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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.9.2008  
COM(2008)550 final

Proposal for a

**COUNCIL REGULATION**

**imposing a definitive countervailing duty on imports of sulphanilic acid originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 and a partial interim review pursuant to Article 19 of Regulation (EC) No 2026/97 and amending Regulation (EC) No [INSERT] 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**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **CONTEXT OF THE PROPOSAL**

#### **Grounds for and objectives of the proposal**

This proposal concerns (i) the application of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004 ('the basic anti-subsidy Regulation') in the anti-subsidy proceeding concerning imports of sulphanilic acid originating in India and (ii) the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic anti-dumping Regulation') in the anti-dumping proceeding concerning imports of sulphanilic acid originating in India.

#### **General context**

This proposal is made in the context of the implementation of the basic anti-dumping and anti-subsidy Regulations and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in these basic Regulations.

#### **Existing measures in the area of the proposal**

Council Regulation (EC) No 1338/2002 imposing a definitive countervailing duty on imports of sulphanilic acid originating in India, as last amended by Council Regulation (EC) No 123/2006 and Council Regulation (EC) No [INSERT] 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 Council Regulation (EC) No 384/96.

#### **Consistency with the other policies and objectives of the Union**

Not applicable.

### **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

#### **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

## LEGAL ELEMENTS OF THE PROPOSAL

### Summary of the proposed action

On 24 July 2007, the Commission initiated an expiry review of the countervailing measures applicable to imports into the Community of sulphanilic acid originating in India.

This expiry review was initiated following a request for a review lodged on 24 April 2007 by two Community producers representing 100% of the Community production of sulphanilic acid.

On 29 September 2007, the Commission initiated on its own initiative a partial interim review limited to the level of subsidisation, since there was sufficient *prima facie* evidence available to the Commission that the circumstances with regard to subsidisation on the basis of which measures were established had changed and that these changes were of a lasting nature.

The enclosed Commission proposal for a Council Regulation contains the definitive findings on subsidisation, injury and Community interest.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* no later than 23 October 2008.

### Legal basis

Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004.

### Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

### Proportionality principle

The proposal complies with the proportionality principle because the form of action is described in the aforementioned basic Regulation and leaves no scope for national decision

An indication of how the financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable

### Choice of instruments

Proposed instruments: regulation.

Other means would not be adequate because the aforementioned basic Regulation does not foresee alternative options.

## BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

**imposing a definitive countervailing duty on imports of sulphanilic acid originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 and a partial interim review pursuant to Article 19 of Regulation (EC) No 2026/97 and amending Regulation (EC) No [INSERT] 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community<sup>1</sup> ('the basic Regulation'), and in particular Articles 15, 18 and 19 thereof,

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

Whereas:

### 1. PROCEDURE

#### 1.1. Previous investigations and existing measures

- (1) In July 2002, by Regulation (EC) No 1338/2002<sup>2</sup>, the Council imposed a definitive countervailing duty ('the existing measures') of 7,1 % on imports of sulphanilic acid falling within CN code ex 2921 42 10 (TARIC code 2921 42 10 60) originating in India. The measures imposed had been based on the findings of an anti-subsidy proceeding initiated pursuant to Article 10 of the basic Regulation ('the original investigation').
- (2) At the same time, by Regulation (EC) No 1339/2002<sup>3</sup>, the Council imposed a definitive anti-dumping duty of 18,3% on imports of the same product originating in India.
- (3) Within the framework of the above-mentioned countervailing and anti-dumping proceedings, the Commission, by Decision 2002/611/EC<sup>4</sup> accepted a price undertaking offered by the Indian exporting producer, Kokan Synthetics and Chemicals Pvt. Ltd ('Kokan').

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<sup>1</sup> OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>2</sup> OJ L 196, 25.7.2002, p. 1.

<sup>3</sup> OJ L 196, 25.7.2002, p. 11.

<sup>4</sup> OJ L 196, 25.7.2002, p. 36.

