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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 6 July 2001, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Communities* [2], the initiation of an anti-subsidy proceeding concerning imports into the Community of sulphanilic acid originating in India.

(2) The proceeding was initiated as a result of a complaint lodged in May 2001 by Sorochimie Chimie Fine, representing a major proportion, in the current case more than 65 %, of the Community production of sulphanilic acid. The complaint contained evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

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

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

(5) The Commission officially advised the exporting producers and importers/traders known to be concerned, the representatives of the exporting country, users, suppliers and Community producers of sulphanilic acid of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) The GOI and the exporting producers, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

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

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

(9) The Commission sent questionnaires to all parties known to be concerned and to all other companies who made themselves known within the deadlines set in the notice of initiation. Replies were received from two Community producers, the GOI and one Indian exporting producer and its related importer in the Community. The Commission also received replies from seven users, one supplier and one distributor providing information which was sufficiently complete and representative to use in the assessment of Community interest. Several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.

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

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

(a) *Community producers*

— Sorochimie Chimie Fine, Givet, France,

— Quimigal SA, Estarreja, Portugal;

(b) *Exporting producer in India*

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

(c) *Users*

— Bayer AG, Leverkusen, Germany.

(11) The investigation of subsidisation and injury covered the period from 1 July 2000 to 30 June 2001 ('IP'). The examination of trends relevant for the assessment of injury covered the period from January 1997 to the end of the IP ('analysis period').

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **Product under consideration**

(12) The product under consideration is sulphanilic acid. There are basically two grades of sulphanilic acid which are determined according to their purity: a technical grade and a purified grade. In addition, the purified grade is sometimes commercialised as a salt of sulphanilic acid. Technical and purified acid share the same basic chemical characteristics in terms of chemical formula ($C_6H_7NO_3S$) and molecular structure although they differ slightly in terms of purity (the range of purity may start from 96 % for the technical grade and from 99 % for the purified grade and for the acid content of its salt; the major impurities being residual aniline and alkali insoluble materials ranging from 2 % to less than 0,1 %). Technical and purified grades of sulphanilic acid are available as dry free flowing powders. The salt of purified sulphanilic acid is sold in powder or solution form according to customer requirements. Sulphanilic acid is used as raw material in the production of optical brighteners, concrete additives, food colorants and speciality dyes. Although there are different uses of sulphanilic acid, all grades and forms are perceived by users to be reasonably substitutable, are used interchangeably in most applications and should be, therefore, treated for the purpose of the present proceeding as one single product.

2. **Like product**

(13) The product sold in the domestic market of India and the one exported to the Community from India as well as the product manufactured and sold in the Community by the Community producers were found to have basically the same chemical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(5) of the basic Regulation.

C. **SUBSIDIES**

1. **Introduction**

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

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

(ii) Duty Entitlement Passbook Scheme (DEPB);

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

(iv) Income Tax Exemption Scheme.

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

(v) Advance Licence — Advance Release Orders scheme;

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

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

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

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

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

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

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

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

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

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

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

(v) 100 % foreign equity ownership;

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

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

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

(d) *Conclusions on EPZ/EOU*

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

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

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

(e) *Calculation of the subsidy amount*

Exemption from import duties on raw materials

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

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

Reimbursement of central sales tax paid on goods procured locally

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

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

(a) *Legal basis*

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

— DEPB on pre-export basis,

— DEPB on post-export basis.

DEPB on pre-export basis

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

DEPB on post-export basis

(b) *Eligibility*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Findings*

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

(46) To benefit from the abovementioned tax deductions/exemptions, a company must make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years following the submission of the tax return. A company may only claim one of the deductions available under the three sections mentioned above.

(47) Under Sections 10A, 10B and 80HHC companies can claim exemption from taxable income for profits realised on export sales.

(d) *Conclusion on ITES*

(48) Item (e) of the Illustrative List of export subsidies (Annex I to the basic Regulation) refers to the 'full or partial exemption … related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes which would otherwise be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit on the recipient by reducing its income tax liability.

(49) The subsidy is contingent in law upon export performance in the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

(e) *Calculation of the subsidy amount*

(50) Claims for benefit under sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it was considered appropriate to calculate the benefit under this scheme on the basis of the tax year 2000/2001 (i.e. 1 April 2000 to 31 March 2001) which covers 9 months of the IP. The benefit to the exporter has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. The rate of corporate tax applicable during this tax year was 39,55 %. The amount of subsidy has been allocated over total exports during the tax year 2000/2001.

(51) During the tax year 2000/2001 the company benefited under Section 80HHC of this scheme and obtained a benefit of 0,3 %.

6. **Advance Licence — Advance Release Orders Scheme**

(a) *Legal basis*

(52) The scheme is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The scheme is specified in paragraphs 7.2 to 7.17 of the Export and Import Policy and paragraphs 7.2 to 7.32 and 7.54 of the Handbook of Procedures.

(b) *Eligibility*

(53) 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.

(c) *Practical implementation*

(54) The amount of imports allowed under this scheme, is determined as a percentage of the amount of exported finished products. 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 SION. The input items specified in the advance licences are items used in the production of the relevant exported finished product.

(55) The advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against Advance Release Orders (ARO). In such cases the advance licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. 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.

(d) *Conclusions on the scheme*

(56) The scheme is clearly contingent upon export performance. Only exporting companies are granted licences which can be used to offset amounts of customs duties due on imports or otherwise purchases of inputs on the basis of anticipated exportation.

