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COUNCIL REGULATION (EC) No 1000/2008

of 13 October 2008

imposing a definitive anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and India following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]) (the basic Regulation), and in particular Articles 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In July 2002, by Regulation (EC) No 1339/2002 ([2]), the Council imposed a definitive anti-dumping duty (the existing measures) of 21 % on imports of sulphanilic acid falling within CN codes ex 2921 42 10 (TARIC code 2921 42 10 60) originating in the People's Republic of China (PRC) and a residual duty rate of 18,3 % on imports originating in India. The measures imposed had been based on the results of an anti-dumping proceeding initiated pursuant to Article 5 of the basic Regulation (the original investigation).

(2) At the same time, by Regulation (EC) No 1338/2002 ([3]), the Council imposed a definitive countervailing duty of 7,1 % on imports of the same product originating in India.

(3) Within the framework of the abovementioned anti-dumping and countervailing proceedings, the Commission, by Decision 2002/611/EC ([4]) accepted a price undertaking offered by one Indian exporting producer, Kokan Synthetics and Chemicals Pvt. Ltd (Kokan).

(4) In February 2004, following an anti-absorption reinvestigation pursuant to Article 12 of the basic Regulation, the Council, by Regulation (EC) No 236/2004 ([5]), increased the rate of the definitive anti-dumping duty applicable to imports of sulphanilic acid originating in the PRC from 21 % to 33,7 %.

(5) In December 2003, Kokan informed the Commission that it wished to withdraw its undertaking voluntarily. Accordingly, the Commission Decision accepting the undertaking was repealed by Commission Decision 2004/255/EC ([6]).

(6) In April 2005, following a request lodged by Kokan, the Commission initiated ([7]) a partial interim review pursuant to Article 11(3) of the basic Regulation and Article 19 of Council Regulation (EC) No 2026/97 ([8]) on protection against subsidized imports from countries not members of the European Community

([1]) OJ L 56, 6.3.1996, p. 1.
([2]) OJ L 196, 25.7.2002, p. 11.
([3]) OJ L 196, 25.7.2002, p. 1.
([4]) OJ L 196, 25.7.2002, p. 36.
([5]) OJ L 40, 12.2.2004, p. 17.
([6]) OJ L 80, 18.3.2004, p. 29.
([7]) OJ C 101, 27.4.2005, p. 34.
([8]) OJ L 288, 21.10.1997, p. 1.

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(the basic anti-subsidy Regulation), limited in scope to the examination of the acceptability of a subsequent undertaking to be offered by Kokan.

(7) By Decision 2006/37/EC ([1]), the Commission accepted the subsequent undertaking offered by Kokan in connection with the anti-dumping and countervailing proceedings concerning imports of sulphanilic acid originating in India.

(8) At the same time, Regulation (EC) No 1338/2002 imposing a definitive countervailing duty on imports of sulphanilic acid originating in India and Regulation (EC) No 1339/2002 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating, *inter alia*, in India, were amended by Council Regulation (EC) No 123/2006 ([2]), to take into account the acceptance of the said undertaking.

2. **Request for a review**

(9) Following the publication of a notice of impending expiry ([3]), the Commission, on 24 April 2007, received a request for an expiry review pursuant to Article 11(2) of the basic Regulation. This request was lodged by two Community producers (the applicants) representing 100 % of the Community production of sulphanilic acid.

(10) The applicants alleged and provided sufficient *prima facie* evidence that there was a likelihood of continuation and/or recurrence of dumping and recurrence of injury to the Community industry with regard to imports of sulphanilic acid originating in the PRC and India (the countries concerned).

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 24 July 2007, by a notice of initiation published in the *Official Journal of the European Union* ([4]), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

3. **Parallel investigations**

(12) By a notice of initiation published in the *Official Journal of the European Union* on 24 July 2007 ([5]), the Commission also initiated an expiry review investigation pursuant to Article 18 of the basic anti-subsidy Regulation on the countervailing measures in force on imports of sulphanilic acid originating in India. This investigation is still on-going.

(13) By a notice of initiation published in the *Official Journal of the European Union* on 29 September 2007 ([6]), the Commission initiated on its own initiative a partial interim review limited to the level of subsidisation, pursuant to Article 19 of the basic anti-subsidy Regulation, since there was sufficient *prima facie* evidence available to the Commission that the circumstances with regard to subsidisation, on the basis of which measures had been established, had changed and that these changes were of a lasting nature. This investigation is still on-going.

4. **Investigation**

4.1. *Investigation period*

(14) The investigation of continuation or recurrence of dumping covered the period from 1 April 2006 to 31 March 2007 (the

([1]) OJ L 22, 26.1.2006, p. 52.
([2]) OJ L 22, 26.1.2006, p. 5.
([3]) OJ C 272, 9.11.2006, p. 18.
([4]) OJ C 171, 24.7.2007, p. 18.
([5]) OJ C 171, 24.7.2007, p. 14.
([6]) OJ C 229, 29.9.2007, p. 9.

