sell to the Community coumarin genuinely produced in India up to a quantitative ceiling corresponding to the quantity of such a product sold to the Community during the IP. Coumarin sold under the undertaking would not be subject to the payment of the extended duty.
- (60) This undertaking from Atlas may be accepted by the Commission by a Commission Decision.
- (61) In this context, Atlas has undertaken to 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.
- (62) To further enable the Commission to effectively monitor the compliance of the company with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on 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 duty will instead be payable.

In view of this, the offer of an undertaking is therefore considered acceptable and the company concerned has been informed of the essential facts, considerations and obligations upon which acceptance is based.

- (63) If Atlas breaches the undertaking or if the undertaking was proved to be otherwise unworkable, the Commission may withdraw its acceptance,

HAS ADOPTED THIS REGULATION:

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- (1) [OJ L 56, 6.3.1996, p. 1](#). Regulation as last amended by Regulation (EC) No 461/2004 ([OJ L 77, 13.3.2004, p. 12](#)).
- (2) [OJ L 123, 9.5.2002, p. 1](#). Regulation as last amended by Regulation (EC) No 1854/2003 ([OJ L 272, 23.10.2003, p. 1](#)).
- (3) [OJ L 104, 8.4.2004, p. 99](#).
- (4) [OJ L 86, 4.4.1996, p. 1](#).
- (5) For reasons of confidentiality, data in this paragraph have been indexed.
- (6) Covering the period from 1 April of one year to 31 March of the following year.
- (7) Ranges given for confidentiality reasons.
- (8) For reasons of confidentiality, precise data are not given.
- (9) Ranges given for confidentiality reasons.

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