(57) During the verification, it was established that the AROs were used during the IP for purchases of inputs that were not consumed in the production of sulphanilic acid (the relevant product for which they were issued). Instead, these inputs were sold on the domestic market.

(58) Furthermore, it was 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.

(59) On the basis of these findings, the ARO element of the Advance Licence scheme is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the 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 product, the condition that only goods actually consumed in the production process of the exported product may benefit from such remission, is not fulfilled.

(60) 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 they enable the supplier to forgo under the deemed export drawback facility.

(61) The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the ARO holder who can import goods duty free. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount*

(62) The amount of subsidy was calculated on the basis of the import duties applicable to the inputs sourced, during the IP, against the AROs. This amount was then allocated over total exports during the IP. The company obtained a subsidy of 3,2 %.

7. **Package Scheme of Incentives of the Government of Maharashtra**

(a) *Legal basis*

(63) In order to encourage the dispersal of industries to the less developed areas of the State, the Government of Maharashtra has been granting incentives to new-expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the 'Package Scheme of Incentives'. The scheme has been amended several times since its introduction and the '1993 Scheme' was operative from 1 October 1993 to 31 March 2001 whereas the latest amended, the '2001 Scheme', was introduced on 31 March 2001 and will be operative up to 31 March 2006. The main component of the successive Package Schemes of Incentives (up to 31 March 2001) has been the granting of sales tax benefits to industries in developing and backward regions of the State.

(b) *Eligibility*

(64) In order to be eligible, companies must invest in less developed areas either by setting up a new industrial establishment or by making a large scale capital investment in expansion or diversification of an existing industrial establishment. These areas, are classified according to their economic development into different categories (e.g. less developed area, lesser developed area, least developed area). The main criterion to establish the amount of incentives is the area in which the enterprise is or will be located and the size of investment.

(c) *Green-light test*

(65) The GOI 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.

(66) 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 concerned), or unemployment rate as measured over a three-year period (at least 110 % of the average for the country concerned).

(67) It should be noted that the Indian authorities did not provide any meaningful information concerning the neutral and objective criteria used to determine the disadvantaged areas within the State in question. In the absence of such information, the Commission was obliged to make use of facts available and conclude that the green-light claim made by the GOI in respect to this regional scheme is not sufficiently supported. It was therefore provisionally concluded that this scheme does not meet the criteria of Article 4(3) of the basic Regulation.

(d) *Conclusions on the scheme*

(68) The scheme is only available to companies having invested within 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.

(69) Goods are normally subject to central sales tax (for inter-state sales) or state sales tax (for sales within the state) at varying levels depending upon the state/states in which transactions are being made. There is no sales tax on the import or export of goods, while domestic sales are subject to the sales tax at the applicable rates.

(70) According to the scheme, designated units are either exempted or can defer the payment of state sales tax on domestic transactions. Payment may be deferred up to a specified monetary limit or for a specified period, depending on which is reached earlier. Under the exemption scheme the unit was not required to collect and pay any sales tax, whereas under the deferral scheme the sales tax was collected and its payment was due after a period of 12 years from the day of collection and not on the regular monthly due dates.

(71) All three units of the investigated company were located in developing regions as notified under the 1993 Package Scheme of Incentives of the Government of Maharashtra. Under the scheme, the company was exempted from the sales tax for its domestic purchases and was allowed to defer the payment of State sales taxes collected on its domestic sales for a period of 12 years from the year of collection.

(e) *Calculation of the subsidy amount*

(72) The benefit to the exporting producer, under the sales tax exemption incentive, has been calculated on the basis of sales tax normally due during the IP, but which was forgone by the Government of Maharashtra. The amount of benefit was allocated over the total sales during the IP.

(73) The deferred amount of States sales taxes, under the deferral incentive, is considered equivalent to an interest-free loan of the same amount granted by the Government of Maharashtra. Thus, the benefit to the exporting producer has been calculated on the basis of the interest payable on a comparable commercial loan during the IP. The amount of benefit was allocated over the total domestic sales during the IP.

(74) On the basis of the above, the amount of subsidy that the company has obtained under this scheme is 2,6 %.

8. **Amount of countervailable subsidies**

(75) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is 9,2 %.

(76) The level of cooperation for India appeared to be 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. 9,2 %.

Type of subsidy	EOU	DEPB	EPCGS	ITES	Advance Licence /ARO	Maharashtra State scheme	TOTAL
		Post-export					
Kokan Synthetics and Chemicals Private Limited	1,4 %	1,7 %	0	0,3 %	3,2 %	2,6 %	9,2 %
All others							9,2 %

D. **COMMUNITY INDUSTRY**

(77) Sulphanilic acid is manufactured in the Community by two companies: the complainant, Sorochimie Chimie Fine ('Sorochimie') and Quimigal S.A.('Quimigal'). It should be noted that Sorochimie manufactured sulphanilic acid throughout the analysis period. Quimigal, however, only began to produce and sell sulphanilic acid in 1999. There were several other Community producers of sulphanilic acid active on the market at the start of the analysis period. However, all these other producers subsequently ceased production during the period either to focus on their other activities or to source sulphanilic acid from external sources. They have therefore not been taken into account when determining 'Community production.' It should be borne in mind that these important developments on the Community market allowed both Sorochimie and Quimigal to increase their production and sales.

(78) Although Quimigal is not a party to the complaint, it has expressed its support for the proceeding and fully cooperated in the investigation. It is therefore considered that Quimigal and Sorochimie fulfil the requirements of Article 10(8) of the basic Regulation, since they accounted for 100 % of the Community production of sulphanilic acid on the date the proceeding was initiated. They are therefore provisionally deemed to constitute the 'Community industry' within the meaning of Article 9(1) of the same Regulation and will hereinafter be referred to as such.