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review investigation period or RIP). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 2003 to the end of the review investigation period (the period considered).

4.2. *Parties concerned by the investigation*

(15) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting countries and the applicants, of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(16) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(17) Questionnaires were sent to all parties known to be concerned, namely to the two Community producers and to all known exporting producers, importers and users.

(18) Replies to the questionnaires were received from the two Community producers and from one exporting producer in India, as well as from four users. None of the exporting producers in the PRC and none of the importers replied to the questionnaire nor made themselves known in the course of this investigation.

(19) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Community interest. In this regard, the Commission carried out verification visits at the premises of the following companies:

(a) Exporting producer in India:

— Kokan Synthetics & Chemicals Pvt Ltd, Mumbai, India;

(b) Community producers:

— Ardenity, Givet, France, and

— CUF Químicos Industriais, Estarreja, Portugal;

(c) Users:

— Kemira Germany GmbH, Leverkusen, Germany, and

— Robama SA, Palafolls, Spain.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(20) The product under review is the same as that of the original investigation, namely sulphanilic acid currently classifiable within CN code ex 2921 42 10. 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 in the form of a salt of sulphanilic acid. Sulphanilic acid is used as a raw material in the production of optical brighteners, concrete additives, food colourants and speciality dyes. While 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 are, therefore, treated, as was the case in the original investigation, as one single product.

2. **Like product**

(21) As established in the original investigation, this review confirmed that sulphanilic acid is a pure commodity product and its quality

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and basic physical characteristics are identical, whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producer in India on its domestic market and to third countries, as well as those manufactured and sold by the Community producers on the Community market, have thus been found to have the same basic physical and chemical characteristics and essentially the same uses, and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF DUMPING**

(22) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place during the RIP and whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.

1. **Preliminary remarks**

(23) It should be noted that, as the Community expanded to 25 Member States in 2004 and to 27 Member States in 2007, export volumes and market shares of imports in the previous investigation and in the current expiry review cannot be directly compared.

1.1. *India*

(24) In order to respect confidential business information and in view of the fact that Kokan represents 100 % of imports originating in India, it has been necessary to present the relevant information in ranges or in indexed form.

(25) This examination was based on the verified questionnaire reply from the cooperating exporting producer in India that fully cooperated with the investigation. It appears from the information provided by the company and available Eurostat data that all imports of the product concerned during the RIP were accounted for by this exporting producer.

(26) It was found that during the RIP around 800 to 1 000 tonnes of sulphanilic acid were imported from India into the Community, i. e. approximately 8-10 % of Community consumption. In the original investigation, imports from India amounted to 1 712 tonnes.

1.2. *People's Republic of China*

(27) In the absence of cooperation from any of the Chinese exporting producers, the examination of whether or not dumping was currently taking place had to be based on the information available to the Commission from other sources. In this respect, and in accordance with the provisions of Article 18 of the basic Regulation, official Eurostat data was used in order to establish import quantities and prices.

(28) On the basis of available data, it was found that during the RIP, 1 482 tonnes of sulphanilic acid were imported from the PRC into the Community, i.e. approximately 15 % of the Community consumption. In the original investigation period, imports from the PRC amounted to 2 950 tonnes.

2. **Likelihood of continuation of dumping**

2.1. *India*

(29) In accordance with Article 11(9) of the basic Regulation, the same methodology as in the previous investigation was used to establish the dumping margin. It is recalled that in the original investigation a dumping margin of 24,6 % was established.

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(a) Normal value

(30) For the determination of normal value, it was first established for the cooperating exporting producer whether its total domestic sales of the product concerned were representative in comparison with its export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume was at least 5 % of its total export sales to the Community. The investigation showed that the domestic sales were representative.

(31) Subsequently, those types of the product concerned sold domestically by the exporting producer having overall representative domestic sales, and which were identical or directly comparable to the types sold for export to the Community, were identified. The criteria used for the identification of the different product types were the grade (pure or technical), the form (acid powder or sodium salt) and the acid concentration.

(32) For each product type sold by the exporting producer on its domestic market which was found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type during the RIP represented 5 % or more of the total sales volume of the comparable product type exported to the Community. The investigation showed that out of the three types exported by the exporting producer concerned, two were sold in representative quantities on the domestic market.

(33) An examination was also made as to whether the domestic sales of the company could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(34) This was done by establishing the proportion of domestic sales to independent customers, of each of the two types sold in representative quantities, not sold at a loss during the RIP. For these product types, since more than 80 % by volume was not sold at a loss on the domestic market, and the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices, paid or payable by independent customers, of the product type in question, as set out in Article 2(1) of the basic Regulation.