- (4) 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 Decision 2004/255/EC<sup>5</sup>.
- (5) In April 2005, following a request lodged by Kokan, the Commission initiated<sup>6</sup> a partial interim review pursuant to Article 19 of the basic Regulation and Article 11(3) of Regulation (EC) No 384/96<sup>7</sup> ('the basic anti-dumping Regulation') respectively, limited in scope to the examination of the acceptability of an undertaking to be offered by the company.
- (6) Following an investigation, in December 2005, by Decision 2006/37/EC<sup>8</sup>, the Commission accepted an undertaking offered by Kokan in connection with the anti-dumping and countervailing proceedings concerning imports of sulphanilic acid originating in India.
- (7) In January 2006, as a result of the investigation referred to above in recital (6), by Council Regulation (EC) No 123/2006<sup>9</sup>, Regulation (EC) 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 to take into account the acceptance of the said undertaking.
- (8) Following a review in accordance with the provisions of Article 11(2) of Regulation (EC) No 384/96, the Council, by Regulation (EC) No [INSERT]<sup>10</sup>, imposed an anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China and India.

## 1.2. Request for a review

- (9) Following the publication of a notice of impending expiry<sup>11</sup> of the existing measures, the Commission, on 24 April 2007, received a request for an expiry review pursuant to Article 18 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 request for an expiry review was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of subsidisation and injury to the Community industry.
- (11) The Commission examined the evidence submitted by the applicants and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 18 of the basic Regulation. After consultation of the Advisory Committee, the Commission announced on 24 July 2007, by a notice of initiation published in the

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<sup>5</sup> OJ L 80, 18.3.2004, p. 29.

<sup>6</sup> OJ C 101, 27.4.2005, p. 34.

<sup>7</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p.17).

<sup>8</sup> OJ L 22, 26.1.2006, p. 52.

<sup>9</sup> OJ L 22, 26.1.2006, p. 5.

<sup>10</sup> OJ L [INSERT].

<sup>11</sup> OJ C 272, 9.11.2006, p. 18.

*Official Journal of the European Union*<sup>12</sup>, the initiation of an expiry review pursuant to Article 18 of the basic Regulation.

- (12) It should be noted that prior to the initiation of the expiry review, and in accordance with Articles 10(9) and 22(1) of the basic Regulation, the Commission notified the Government of India (hereinafter referred to as 'GOI') that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The GOI did not react to this offer of consultations. Consultations were likewise offered and held with the Indian authorities in the context of the partial interim review referred to below. These consultations did not arrive at a mutually agreed solution that would have warranted that the review not be initiated.

### **1.3. Partial interim review**

- (13) By a notice of initiation published in the *Official Journal of the European Union* on 29 September 2007<sup>13</sup> (the "Article 19 notice of initiation"), the Commission, pursuant to Article 19 of the basic Regulation, initiated on its own initiative a partial interim review limited to the level of subsidisation, 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 have changed and that these changes were of a lasting nature.
- (14) The review was limited to the level of subsidisation of the company Kokan listed in the Annex to the Article 19 notice of initiation as well as to other exporters that were invited to make themselves known under the conditions and within the time limit set out in the notice of initiation.

### **1.4. Investigation**

#### **1.4.1. Investigation period**

- (15) The investigation of continuation or recurrence of subsidisation covered the period from 1 April 2006 to 31 March 2007 ('review investigation period' or 'RIP'). This period was also used for the examination of the alleged changed circumstances that led to the initiation of the partial interim review. The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2003 to the end of the review investigation period ('the period considered').

#### **1.4.2. Parties concerned by the investigation**

- (16) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the Community producers of the initiation of the expiry review and the partial interim 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.

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<sup>12</sup> OJ C 171, 24.7.2007, p. 14.

<sup>13</sup> OJ C 229, 29.9.2007, p. 9.



- (17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (18) Questionnaires were sent in the expiry review to all parties known to be concerned, namely to the two Community producers, to the exporting producer in India and to the known importers and users and to the GOI. In regard to the partial interim review, questionnaires were sent to the exporting producer in India and to the GOI.
- (19) Replies to the questionnaires were received from the GOI, both of the Community producers and the exporting producer from the country concerned, as well as from four users. None of the importers replied to the questionnaire and no other importers supplied the Commission with any information or made themselves known in the course of the investigations.
- (20) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidization and resulting injury and of the Community interest as well as of alleged changed level of subsidisation. In this regard the Commission carried out verification visits at the premises of the GOI in Delhi, the Government of Maharashtra in Mumbai, the Reserve Bank of India in Mumbai, and the following companies:
- (a) Exporting producer in India:
    - Kokan Synthetics & Chemicals Pvt Ltd., Mumbai, India;
  - (b) Community producers:
    - Ardenity, Givet, France,
    - CUF Quimicos Industrials, Estarreja, Portugal;
  - (c) Users:
    - Kemira Germany GmbH, Leverkusen, Germany,
    - Robama SA, Palafolls, Spain.