E. **INJURY**

1. **Community consumption**

(79) Apparent consumption of sulphanilic acid in the Community was established on the basis of:

— imports of the product concerned into the Community as established according to recital 81,

— the total verified sales of the Community industry on the Community market,

— the verified responses of former Community producers of the product concerned which co-operated in the investigation and

— evidence contained in the complaint for other former producers which did not cooperate.

(80) Community consumption of sulphanilic acid in the IP was approximately 11 000 tonnes. This figure is some 13 % higher than at the start of the analysis period. After two years of relative stability in 1997 and 1998, there was a slight decline in consumption in 1999 before a clear upturn in 2000 and the IP.

2. **Imports into the Community from India**

2.1. *Import data*

(81) The CN heading, under which the product under investigation is currently classified covers a variety of other products. The Commission therefore made use of the best facts available and established figures for both the volumes and prices of imports of sulphanilic acid on the following basis. Data for imports from India were established on the basis of the reply of the cooperating exporting producer to the Commission's questionnaire. The volumes of imports from the People's Republic of China ('PRC') and the United States of America ('USA') were taken from information contained in the complaint given the low level of cooperation from producers in the PRC and the fact that the sole exporting producer in the USA gave an estimate in confidence of its exports to the Community for the analysis period. The prices of these imports were predominantly derived from Eurostat data with the response of the cooperating Chinese producer to the Commission's questionnaire also being taken into account for the IP only. Information concerning the volume and prices of imports originating in Hungary and Japan was derived by comparing Eurostat data to responses of users to the Commission's questionnaires. The investigation also established that the major part of imports originating in India was produced by the sole cooperating exporting producer. It has therefore been necessary to present data relating to such imports in an indexed form in order to protect the confidential nature of this information. With the exception of the countries noted above, the investigation established that there were no imports from other third countries during the analysis period.

3. **Volume and prices of the imports concerned**

(82) The volume of the imports concerned almost doubled during the analysis period to reach a figure of more than 1 700 tonnes in the IP. Their market share grew by approximately 50 % over the same period to represent a figure of approximately 15 % of Community consumption.

(83) The average price of the imports concerned increased by 7 % during the analysis period. They reached their lowest level in 1999.

	1997	1998	1999	2000	IP
Imports tonnes (indexed)	100	149	119	118	192
Market share (indexed)	100	143	124	113	171
Average cif price ECU/EUR per tonne (indexed)	100	92	88	91	107

3.1. *Price undercutting*

(84) For the purposes of analysing price undercutting, the weighted average sales prices per grade of the Community industry to unrelated customers on the Community market were compared to the corresponding weighted average export prices of the imports concerned. The comparison was made after the deduction of rebates and discounts. The prices of the Community industry were adjusted to an ex-works basis. The prices of the imports concerned were on a cif basis with an appropriate adjustment for customs duties and post importation costs.

(85) In view of the high level of cooperation received from the exporting producer in India, the level of price undercutting for India as a whole has been established on the basis of this company's data. The level of price undercutting for Imports originating in India is therefore 13 %. It should be noted the imports concerned exerted a price depressive and suppressive effect on the prices of the Community industry which suffered losses throughout the analysis period.

4. **Situation of the Community industry**

4.1. *Preliminary remarks*

(86) In order to respect confidential business information, it has been necessary to present information concerning the two companies forming the Community industry in an indexed form. In addition, as the second member of the Community industry began production only in 1999, i.e. midway through the analysis period, it has been decided to present its data separately from that of Sorochimie so as to allow a more meaningful analysis of trends. As a result, two indices, both starting at 100, are presented for each indicator with 1997 as the base year for Sorochimie and 1999 as the base year for Quimigal (except in the case of investments which started to be made earlier).

(87) 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 economic factors and indices having a bearing on the state of the industry.

4.2. *Production, production capacity and capacity utilisation*

(88) The Community industry's level of production in the IP was more than double the level recorded at the start of the analysis period. This reflected an increase of 51 % in Sorochimie's production over the analysis period and the entry of Quimigal onto the market in 1999. The Community industry's production capacity also increased over the analysis period but to a lesser degree than its actual production. The combination of these two factors led to an overall increase in the capacity utilisation rate of the Community industry during the period. Quimigal's capacity utilisation rate increased sharply as it came out of its start-up phase. Both companies achieved a satisfactory level of utilisation of their capacity in the IP.

Indexed		1997	1998	1999	2000	IP
Production (tonnes)	Sorochimie	100	126	125	142	151
	Quimigal	0	0	100	288	348
Capacity (tonnes)	Sorochimie	100	115	115	115	115
	Quimigal	0	0	100	133	133
Increase in capacity utilisation (%)	Sorochimie	100	110	109	124	132
	Quimigal	0	0	100	216	261

4.3. *Stocks*

(89) Sorochimie's year-end stock levels were higher in absolute terms at the end of the IP than in 1997. However, when expressed as a percentage of production they decreased over the period (from 15 % to 11 %). Quimigal's stock levels decreased after its entry onto the market so that its stocks represented approximately 5 % of production in the IP. The Community industry's year-end stock levels are not considered to be abnormal for such an industry.

Indexed		1997	1998	1999	2000	IP
Stocks (tonnes)	Sorochimie	100	94	76	69	108
	Quimigal	0	0	100	73	59

4.4. *Sales volume, market share and growth*

(90) The sales of the Community industry in the IP were more than 75 % higher than recorded in 1997. It should be borne in mind that part of the increase is due to the appearance of Quimigal on the market in 1999. Considered in isolation, Sorochimie increased its sales on the Community market by nearly 40 % during the analysis period.