(35) For the product type which was not sold in representative quantities on the domestic market, normal value had to be constructed. In order to establish the constructed normal value, the cooperating exporting producer's own sales, general and administrative (SG&A) costs incurred and weighted average profit realised on the domestic sales of the like product, in the ordinary course of trade, during the RIP, were added to the average cost of manufacturing during the RIP, pursuant to Articles 2(3) and 2(6) of the basic Regulation.

(b) Export price

(36) The investigation showed that the exports of the Indian exporting producer were made only to unrelated customers in the Community.

(37) Consequently, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

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(c) Comparison

(38) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. These adjustments were made in respect of transport and insurance costs.

(d) Dumping margin

(39) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal value of each product type of the product concerned exported to the Community in the RIP was compared to the weighted average export price of each corresponding type of the product concerned.

(40) This comparison showed the absence of dumping for the cooperating exporting producer in India that exported to the Community during the RIP.

(41) With regard to the absence of dumping by the cooperating exporter in the RIP, it should be noted that, as mentioned in recital 7 above, a price undertaking was in force during the RIP which required the exporting producer concerned to respect a certain price level for exports to the Community. Certain transactions were found to be slightly higher than the level of the minimum import prices (MIPs) of the undertaking, but the majority of the sales were priced at the level of the MIPs.

2.2. *People's Republic of China*

(42) In accordance with Article 11(9) of the basic Regulation, the same methodology as in the previous investigation was used to establish the dumping margin. It is recalled that in the original investigation a dumping margin of 21 % was established. However, following an anti-absorption reinvestigation initiated in June 2003, the dumping margin was reassessed and found to have increased to 33,7 %, as described in Regulation (EC) No 236/2004.

(e) Analogue country

(43) In accordance with Article 2(7) of the basic Regulation, the PRC is not a market economy country and therefore, the normal value for imports from the PRC had to be based on data from a market economy third country.

(44) In the notice of initiation, India was envisaged as an appropriate market economy third country in respect to the Community exports of the PRC. India was also used as the analogue country in the original investigation.

(45) The applicants suggested, however, that it would be more appropriate to use the United States of America (US) as an analogue country in this case. It was argued that contrary to India, prices of sulphanilic acid in the US are driven by normal undistorted market forces. Moreover, it was claimed that the process of producing sulphanilic acid in the US is carried out in a manner comparable to that in the PRC and that the quantities produced and sold in the US are representative. In addition, the applicants also argued that access to raw materials in India is not comparable to access to raw materials in the PRC, as Indian producers, due to the Advance License Scheme, prefer importing raw materials instead of buying domestic materials.

(46) As regards the suggestion of using the US as an analogue country, it is noted that the US, for a number of years, has had protective measures in place in the form of anti-dumping measures against imports from the PRC and India as well as

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countervailing measures against imports from India. For this reason, it cannot be excluded that prices have been influenced by these trade defence measures.

(47) Concerning the access to raw materials, it was also found that Indian manufacturers of sulphanilic acid purchase raw materials on the domestic market. Accordingly, it cannot be argued that access to raw materials makes India an inappropriate analogue country. Moreover, there are several producers of sulphanilic acid in India and imports, for instance from the PRC, are also present on the market. There is therefore no evidence to suggest a lack of competition in India.

(48) In light of the above, and in the absence of other convincing arguments of changed circumstances since the original investigation, it is concluded that India constitutes an appropriate analogue country for the purpose of establishing normal value in accordance with Article 2(7)(a) of the basic Regulation in the context of this expiry review.

(f) Determination of normal value

(49) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of verified information received from the cooperating exporting producer in the analogue country. More specifically, normal value was based on the price paid or payable in India by unrelated customers for comparable product types, as these were found to be made in the ordinary course of trade.

(g) Export price

(50) Given the lack of cooperation from Chinese exporting producers, the export price had to be based on facts available in accordance with Article 18 of the basic Regulation. Official Eurostat figures were chosen as the appropriate basis for establishing the export price.

(h) Comparison

(51) For the purposes of making a fair comparison between the normal value and the export price, due allowance was made for differences which could affect price comparability. These adjustments were made in respect of transport and insurance costs in accordance with Article 2(10) of the basic Regulation. Normal value at Indian ex-works level was then compared to the adjusted Chinese export price at the same level.

(i) Dumping margin

(52) The comparison of normal value and export price showed the existence of dumping, the dumping margin being equal to the amount by which normal value exceeded the price for export to the Community. The dumping margin found, as a percentage of the CIF Community-frontier price, was in the order of 15 to 20 %.

3. **Development of imports should measures be repealed**

3.1. *India*

(j) Preliminary remarks

(53) In the absence of dumping during the RIP, it was examined whether dumping from India would be likely to recur should measures be repealed. In order to assess whether there was a likelihood of recurrence of dumping, the pricing behaviour of Kokan, namely its prices to other export markets in comparison with its export prices to the Community and with its domestic prices, and its production, production capacity and stocks were examined. The analysis was based on the information provided in the questionnaire reply and verified at the premises of Kokan during the investigation.