## **2. PRODUCT CONCERNED AND LIKE PRODUCT**

### **2.1. Product concerned**

- (21) The product under review is sulphanilic acid originating in India ('the product concerned'), currently classifiable within CN code ex 2921 42 10 (TARIC 2921 42 10 60). 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 colorants 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.

### **2.2. Like product**

- (22) As established in the original investigation, these review investigations confirmed that sulphanilic acid and its salts are pure commodity products, and their quality and basic

physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producer concerned on its domestic market and exported 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(5) of the basic Regulation.

### **3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION**

#### **3.1. Introduction**

(23) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated.

- Subsidy schemes investigated in original investigation
    - Nationwide Schemes
      - (a) Export Processing Zones Scheme ('EPZS')/Special Economic Zones Scheme ('SEZS')/Export Oriented Units Scheme ('EOUS')
      - (b) Duty Entitlement Passbook Scheme ('DEPBS')
      - (c) Export Promotion Capital Goods Scheme ('EPCGS')
      - (d) Income Tax Exemption Scheme ('ITES')
      - (e) Advance Licence Scheme ('ALS')/Advance Authorisation Scheme ('AAS')
    - Regional Schemes
      - (f) Package Scheme of Incentives ('PSI') of the Government of Maharashtra
  - Subsidy schemes not investigated in original investigation
    - Nationwide Schemes
      - (g) Export Credit Scheme (pre-shipment and post-shipment) ('ECS')
- (24) The schemes (a), (b), (c) and (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Export and Import Policy' documents, which, since 1 September 2004, has been named 'Foreign Trade Policy', and are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the review investigation period of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 ('EXIM-policy 2004-2009'). In addition, the GOI also sets out the procedures governing the EXIM-policy 2004-2009 in a 'Handbook of Procedures - 1 September 2004 to 31 March 2009, Volume I' ('HOP I 2004-2009').
- (25) The Income Tax Exemption Scheme specified above under (d) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

- (26) The scheme (f) is managed by the State of Maharashtra and is based on resolutions of the Government of Maharashtra Industries, Energy and Labour Department.
- (27) The Export Credit Scheme specified above under (g) is based on Sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.

### **3.2. Export processing zones Scheme ('EPZS')/Special Economic Zones Scheme ('SEZS')/ Export Oriented Units Scheme ('EOUS')**

- (28) It was found that the cooperating exporting producer was not located in an SEZS nor in an EPZS. However, the cooperating exporting producer had been set up under the EOUS and received countervailable subsidies in the RIP. The description and assessment below is therefore limited to the EOUS.

#### **3.2.1. Legal basis**

- (29) The details of the EOUS are contained in chapter 6 of the EXIM-policy 2004-2009 and the HOP I 2004-2009.

#### **3.2.2. Eligibility**

- (30) With the exception of pure trading companies, all enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the EOUS. Undertakings in industrial sectors have to fulfil a minimum investment threshold in fixed assets (10 million Indian rupees) to be eligible for the EOUS.

#### **3.2.3. Practical implementation**

- (31) EOUS can be located and established anywhere in India.
- (32) An application for EOUS status must include details for the next five years of, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. Upon acceptance by the authorities of the company's application, the terms and conditions attached to this acceptance will be communicated to the company. The agreement to be recognised as a company under the EOUS is valid for a five-year period. The agreement may be renewed for further periods.
- (33) A crucial obligation of an EOUS as set out in the EXIM-policy 2004-2009 is to achieve net foreign exchange ('NFE') earnings, i.e. in a reference period (five years) the total value of exports has to be higher than the total value of imported goods.
- (34) EOUS units are entitled to the following concessions:
- 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;
  - exemption from excise duty on goods procured from indigenous sources;
  - reimbursement of central sales tax paid on goods procured locally;
  - the facility to sell part of the production on the domestic market of up to 50% of the FOB value of exports, subject to fulfilment of positive NFE earnings upon payment of concessional duties, i.e. excise duties on finished products;