(91) The Community industry increased its share of the Community market by nearly 50 % during the analysis period. The highest market share was recorded in 2000. However, some market share was lost to the subsidised imports in the IP as their volume grew at a faster rate than the overall market. Most of the Community industry's increase in market share resulted from the effect of Quimigal's production coming on stream. However, Sorochimie was also able to increase its market share during the analysis period because a number of other producers in the Community withdrew from the market. Both companies, therefore, were able to experience a more rapid growth than consumption. This, however, was done by pushing capacity utilisation to high levels and developing sales of salts as the presence of subsidised imports prevented them from fully benefiting from the restructuring of the Community production of sulphanilic acid and implementing their planned capacity expansion (see recital 96).

Indexed		1997	1998	1999	2000	IP
Sales (tonnes)	Sorochimie	100	93	96	135	138
	Quimigal	0	0	100	243	238
Market share (%)	Sorochimie	100	92	103	132	126
	Quimigal	0	0	100	222	202

4.5. *Sales prices and costs*

(92) Sorochimie's average selling price decreased by 9 % over the analysis period. There was a sharp decline between 1997 and 1998 before prices began to rise again, albeit very slowly. The development between 1997 and 1998 reflects both a slight fall in the price of aniline (the most important raw material in price terms) as well as the price pressure exerted on the Community market by the subsidised imports which increased by over 50 % in volume at this time. Sorochimie's average selling price increased marginally from 1999 onwards as the company was able to take advantage of both an increase in Community consumption and the exit of certain producers from the market. However, this increase was at a lower rate than the increase in the price of aniline, which is the most significant raw material for the production of sulphanilic acid in cost terms. In this way, the level of undercutting established for the imports concerned in the IP demonstrates the price depressing effect they had on the level of Sorochimie's own prices as it was unable to recover the full amount of the increase in its main raw material. Quimigal's average selling price increased at a faster rate than Sorochimie's but it should be borne in mind that the company had to start from a relatively low selling price in 1999 with relatively low sales volume as it attempted to establish itself in the market. In spite of its rising sales price, it was nonetheless unable to cover its full costs of production and remained loss making in the IP.

Indexed		1997	1998	1999	2000	IP
Average sales price (ECU/EUR per tonne)	Sorochimie	100	85	86	87	91
	Quimigal	0	0	100	103	119

4.6. *Profitability*

(93) The Community industry was loss making throughout the analysis period, with the most important losses recorded in 2000. It is to be recalled that the imports concerned have been present on the Community market in significant volumes and at low prices since the beginning of the analysis period as demonstrated by their market share of approximately 10 % in 1997 and their prices some 13 % below those of the Community industry in the IP. Sorochimie's losses on net sales to unrelated customers in the Community during the IP, when expressed as a percentage of the same sales, were in single digits whilst Quimigal's losses were in double digits. Quimigal's net return on sales include a recalculation of their depreciation on a straight line over a period of 10 years in order not to take into account exceptional start-up costs in the form of accelerated amortisation. Furthermore, as capacity utilisation was fairly high in the IP, no impact of low start-up volumes on unit costs is included in the data examined.

(94) It is clear that the viability of the Community industry depends on it being able to achieve higher selling prices for its production and thereby put an end to its prolonged loss making period.

4.7. *Investments and ability to raise capital*

(95) The table below indicates that the Community industry continued to make investments in its sulphanilic acid activities throughout the analysis period. In the case of Sorochimie, these investments were primarily related to the maintenance of existing capital assets. It should be noted that Quimigal made substantial investments in advance of its start-up in 1999. This company made the decision to enter the sulphanilic acid market several years earlier when prices on the Community market were higher.

(96) Sorochimie's ability to raise capital has been affected by the subsidised imports as investment plans to increase capacity have been deferred since the necessary expenditure could not be justified in the current environment of insufficient returns on sulphanilic acid activities. Quimigal had also to delay its expansion plans because of the current market situation.

Indexed		1997	1998	1999	2000	IP
Investments (ECU / EUR)	Sorochimie	100	39	92	91	81
	Quimigal	100	826	291	100	99

4.8. *Return on investments and cash flow*

(97) As the Community industry has been loss making throughout the analysis period, the figure for the return on investments, which expresses the after tax result as a percentage of the average opening and closing net book value of assets employed in the production of sulphanilic acid, has also remained negative.

(98) Sorochimie was cash generative throughout the analysis period, although only marginally so in 1998, 1999 and 2000. Quimigal was cash generative in the year it commenced sales (1999) but then cash flow became negative in 2000 and the IP.

4.9. *Employment, productivity and wages*

(99) The following table shows the development in the number of workers employed in the sulphanilic activities of both companies forming the Community industry and the average total employment cost per employee. The figure for productivity is calculated on the basis of tonnes produced per employee.

(100) For the Community industry as a whole, employee numbers were the same in the IP as at the beginning of the analysis period. However, it should be noted that the two companies experienced divergent trends in that Sorochimie lost a number of jobs incidentally equal to that created by Quimigal when it came onto the market.

(101) The Community industry considerably improved its productivity during the analysis period. This occurred as Quimigal reached its planned level of production in the IP and efforts were made overall to improve competitiveness.