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(k) Relationship between prices in the Community and prices within India

(54) Prices on the Community market were higher that those achieved by Kokan on its domestic market during the RIP. This development, however, should be seen in the light of the fact that the export prices of this company were subject to the discipline of the MIPs of the undertaking.

(l) Relationship between export prices to third countries, export prices to the Community and domestic prices in India

(55) It was found that the average export price charged by Kokan to third countries was significantly below its average export price to the Community. It was also found that these prices were dumped as they were found to be well below the prices charged by Kokan on its domestic market.

(56) As mentioned in recitals 7 and 41 above, Kokan was subject to a minimum price undertaking for its exports to the Community during the RIP, whereas the prices charged to customers in other third countries were freely established. In these circumstances, the latter prices are an indication of the likely price level for export to the Community should measures be allowed to lapse. It was thus concluded that Kokan is likely to reduce its export prices to the Community and that dumping is likely to recur in the Community market in case measures are repealed.

(m) Relationship between export prices to third countries and the price level in the Community market

(57) It is also noted that export prices to third countries were found to be, on average, below the sales prices of the Community industry in the Community market. This means that the prevailing price level for the product concerned in the Community market makes this market very attractive for the exporting producer in India. On this basis, it is considered that there is indeed an economic incentive to shift sales to the higher-priced Community market in case of repeal of the measures in force.

(n) Unused capacities and stocks

(58) The investigation revealed that the cooperating exporting producer did not build up stocks during the RIP. However, it was found that the company would be able to increase its production as its capacity utilisation rate was around 65 % during the RIP. It is noted in this respect that unused production capacity of the cooperating exporting producer was found to correspond to more than 30 % of Community consumption.

(o) Conclusion on India

(59) The investigation clearly showed that price levels in India and in other third countries' markets is significantly lower than the price levels in the Community market. If the existing anti-dumping measures are repealed, there will be a strong incentive for the cooperating Indian exporting producer to deploy unused capacities, but also to shift more sales to the Community market and therefore to continue exporting, even at increased quantities. The assessment made above indicates that the increased quantities of exports to the Community would in all likelihood be made at dumped prices.

3.2. *PRC*

(p) Preliminary remarks

(60) Further to the finding of dumping during the RIP, the likelihood of continuation of dumping in case measures are repealed was

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also examined. In the absence of cooperation from any Chinese exporting producers, the conclusions below rely on facts available, namely information submitted by the applicants, in accordance with Article 18 of the basic Regulation, together with data extracted from Eurostat.

(q) Production capacity

(61) Publicly available data show that the Chinese production volume is around 22 000 tonnes, which is more than double the consumption in the Community during the RIP. In the absence of cooperation from any Chinese exporting producer, no information was available as to whether spare capacities exist in the PRC. However, according to the information available, Chinese producers have the ability to use the relatively simple batch process currently used to make speciality dyes and chemicals in order to produce sulphanilic acid. Moreover, as mentioned in recital 63 below, the Community market has continued for many years to be an attractive market for Chinese exporters. It is, therefore, reasonable to assume that any spare production capacities that might exist in the PRC would be used to channel additional quantities to the Community market and/or that existing production, increased by switches in production between speciality dyes and chemicals, would be redirected to the Community, should the existing anti-dumping measures be repealed.

(r) Relationship between export prices to third countries and export prices to the Community

(62) According to the available data, Chinese export prices to third countries were below Chinese export prices to the Community during the RIP. There is a strong likelihood, therefore, that if the measures were to be repealed, the Chinese exporters would redirect their current exports to third countries to the Community market and that these would continue to be at dumped prices.

(s) Absorption practices

(63) As established by Regulation (EC) No 236/2004, it was found that absorption of the anti-dumping duty had taken place in respect of exports from the PRC to the Community. This practice demonstrated the continued attractiveness for Chinese exporting producers of the Community market. Since exports were found to be made at dumped prices during the RIP, it can be concluded that dumping is likely to continue if the measures are allowed to lapse and export volumes are likely to increase.

(t) Conclusion on PRC

(64) The investigation showed that the Chinese exporters continued their dumping practices during the RIP at a significant level. On the basis of the findings in recitals 62 and 63 above, it is concluded that there is a likelihood that significant dumping would continue if the existing measures were repealed. Also, there is a likelihood that the volume of dumped imports would significantly increase in the absence of measures.

4. **Conclusion regarding the likelihood of continuation or recurrence of dumping**

(65) On the basis of the above, it is concluded that dumping is likely to continue as concerns the Chinese exporters and likely to recur as regards the Indian exporting producers, should the existing measures be repealed.

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

(66) Within the Community, the like product is manufactured by two producers whose output is deemed to constitute the total

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Community production of the like product within the meaning of Article 4(1) of the basic Regulation.

(67) It should be noted that as compared to the original investigation, the 'Sorochimie Chimie Fine' and 'Quimigal SA' companies have been renamed, the former to 'Ardenity' and the latter to 'CUF Químicos Industriais'.