- partial reimbursement of duty paid on fuel procured from domestic oil companies;
  - exemption from income tax normally due on profits realised on export sales in accordance with Section 10B of the Income Tax Act, for a 10 year period after starting its operations, but no longer than up to 2010;
  - possibility of 100% foreign equity ownership.
- (35) Units operating under these schemes are bonded under the surveillance of customs officials in accordance with Section 65 of the Customs Act.
- (36) These units are legally obliged to maintain a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made in accordance with section 6.11.1 of the HOP I 2004-2009. These documents should be submitted periodically to the competent authorities through quarterly and annual progress reports.
- (37) However, “at no point in time [an EOU] shall be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA (Domestic Tariff Area) or stocks”, as section 6.11.2 of the HOP I 2004-2009 states.
- (38) Domestic sales are dispatched and recorded on a self-certification basis. The dispatch process of export consignments of an EOU is supervised by a customs/excise official, who is permanently posted in the EOU.
- (39) In the present case, the co-operating exporting producer utilized the scheme to procure goods domestically free of excise duty, to obtain central sales tax reimbursement and to obtain partial reimbursement of duty paid on fuel procured from domestic oil companies. The investigation showed that the exporting producer concerned did not avail of benefits under the income tax exemption provisions of the EOUS.

#### 3.2.4. Conclusions on the EOUS

- (40) In the case of exemption from excise duty on goods procured from indigenous sources, it was found that the duty paid on purchases by a non-EOUS unit can be used as a credit for its own future duty liabilities, e.g. towards payment of excise duty on domestic sales (the so-called “CENVAT” mechanism). Therefore, the excise duty paid on purchases is not definitive. By the means of “CENVAT”-credit only an added value bears a definitive duty, not the input materials. Thus, by exempting excise duty on purchases by an EOUS unit, no additional government revenue is foregone and consequently no additional benefit accrues to the EOUS.
- (41) The reimbursement of the central sales tax and the partial reimbursement of duty paid on fuel procured from domestic oil companies constitute subsidies within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Government revenue which would be due in the absence of this scheme is forgone, thus conferring a benefit upon the EOUS within the meaning of Article 2(2) of the basic Regulation, because it improved its liquidity by obtaining reimbursements of the central sales tax and duties normally paid on fuel. The subsidies are contingent in law upon export performance and, therefore, deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. The export objective of an EOUS as set out in paragraph 6.1 of the EXIM-policy 02-07 is a *conditio sine qua non* to obtain the incentives.

#### 3.2.5. Calculation of the subsidy amount

- (42) The subsidy amount was calculated on the basis of the central sales tax reimbursed on goods procured locally and the partial reimbursement of duties paid on domestically purchased fuel during the review investigation period. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as the numerator. In accordance with Article 7(2) of the basic Regulation this subsidy amount was allocated over the appropriate export turnover generated during the RIP as the appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained was 3,2%.

### **3.3. Duty Entitlement Passbook Scheme ('DEPBS')**

#### **3.3.1. Legal Basis**

- (43) A detailed description of the DEPBS is contained in section 4.3 of the EXIM-policy 2004-2009 and in section 4.37-4.53 of the HOP I 2004-2009.

#### **3.3.2. Findings**

- (44) It was found that the cooperating exporting producer did not obtain any benefits under the DEPBS in the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

### **3.4. Export Promotion Capital Goods Scheme ('EPCGS')**

#### **3.4.1. Legal basis**

- (45) A detailed description of the EPCGS is contained in chapter 5 of the EXIM-policy 2004-2009 and in chapter 5 of the HOP I 2004-2009.

#### **3.4.2. Findings**

- (46) It was found that the cooperating exporting producer did not obtain any benefits under the EPCGS in the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

### **3.5. Income Tax Exemption Scheme ('ITES')**

- (47) It was found that the cooperating exporting producer did not obtain any benefits under the ITES in the RIP. It was therefore not found necessary to further analyse this scheme in this investigation.