Indexed		1997	1998	1999	2000	IP
Employees (number)	Sorochimie	100	96	89	86	86
	Quimigal	0	100	100	133	133
Average employment cost per employee (ECU / EUR per person)	Sorochimie	100	121	133	134	132
	Quimigal	0	100	278	208	208
Productivity (tonnes per person)	Sorochimie	100	131	140	166	177
	Quimigal	0	0	100	216	261

4.10. *Magnitude of subsidisation*

(102) Given the volume and the price of the subsidised imports, the impact of the actual margin of subsidy, which is significant, cannot be considered negligible.

4.11. *Conclusion on injury*

(103) During the analysis period, the volume of imports from India increased by more than 90 %. Their market share increased by 50 % to reach a level of more than 15 % in the IP. They experienced a rapid growth in market share between 1997 and 1998. It was also at this time that Sorochimie suffered the sharpest drop in its average sales prices as it was forced to compete aggressively against the subsidised imports in an effort to maintain its position on the market.

(104) Although Sorochimie was later able to raise its selling prices and also increase its sales volumes as other operators were forced out of the market, it remained loss making due to the low price levels prevailing on the market. This was in spite of the efforts made to improve efficiency as demonstrated by its increased productivity.

(105) Quimigal was never able to cover its costs although the extent of its losses reduced somewhat due to an increase, albeit an insufficient one, in its selling price.

(106) It is thus clear that the volume and prices of the subsidised imports prevented the Community industry from generating an adequate return on its sulphanilic acid activities. This is demonstrated by the fact that it suffered losses throughout the analysis period. As a direct consequence of this situation, it was prevented from implementing its expansion plans.

(107) On the basis of the foregoing, it is provisionally concluded that the Community industry has suffered material injury, characterised by price depression and suppression, a prolonged period of losses, insufficient returns on investment and the deferment of expansion plans, within the meaning of Article 8 of the basic Regulation.

F. CAUSATION OF INJURY

1. Introduction

(108) In accordance with Article 8(7) of the basic Regulation, the Commission examined whether the subsidised imports originating in India have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the subsidised imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.

2. Effect of the subsidised imports

(109) The volume of the subsidised imports increased by more than 90 % during the analysis period. They enjoyed a particularly rapid rate of growth between 1997 and 1998 when their prices decreased by 8 %. This increase was to cause a rapid drop in Sorochimie's selling price

as it tried to maintain its market share. Subsequently, the low price level of the subsidised imports and their increasing presence on the Community market had a price suppressing effect on the prices of the Community industry in that it was unable to reflect the full increase in its own cost of production in its selling price. Finally the Community industry could not increase its production capacity as should have been the case given the withdrawal of other Community producers from the market and the increase in demand observed over the analysis period as a whole.

3. **Effects of other factors**

3.1. *Dumped imports originating in the PRC*

(110) In the parallel anti-dumping investigation, it was provisionally established that dumped imports originating in the PRC caused material injury to the Community industry.

(111) Dumped imports originating in the PRC are therefore provisionally considered as having contributed to the injury suffered by the Community industry.

3.2. *Imports originating in third countries other than India and the PRC*

(112) With the exception of 1999 when Community consumption fell to its lowest point in the analysis period, the volume of imports originating in other third countries remained relatively stable at approximately 2 000 tonnes. Overall, they therefore lost market share from approximately 21 % in 1997 to 18 % in the IP. On the basis of the facts available, only imports from the USA and Hungary were at levels above 1 % of Community consumption in the IP. It should be noted that the sole producer of sulphanilic acid in Japan ceased manufacturing the product during the analysis period. Imports from this country in the IP were not significant (less than 100 tonnes). Imports from Japan have therefore not been further considered in this investigation.

(113) Imports originating in the USA increased significantly to reach a market share of around 10 % in the IP. This came about following the relocation of some production activities that had previously taken place in the Community. The prices of imports originating in the USA were significantly higher than those of the Community industry.

(114) Imports originating in Hungary decreased by nearly half during the analysis period. Their average selling price was significantly higher than that of the subsidised imports and broadly similar to that of the Community industry.

(115) On the basis of the above, it is provisionally concluded that imports originating in other third countries and in particular the USA and Hungary did not contribute to the material injury suffered by the Community industry.

3.3. *Changes in the pattern of consumption*

(116) The apparent consumption of sulphanilic acid in the Community increased during the analysis period from approximately 10 000 tonnes in 1997 to around 11 000 tonnes in the IP. The Community industry was able to increase its market share over the same period as other Community producers left the market. The development of consumption did not, therefore, contribute to the injury suffered by the Community industry.

3.4. *The export performance of the Community industry*

(117) Sorochimie's exports as percentage of total sales in the IP was similar to that recorded at the start of the analysis period at approximately one third. There was an increase in 1998 and 1999 due to certain one-off contracts. The level of Quimigal's exports expressed by the same measure was higher in the IP at approximately one half of total sales. The Community industry's price level for exports during the IP was similar to that experienced for sales on the Community market. It has therefore been provisionally concluded that the export performance of the Community industry did not contribute to the injury it suffered.

3.5. *The entry of Quimigal onto the Community market*

(118) It is recalled that Quimigal, the second company forming part of the Community industry, began producing and selling sulphanilic acid in 1999 as a result of an earlier decision taken at a time when prices on the Community market for sulphanilic acid were higher. It has been alleged that at least part of the injury suffered by the Community industry should be attributed to Quimigal and not to the imports concerned in that Quimigal had relatively low sales prices and high unit costs in its first years of operation. This claim had to be rejected since it is the presence of the very low priced dumped imports, that forced the company to offer its production at fairly similar prices in order to gain market share in a reasonable length of time. Prices of Quimigal were afterwards able to slightly increase.