(68) These two producers cooperated in the investigation and supported the request for a review. They therefore constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

E. SITUATION ON THE COMMUNITY MARKET

1. Consumption in the Community market

(69) The apparent Community consumption was established on the basis of:

— imports of the product concerned into the Community market derived from Eurostat,

— total sales of the Community industry on the Community market derived from the questionnaires' replies.

(70) Community consumption of sulphanilic acid in the RIP was around 10 000 tonnes. Over the period considered, a decrease in consumption of 6 % was observed.

Table 1

Consumption on the Community market

	2003	2004	2005	2006	RIP
Consumption (tonnes)	10 684	10 443	10 899	9 939	9 997
Index	100	98	102	93	94

2. Current imports from the countries concerned

(71) In order to respect confidential business information, in view of the fact that Kokan represents 100 % of imports originating in India and that the Community industry consists of only two producers, it has been necessary to present the information in Tables 2 to 5 below in an indexed form.

2.1. *Import volume and market share of the imports concerned in the RIP*

(72) The volumes and market shares of the imports from the PRC and India developed as set out in the tables below. The import volume data is based on Eurostat.

Table 2

Imports from the countries concerned

Imports (index)	2003	2004	2005	2006	RIP
PRC	100	106	128	86	84
India	100	54	59	56	60
Total countries concerned	100	81	95	72	73

Source: Eurostat.

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Table 3

Market share of the countries concerned

Market shares (index)	2003	2004	2005	2006	RIP
PRC	100	109	126	92	90
India	100	55	58	60	64
Total countries concerned	100	83	94	77	78

(73) Imports from the countries concerned decreased by 27 % over the period considered. The market share of the countries concerned decreased by 22 % between 2003 and the RIP.

(74) Considering each country separately, import volumes from India decreased by 40 % between 2003 and the RIP and the market share of Indian imports decreased by 36 %.

(75) The volume of imports originating in the PRC decreased by 16 % over the period considered and the market share decreased by 10 % over the same period.

2.2. *Price evolution and price behaviour of the imports of the product concerned*

Table 4

Prices of the imports concerned

Unit prices (EUR/tonne)	2003	2004	2005	2006	RIP
PRC	773	876	1 138	1 128	1 040
Index	100	113	147	146	135
India (indexed)	100	85	96	110	111
Total countries concerned	956	910	1 131	1 180	1 138
Index	100	95	118	123	119

Source: Eurostat.

(76) The average price of the imports concerned originating in the PRC increased by 35 % over the period considered. Over the same period, the average price of the imports concerned originating in India increased by 11 %.

(77) For the purpose of calculating the level of price undercutting during the RIP, the Community industry's ex-works prices to unrelated customers have been compared with the CIF Community-frontier import prices of the countries concerned, and duly adjusted in order to reflect a landed price. This adjustment was made by increasing the prices by the normal custom duty and post importation costs, for both the PRC and India, and by further increasing the Chinese prices with the anti-dumping duty. The comparison showed that the adjusted Chinese and Indian prices were not undercutting the prices of the Community industry.

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3. **Imports from other third countries**

Table 5

Imports from other third countries

Rest of the world	2003	2004	2005	2006	RIP
Imports (index)	100	80	100	97	97
Market share (index)	100	82	98	104	104
Average prices (EUR/tonne)	935	927	1 100	1 255	1 285
Index	100	99	118	134	137

Source: Eurostat.

(78) The volume of imports from other third countries slightly decreased by 3 % over the period considered. However, in view of the contraction in demand, their market share increased by 0,7 percentage points. The main exporting country, notably the US, accounted for most of these imports during the period considered.

(79) Prices of sulphanilic acid from other third countries were slightly lower than those of the Community industry and followed the Indian price trends from 2005 onwards.

4. **Economic situation of the Community industry**

(a) *Preliminary remarks*

(80) 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.

(81) In accordance with Article 3(5) of the basic Regulation, all relevant economic factors and indices pertaining to the Community industry were examined.

(b) *Data relating to the Community industry*

— Production, installed production capacity and capacity utilisation rate

Table 6

Production, installed production capacity, capacity utilisation

	2003	2004	2005	2006	RIP
Capacity tonnes (index)	100	100	100	105	112
Production tonnes (index)	100	119	115	115	117
Capacity utilisation (index)	100	119	115	109	105

Source: Questionnaire replies of the Community industry.

(82) The Community industry's level of production in the RIP was 17 % higher than the level recorded at the beginning of the period considered. The Community industry's production capacity also increased over the period considered by 12 % as a result of a Community producer increasing its capacity by investing in equipment in order to produce pure grade sulphanilic acid. The combination of these two factors led to an overall increase in the capacity utilisation rate of the Community industry during the

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period considered. It should be also noted that the Community industry achieved a satisfactory level of capacity utilisation (in the range of 75-80 %) in the RIP.