(119) Furthermore, in order to ensure that the injury suffered by the Community industry was not incorrectly attributed to the dumped imports, the impact of any exceptional start-up costs from Quimigal's operating results were removed as explained at section 4.6 on profitability.

(120) In view of the above, it is provisionally concluded that the entry of Quimigal onto the market did not contribute to the material injury suffered by the Community industry.

4. **Conclusion on causation**

(121) The investigation has shown that the arrival of subsidised imports from India in large quantities on the Community market caused severe price depression of the Community industry's average selling prices. The Community industry was forced to considerably lower its prices in order to maintain its share of the market and ensure a satisfactory capacity utilisation. The fact that it was able to increase its market share can be attributed to the exit of a number of other Community producers from the sulphanilic acid market. Although the Community industry was able to raise its prices from 1998 onwards, these increases were not sufficient to return it to profitability as the dumped and subsidised imports had a price suppressing effect. Over the same period, the volume of subsidised imports from India continued to increase.

(122) Notwithstanding the fact that imports from the PRC contributed to the material injury suffered by the Community industry in that their increasing presence on the Community market and low prices exerted a price suppressing effect, it is provisionally considered that the imports from India, considered in isolation, caused material injury to the Community industry. During the analysis period, imports from India increased significantly both in terms of volume and market share. It is also recalled that the average price of such imports in the IP was 13 % below that of the Community industry. It is therefore provisionally concluded that imports originating in India have caused material injury to the Community industry, which has been characterised by low selling prices, lack of profitability and negative returns on investments.

(123) Furthermore, the changes in the pattern of consumption and the export performance of the Community industry did not contribute to the injury suffered by the Community industry.

G. **COMMUNITY INTEREST**

1. **General remarks**

(124) The Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 31(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

2. **The investigation**

(125) The Commission sent questionnaires to importers, suppliers of raw materials, industrial users of the product concerned as well as other interested parties who made themselves known within the time limit set in the notice of initiation.

(126) In total, 27 questionnaires were sent out, but only 9 replies were received within the time limits set. As noted above in recital 9, several companies chose to submit only comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate.

(127) Questionnaire responses were received within the time limits from seven users of the product concerned:

— Bayer AG, Leverkusen, Germany,

— Ciba Spezialitätenchemie Grenzach GmbH, Grenzach Wyhlen, Germany,

— Manuel Vilaseca SA, Barcelona, Spain,

— SA Robama, Barcelona, Spain,

— Sika Limited, Welwyn Garden City, United Kingdom,

— SIPO srl, Milan, Italy,

— SKW Polymers GmbH, Trostberg, Germany;

one trader:

— Twinstar Chemicals Ltd., Harrow, United Kingdom;

one supplier of raw materials to the sulphanilic acid industry:

— Quimigal SA, Estarreja, Portugal.

3. **Likely effect of the imposition on the Community industry**

(128) It is recalled that the Community industry comprises two companies with production facilities in France and Portugal.

(129) In spite of the material injury suffered by the Community industry during the IP, there is no reason to doubt its long-term viability and competitiveness in a market where normal conditions of fair trade exist. The Community industry has plans to increase its production capacity in the Community to be able to meet growing domestic demand. However, these plans have had to be deferred because of the low level of prices in the Community brought about by the presence of the subsidised imports.

(130) It should be noted that the Community industry's loss-making situation has resulted from its difficulty to compete with the low-priced, subsidised imports, which have increased their market share considerably during the analysis period. The pressure of the subsidised imports has also forced a number of Community producers to cease production of sulphanilic acid.

(131) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then be able to increase the volume and prices of its sales, thereby generating the necessary level of return to justify continued investment in its production facilities.

(132) Should measures not be imposed, it is almost certain that the losses of the Community industry observed over the analysis period will continue. It will not be able to invest in new production capacity and compete effectively with imports from third countries. It is to be noted that Sorochimie has filed for protection from its creditors because of difficulties in its business and that its current trading activities are being overseen by an administrator appointed by the local Court of Commerce. It may be impossible for the company to continue if measures are not imposed.

(133) In this context, it is noted that exports from India have been subject to anti-dumping and anti-subsidy measures in the USA since March 1993. With the exception of the Community market, there are considered to be limited additional third country markets for these exports.

(134) It is therefore provisionally concluded that the imposition of countervailing measures is in the interest of the Community industry.

4. **Likely effect of the imposition of measures on traders**

(135) The Commission received one reply from a company which imported the product concerned until recently and also traded sulphanilic acid produced by the Community industry. The company noted that the imposition of measures in the Community could lead some users to relocate their production facilities outside the Community or move away from certain end-product markets. It therefore feared that it would lose business in the Community. As concluded below with regard to users of the product concerned, such developments are unlikely to occur and therefore it was provisionally concluded that the imposition of measures would not have a serious impact on Community traders of sulphanilic acid.

5. **Likely effect of the imposition of measures on suppliers of raw materials to the sulphanilic acid industry**

(136) The Commission received only one questionnaire reply from a supplier of raw material (aniline) to the sulphanilic acid industry. This reply was from Quimigal, which is also one of the two Community producers of sulphanilic acid. In the IP, its aniline sales to sulphanilic acid producers represented a very small percentage of its total aniline sales in the Community. In spite of this, the company stressed the importance of its sales (both internal and external) to the sulphanilic acid industry.

(137) In view of the low level of cooperation from suppliers of raw materials to the sulphanilic acid industry and the situation of the one cooperating supplier, it is provisionally concluded that the imposition of countervailing measures would not have either major beneficial or prejudicial consequences for suppliers.

6. **Likely effect of the imposition of measures on users**

(138) Sulphanilic acid has a wide range of applications. It is used in the manufacture of optical brighteners, additives for concrete and speciality dyes and colorants. An analysis of data provided by the Community industry, cooperating exporting producers and a former Community producer of sulphanilic acid, showed the optical brightener sector to be the most important user sector with approximately 65 % of estimated Community consumption. Concrete additives accounted for approximately 15 % of Community consumption and speciality dyes and colorants for 10 %. The intended application of the remainder, which also included sales to traders, was unknown.

(139) The Commission sought to quantify the possible financial impact of measures on the operations of the cooperating users by taking into account both the origins of their sulphanilic acid purchases and its share in their overall manufacturing costs in the IP. For the purpose of this exercise, it was considered that the prices of imports from India would increase by the amount of the duty proposed in this investigation and in the parallel anti-dumping investigation, as indeed would imports from China.

(140) As a number of users have made the same point opposing the imposition of measures on the grounds that production capacity in the Community is insufficient to meet domestic demand, it has been decided to address this concern for all user sectors in section 7.

6.1. *Optical brighteners*

(141) Three questionnaire replies were received from Community companies producing optical brighteners and written comments from a fourth. Optical brighteners are general fluorescent whitening agents used by external customers primarily in the paper and detergent industries. Although one of the questionnaire respondents did not provide comprehensive information on its profitability during the analysis period, the trends observed for the other two companies are considered to be meaningful in that the two accounted for half of the sulphanilic acid used by all three respondents in the IP.

(142) The cooperating producers of optical brighteners use either pure grade sulphanilic acid or pure grade in a salt solution. In the IP, approximately half of their purchases were sourced from the Community industry and half from other sources including the countries concerned.

(143) Sulphanilic acid is only used in certain types of optical brighteners and in varying quantities. When the information provided by the three cooperating users was combined, it was found that sulphanilic acid accounted for in the region of 10 % of their manufacturing costs of those optical brighteners in which sulphanilic acid is a constituent. It was consequently established using the methodology detailed in recital 139 that measures would increase the manufacturing costs for optical brighteners containing sulphanilic acid by just over 1 % and that the increase in their full costs (i.e. after taking sales, general and administration expenses (SG&A) into account) would be somewhat less than 1 %.

(144) The producers of optical brighteners argued that there is little differentiation between the types available on the market. As a result, optical brighteners are treated like a commodity and competition between producers is intense. This appeared to be supported by the profitability data provided by two of the respondents which showed that the returns on sales of optical brighteners containing sulphanilic acid had declined significantly over the analysis period in spite of the availability of sulphanilic acid at dumped prices and a more general decline in total manufacturing costs observed over the same period.

(145) It was argued that if measures were imposed, producers of optical brighteners in third countries where there were no measures would gain a significant price advantage. One producer claimed that if the already low level of return from its optical brightener's business were further reduced by measures, it would have to reconsider its presence in the market.

(146) It is not evident that producers of optical brighteners in countries outside the Community will derive a distinct competitive advantage against Community based competitors if measures are imposed. This is particularly true if one considers that the market for sulphanilic acid in one of the largest optical brightener producing countries, the USA, is already subject to a number of anti-dumping and anti-subsidy duties on imports of sulphanilic acid. It should also be noted that, taking into account the fact that the possible increase in the overall costs of Community based optical brightener producers would be somewhat less than 1 %, and that optical brighteners only account for a small part of the cost of paper production, it has not been demonstrated that continued production in the Community of these products would be endangered. In view of the substantial investments they have made in their Community production facilities in recent years, the size of the market and their customer base, it is evident that these producers will maintain a substantial presence in the Community.

(147) It is therefore provisionally considered that the imposition of measures would not have a major adverse impact on this user group.

6.2. *Concrete additives*

(148) The Commission received replies to its questionnaire from two companies producing concrete additives and written comments from a third. Concrete additives or admixtures are used to improve certain characteristics of concrete and thereby the way in which it performs under a variety of conditions.

(149) The data of the cooperating users showed that sulphanilic acid was used in the production of all types of concrete additives. When the data of the two companies were combined and account was taken of their respective product mix and size, it was found that sulphanilic acid represented roughly 15 % of their manufacturing costs. It was consequently established using the methodology detailed in recital 139 that measures would increase the manufacturing costs for concrete additives by just over 2 % and that the increase in their full costs (i.e. after taking SG&A into account) would be somewhat less than this figure.

(150) Only one of the respondents provided data concerning the profitability of products sold containing sulphanilic acid. The Commission has therefore not been able to make a precise assessment of the financial impact of measures on this user group. Nevertheless, it is to be noted that the turnover of products containing sulphanilic acid represents a very small part (i.e. less than 5 %) of the total turnover of the two companies that replied to the Commission's questionnaire. Therefore, although it is acknowledged that measures would have some impact on their concrete admixture business, the companies' overall activities would not be endangered. This is supported by the fact that neither company submitted that it would be unable either to absorb the increase in its costs or to pass such an increase onto customers.

(151) The same two cooperating users were very much against the imposition of measures. Apart from raising concerns about the adequate availability of sulphanilic acid in the Community which are addressed below in section 7, they alleged that they would lose competitiveness on world markets to producers of concrete admixtures in third countries where there was access to supplies of sulphanilic acid from India and China without duties.