— Inventories

(83) The Community industry's year-end stock levels decreased over the period considered by 22 %. The levels of stock fell significantly in 2004 and 2005 but progressively increased in 2006 and in the RIP.

Table 7

Closing stock in volume

	2003	2004	2005	2006	RIP
Stocks tonnes (index)	100	35	38	64	78

Source: Questionnaire replies of the Community industry.

— Sales volume, market share and growth

(84) The sales volumes of the Community industry in the RIP were 5 % higher in comparison with the beginning of the period considered. As Community consumption decreased by 6 % over the period considered (see recital 70 above), the market share held by the Community industry increased by 12 % over the same period. Specifically, the Community industry gained around 7 percentage points of market share over the period considered. The Community industry market share was kept above 50 % throughout the period considered.

Table 8

Sales volume and market share

	2003	2004	2005	2006	RIP
Sales volume – tonnes (index)	100	114	107	105	105
Market share % (index)	100	116	105	113	112

Source: Questionnaire replies of the Community industry.

(85) It should be noted that the decrease in Community consumption in 2006 and in the RIP somewhat affected the growth of the Community industry. The increase in market share is explained almost equally by an increase in the sales volumes and by the weaker consumption towards the end of the period considered.

— Factors affecting Community prices

(86) Average sales prices of the Community industry increased substantially by 26 % over the period considered. The developments observed as from 2005 appear to reflect, in particular, the effects of the anti-absorption measures imposed in 2004. The Community industry's average selling prices increased significantly between 2004 and 2005 and remained rather stable thereafter. 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. Indeed, aniline, which is a benzene derivative, represented around 50 % of the total manufacturing cost during the RIP and marked a price increase of around 45 % between 2003 and the RIP.

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Table 9

Sales prices

	2003	2004	2005	2006	RIP
Average sales price (index)	100	104	124	125	126

Source: Questionnaire replies of the Community industry.

— Employment and productivity

(87) The level of employment declined by 9 % between 2003 and the RIP, while production increased, thus reflecting an increase in the Community industry's productivity and competitiveness. The average cost per employee, however, rose during the same period by 15 %.

Table 10

Employment and productivity

	2003	2004	2005	2006	RIP
Employment (index)	100	96	96	98	91
Productivity (index)	100	125	120	117	129
Average labour cost (index)	100	82	94	106	115

Source: Questionnaire replies of the Community industry.

— Profitability

Table 11

Profitability

	2003	2004	2005	2006	RIP
Index	100	–1 286	1 519	335	191

Source: Questionnaire replies of the Community industry.

(88) The Community industry's profitability, with the exception of the year 2005, was around or below 1 % of its turnover. Important losses were recorded in 2004, whereas the Community industry recorded profits in 2005, 2006 and the RIP. Given that the profitability of the Community industry was remarkably low in 2003, the apparent increase shown in the period considered led to a level of profitability still far below the level which could be acceptable in this type of industry.

(89) It is also noted that the Community industry's profitability was influenced by the evolution of raw material prices. The average production cost increased by 25 % between 2003 and the RIP. As mentioned in recital 86 above, aniline is the key input in sulphanilic acid production and it accounts for approximately half of the manufacturing cost. Given the fact that aniline prices significantly rose in 2004, the Community industry was not able to pass this price increase to its customers and incurred losses. The situation for the Community industry improved in 2005 as the prices of aniline stabilised and the Community industry was able to increase its prices of sulphanilic acid to the extent necessary to cover the rise in raw material costs. In

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2006 and the RIP, confronted with new rise of prices of the aniline, the Community industry's profitability declined to levels below 1 % in relation to turnover.

— Investments, return on investments and ability to raise capital

Table 12

Investments, return on investment

	2003	2004	2005	2006	RIP
Investments (index)	100	39	57	255	305
Return on investments (index)	100	–1 779	2 498	420	224

Source: Questionnaire replies of the Community industry.

(90) The Community industry continued to make investments in its sulphanilic acid activities throughout the period considered. In 2006 and the RIP, besides investments primarily related to the maintenance of existing capital assets, one Community producer made investments in order to increase its capacity concerning the production of pure grade sulphanilic acid. It should be however noted that this new capacity is expected to be fully operational only from 2008.

(91) As the Community industry realised low profits throughout the period considered, the figure for the return on investments, which expresses the pre-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 very low, namely around 2 % during the RIP.

(92) The investigation showed that the capital requirements of the Community industry have been adversely affected by the difficult financial situation. Although one of the Community producers is part of a large group, capital requirements are not always met to the desired level, as within this group financial resources are generally allocated to the most profitable entities.

— Cash flow

(93) Cash flow significantly decreased, by 85 % between 2003 and the RIP, but still remained positive. Cash flow is not following the trend of profitability as it was influenced by non–cash items such as depreciation and inventory movements.

Table 13

Cash flow

Cash flow	2003	2004	2005	2006	RIP
Index	100	41	64	32	15

Source: Questionnaire replies of the Community industry.