(152) This claim had to be rejected for a number of reasons. In the first instance, neither company provided any evidence, such as information relating to the degree of competitive threat posed by producers of concrete additives in other third countries, with which to substantiate their claim. In addition, having taken account of the anticipated increase in these companies' overall costs as noted in recital 149, it was not considered that measures would have such a prejudicial effect on their competitiveness.

(153) The third producer was more equivocal in its stance. Whilst underlining that its competitiveness depended to a certain extent on the price at which it was able to purchase its raw materials, it recognised the importance of maintaining a competitive production base for sulphanilic acid in the Community which would guarantee the security of supply for this raw material.

(154) In the light of the above, it is provisionally concluded that the imposition of measures would not have serious prejudicial effects on the activities of this user sector.

6.3. *Dyes and colorant producers*

(155) The Commission received replies from three producers of dyes, one of which had also replied to the Commission in its capacity as a producer of optical brighteners. Written comments were also received from a fourth producer. They purchased relatively small quantities of sulphanilic acid in the IP. Approximately half of the purchases were of sulphanilic acid originating in the Community with the remainder coming from the countries concerned. When the data of the three companies were combined and account was taken of their respective product mix and size, it was found that sulphanilic acid represented between 5 and 10 % of their manufacturing cost for dyes containing sulphanilic acid. The turnover of these products in turn accounted for approximately one third of the combined turnover of these companies.

(156) It was consequently established using the methodology detailed in recital 139 that measures would increase the manufacturing costs for dyes and colours containing sulphanilic acid by just over 1 % and that the increase in full costs (i.e. after taking SG&A into account) would be somewhat less than this figure. However, as none of these companies provided the Commission with specific details on the profitability of their dye businesses, it was not possible to determine with any precision the possible effect of measures on their overall financial situation.

(157) One respondent did however make written comments on the very competitive nature of the dye business and the low margin environment in which it had to do business. It was stated that there was strong price competition from dye products originating in India and China, possibly due to dumping and subsidisation, and that any increase in the price of sulphanilic acid could have serious consequences for continued dye production in the Community. However, the possible existence of dumping and subsidisation on a downstream market (no evidence to this effect having been provided) should not prevent the application of proper trade defence instruments to remedy the injurious effects of the dumped imports on the producers of sulphanilic acid forming the Community industry.

(158) Due to the lack of information provided on profitability and the relatively low importance of the cost of sulphanilic acid in the overall manufacturing costs of all dyes, it is provisionally concluded that the imposition of countervailing duties would not have serious prejudicial consequences for this user sector.

6.4. *Conclusion*

(159) Recalling the conclusions reached above in respect of the various users of sulphanilic acid in the present investigation, it is provisionally concluded that the imposition of measures would slightly affect their financial situation but would not endanger their continued activities or lead them to relocate their production outside the Community.

7. **Competition and trade distorting effects**

(160) The Commission considered the possible competition and trade distorting effects of measures in the light of the findings of the investigation and comments made by interested parties. These comments primarily focused on the continued need for imports of the product concerned into the Community because of the inability of the Community industry to satisfy demand. One user also raised the fear that a reduction in supply from India and China would allow Sorochimie to fix prices on the Community market with its American competitor.

(161) Measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious subsidised prices. It is accepted that imports from various origins will continue to satisfy a significant part of Community demand. It should also be noted that the Community industry has plans to increase its capacity if the return on its sulphanilic acid sales reaches an acceptable level. It is therefore most likely, provided that the injurious effects of the subsidised imports are removed by the imposition of measures, that the Community industry will be able to carry out these investment plans. It is important to note that sulphanilic acid production is already concentrated in relatively few countries around the world. According to the findings of the present investigation, production outside the Community is now restricted to India, China, the USA and Hungary. It is therefore in the interests of all users in the Community that the Community industry is allowed to operate under conditions of fair competition so that domestic supplies of the product continue to be available.

(162) The second claim concerning price collusion had to be rejected as mere conjecture. No evidence was supplied to support the allegation. Moreover, were measures not to be imposed, the Community industry could be forced out of production. If this were to happen, the number of suppliers on the Community market would be further reduced and remaining suppliers could raise their prices to take advantage of this fact.

(163) In view of the above, it is provisionally concluded that the imposition of provisional countervailing duties would help to protect the choice of user industries and maintain competition on the Community market.

8. **Conclusion on Community interest**

(164) On the basis of the above, it is provisionally concluded that there are no compelling reasons on the grounds of Community interest why countervailing duties should not be imposed in the present case.

H. **PROVISIONAL ANTI-SUBSIDY MEASURES**

1. **Injury elimination level**

(165) In order to prevent further injury being caused by the subsidised imports, it was considered appropriate to adopt countervailing measures in the form of provisional duties.

(166) For the purpose of determining the level of these duties, the Commission took account of the subsidy margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

(167) To this end, the Commission determined a non-injurious price based on production costs of the Community industry (without taking into account any exceptional costs linked to the Sorochimie's difficulties in its glue business or to the start-up costs of Quimigal), together with a profit margin of 6 %. This profit margin was considered reasonable and achievable for an industry of this type in the chemical sector. The non-injurious price was compared with the prices of the dumped and subsidised imports used to establish price undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury margin.

2. **Provisional measures**

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

India (all companies): 9,2 %.

I. **FINAL PROVISION**

(169) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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 provisional countervailing duty applicable to the net-free-at-Community-frontier-price, before duty, shall be 9,2 %.

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of provisional duty.

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97 interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 shall apply for a period of four months.

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

Done at Brussels, 3 April 2002.

For the Commission
Pascal LAMY
Member of the Commission