5. **Conclusion**

(94) Between 2003 and the RIP, most of the indicators pertaining to the Community industry developed positively: sales volumes, capacity utilisation, production volume, closing stocks, productivity, investments and return on investment. However, its profitability remained below 1 % of turnover during the RIP.

(95) The Community industry has benefited from a rise in its unit price of sulphanilic acid, notably from 2004 to the end of the RIP. However, the increase in the selling price could not fully

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compensate for the rise in production costs, and profit margins therefore decreased.

(96) In addition, the decrease in Community consumption in 2006 and in the RIP somewhat hindered the recovery of the Community industry.

(97) Overall, it is clear that the introduction of the anti-dumping measures enabled the Community industry to stabilise, but not to fully recover from its injurious situation because of the continued presence of dumped imports from the PRC, as well as the increase in the cost of raw materials, which the Community industry was unable to pass on to its customers. Nevertheless, the investigation showed that the Community industry started to invest in new equipment during the period considered.

(98) In the light of the above analysis, it emerged, on the one hand, that the volume indicators developed positively during the period considered. On the other, the financial indicators pertaining to the Community industry such as profitability and cash flow showed that the Community industry is still in a vulnerable economic situation. It is therefore concluded that the Community industry could not fully recover from the effects of injurious dumping.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. General

(99) Pursuant to Article 11(2) of the basic Regulation, an analysis of the likelihood of recurrence of injury should the existing measures be repealed was carried out. In this respect, the likely development of export volumes and prices from the countries concerned was examined in particular, as well as their likely effects on the situation of the Community industry in the absence of measures.

2. Development of import volumes and prices from the countries concerned should measures be repealed

(100) It is recalled that even with anti-dumping measures in place, imports from the countries concerned had a market share of 24,6 % in the RIP.

(101) The investigation showed that the cooperating Indian exporting producer has significant spare capacity, corresponding to more than 30 % of Community consumption. In addition, information available to the Commission showed that the existing production of sulphanilic acid in the PRC is around 22 000 tonnes, which corresponds to more than double the Community consumption. On the basis of the same information, it also appears that Chinese producers are able to easily switch production from speciality dyes and chemicals to sulphanilic acid. These capacities, which may be available in the countries concerned, indicate that the exporting producers have the possibility to increase their current production and thus also to increase their exports of sulphanilic acid to the Community.

(102) It is also noted that Community consumption slightly decreased over the period considered and it is not expected that the demand in the next few years will be such as to absorb the potential increase in imports from the PRC and India should the measures be terminated. In this scenario, exports of sulphanilic acid from the PRC and India would very likely replace a large share of the sales made by the Community industry, as the prices of imports are likely to be lower.

(103) The investigation established that the Community market remains attractive for both Chinese and Indian exporting producers. Indeed, as mentioned in recitals 57 and 62 above, it was found

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that the average export price of Indian and Chinese sales to other third countries was significantly below the average export price to the Community. Despite the fact that no price undercutting was found to exist for Chinese and Indian export prices when adjusted by the current anti-dumping and normal customs duties, the Chinese and Indian CIF export prices were found, on average, to be considerably lower (around 18 %) than the average price of the Community industry. Therefore, without any measures in place, imports of sulphanilic acid from the countries concerned into the Community are likely to significantly increase in the light of (i) the unused capacities (namely in India), (ii) the re-direction of exports to other third countries into the Community market, (iii) the possibility to switch production from speciality dyes and chemicals to sulphanilic acid (namely in the PRC), at price levels significantly below the current price levels in the Community.

3. **Conclusion on likelihood of recurrence of injury**

(104) On the basis of the foregoing, it can be concluded that, should measures lapse, imports into the Community market from the countries concerned would very likely occur in significant volumes and at dumped prices which would be below the Community industry's prices. This would in all likelihood have the effect of introducing a price-depressive trend on the Community market, with an expected negative impact on the economic situation of the Community industry. This would, in particular, reverse the recovery that was achieved over the period considered, leading to a likely recurrence of injury.

G. **COMMUNITY INTEREST**

1. **Introduction**

(105) According to Article 21 of the basic Regulation, it was examined whether maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all various interests involved.

(106) Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(107) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. **Interest of the Community industry**

(108) It can reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover by regaining market share and improving its profitability. Should the measures not be maintained, it is likely that the Community industry will again begin to suffer injury as a result of increased imports at dumped prices from the countries concerned and that its currently fragile financial situation will deteriorate.

(109) On this basis, it can be concluded that maintaining the measures would be in the interest of the Community industry.

3. **Interest of importers**

(110) It is recalled that in the original investigation, it was found that the imposition of measures would not have a serious impact on Community traders of sulphanilic acid. As indicated above, no

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importer cooperated in this investigation; therefore, no compelling reasons were presented to suggest that the imposition of measures would be against the interest of importers.

4. **Interest of users**

(111) The Commission sent questionnaires to all 31 known users, of which only four submitted a questionnaire reply. Three questionnaire replies were received from Community companies producing optical brighteners and one questionnaire reply from a company producing dyes. However, the information provided by these users regarding the effect of the measures and the proportion that sulphanilic acid represented in their manufacturing costs was not meaningful.

(112) The volumes of the product concerned imported by these four users represented 47,3 % of the total imports in the Community. Moreover, as these four users purchase significant volumes of sulphanilic acid from the Community industry, they accounted overall for around 40 % of Community consumption in the RIP.

(113) Three users have made the same comments opposing the maintenance of the measures on the grounds that the production capacity of the Community industry is insufficient to meet domestic demand and on the grounds that the measures harm their competitiveness on the downstream products. The fourth user remained silent on whether it was in favour or against the maintenance of the measures.

(114) Regarding the supply situation on the Community market, it is to be noted that the current production capacity of the Community industry could satisfy in the region of 80 % of Community consumption. It should also be stressed that the Community industry has invested in new facilities in order to increase its output of pure grade sulphanilic acid. In any event, the purpose of the measures is not to prevent imports from the countries concerned entering the Community market but to ensure that they are made at non-dumped and non-injurious prices. It is therefore expected that imports from the countries concerned will continue to enter the market, as has been the case following the imposition of measures in 2002.

(115) It should also be noted that sulphanilic acid production outside the Community is now restricted to a few countries in the world, such as India, the PRC and the US. It is therefore important that the Community industry is allowed to operate under effective competition conditions so that domestic supplies of the product continue to be available to all users in the Community.

(116) Regarding the competitiveness of the users, it should be noted that, despite the lack of information obtained from the users in the framework of this investigation, it was shown in the original investigation that anti-dumping measures would increase the full costs of optical brighteners and of dyes containing sulphanilic acid by less than 1 %.

(117) On the basis of the above, it is also considered, in the framework of this expiry review investigation, that the maintenance of measures would not have a major adverse impact on the situation of users.

5. **Conclusion on Community interest**

(118) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. ANTI-DUMPING MEASURES

(119) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the

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existing measures be maintained. They were also granted a period during which to make representations and to comment. No comments which were of a nature to change the above conclusions were received.

(120) In view of the conclusions reached with regard to the likelihood of continuation of dumping regarding imports of sulphanilic acid from the PRC, the likelihood of recurrence of dumping in regard to imports from India, the likelihood of recurrence of injury and Community interest, the anti-dumping measures on imports of sulphanilic acid should be maintained in order to prevent a recurrence of injury being caused to the Community industry by the dumped imports.

(121) The duty rate will not be applicable for imports of the product concerned which are manufactured and sold for export to the Community by one Indian company from which an undertaking has been accepted by Commission Decision 2006/37/EC,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Country	Definitive duty (%)
The People's Republic of China	33,7
India	20,5

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

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

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2006/37/EC, as from time to time amended, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community, and

— such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex of this Regulation, and

— the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation whenever it is established, in respect of goods described in Article 1 and exempted from the duties under the conditions listed in paragraph 1, that one or more of such

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conditions is not fulfilled. The condition set out in the second indent of paragraph 1 shall be considered as not being fulfilled where the undertaking invoice is found not to comply with the provisions of the Annex or found not to be authentic or where the Commission has withdrawn the acceptance of the undertaking pursuant to Article 8(9) of Regulation (EC) No 384/96 or Article 13(9) of the basic anti-subsidy Regulation in a Regulation or Decision which refers to (a) particular transaction(s) and declares the relevant undertaking invoice(s) as invalid.

3. Importers shall accept as a normal trade risk the fact that the non-fulfilment, by any party, of one or more of the conditions listed in paragraph 1 and further defined in paragraph 2, may give rise to a customs debt incurred under Article 201 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1]. The customs debt incurred shall be recovered upon withdrawal by the Commission of the acceptance of the undertaking.

Article 3

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

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

[1] OJ L 302, 19.10.1992, p. 1.

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ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of sulphanilic acid to the Community which are subject to an undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.

2. The name of the company, mentioned in Article 1 of Commission Decision 2006/37/EC accepting the undertaking, issuing the commercial invoice.

3. The commercial invoice number.

4. The date of issue of the commercial invoice.

5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier.

6. The exact description of the goods, including:

   — the product code number (PCN) used for the purpose of the undertaking (e.g. PA99, PS85 or TA98),

   — the technical/physical specifications of the PCN, i.e. for 'PA99' and 'PS85' white free-flowing powder, and for 'TA98' grey free-flowing powder,

   — the company product code number (CPC) (if applicable),

   — CN code,

   — quantity (to be given in tonnes).

7. The description of the terms of the sale, including:

   — price per tonne,

   — the applicable payment terms,

   — the applicable delivery terms,

   — total discounts and rebates.

8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2006/37/EC. I declare that the information provided in this invoice is complete and correct.'