### **3.6. Advance Licence Scheme ('ALS')/Advance Authorisation Scheme ('AAS')**

#### **3.6.1. Legal basis**

- (48) A detailed description of the scheme is contained in sections 4.1 to 4.1.14 of the EXIM-policy 2004-2009 and chapters 4.1 to 4.30 of the HOP I 2004-2009. The name of the scheme changed to the Advance Authorisation Scheme from 1 April 2006.

#### **3.6.2. Findings**

- (49) It was found that the cooperating exporting producer did not obtain any benefits under the AAS in the RIP. It was therefore not found necessary to further analyse this scheme in this investigation.

### **3.7. Package Scheme of Incentives of the Government of Maharashtra ('GOM')**

#### **3.7.1. Legal basis**

- (50) In order to encourage the establishment of industries in the State of Maharashtra to the less developed areas of the State, the GOM 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' ('PSI'). The scheme has been amended many times since its introduction and the '2001 Scheme' was operative from 1 April 2001 until 31 March 2006 after which it was extended for one year until 31 March 2007. The PSI of the GOM is composed of several sub-schemes amongst which the main ones are: (i) the refund of octroi tax/entry tax, (ii) the exemption from electricity duty and (iii) the exemption from local sales tax/deferral of local sales tax. According to the GOM, the 2001 scheme does not include the latter tax scheme, i.e. neither sales tax exemption nor sales tax deferrals. However, the investigation established that a company's entitlement to benefits under the scheme is stipulated in the 'Eligibility Certificate'. The investigation revealed that the only sub-scheme used by the cooperating exporting producer during the RIP was, in fact, the one concerning sales tax deferrals (part of (iii) above).

#### **3.7.2. Eligibility**

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

#### **3.7.3. Practical implementation**

- (52) The Eligibility Certificate issued by the GOM to the cooperating exporting producer provided that the company was, under the sales tax deferral sub-scheme, 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.

#### **3.7.4. Conclusion**

- (53) The sales tax deferral sub-scheme of the PSI of the GOM provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The sub-scheme examined constitutes a financial contribution by the GOM, since this concession postpones the collection of the GOM's revenue which would be otherwise due. This deferral confers a benefit upon the company as it improves the company's liquidity.
- (54) The sub-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 for companies located outside these areas. The level of benefit is different according to the area concerned. The scheme is specific in accordance with Article 3(2)(a) and Article 3(3) of the basic Regulation and therefore countervailable.

#### 3.7.5. Calculation of the subsidy amount

- (55) The deferred amount of State sales taxes, under the deferral element of the scheme, collected in the RIP is considered equivalent to an interest-free loan of the same amount granted by the GOM. Thus, the benefit to the cooperating exporting producer has been calculated on the basis of the interest that was paid on a comparable commercial loan by the company during the RIP.
- (56) Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) was then allocated over the total company turnover during the RIP as the appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (57) On the basis of the above, the amount of subsidy that the company has obtained under this scheme is 0,6%.

### 3.8. Export Credit Scheme ('ECS')

#### 3.8.1. Legal basis

- (58) The details of the scheme are set out in the Master Circular IECD No 02/04.02.02/2006-07 (Export Credit in Foreign Currency) and the Master Circular IECD No 01/04.02.02/2006-07 (Rupee Export Credit) of the Reserve Bank of India ('RBI'), which is addressed to all commercial banks in India.

#### 3.8.2. Eligibility

- (59) Manufacturing exporters and merchant exporters are eligible for this scheme. It was found that the cooperating exporting producer availed of benefits under the ECS.

#### 3.8.3. Practical implementation

- (60) Under this scheme, the RBI sets compulsory maximum ceilings on interest rates applicable to export credits, both in Indian rupees or in foreign currency, which commercial banks can charge an exporter 'with a view to making credit available to exporters at internationally competitive rates'. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme ("packing credit"), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.
- (61) As a result of the RBI Master Circulars, exporters can obtain export credits at preferential interest rates compared with the interest rates for ordinary commercial credits ("cash credits"), which are purely set under market conditions.

#### 3.8.4. Conclusion on the ECS

- (62) Firstly, the preferential interest rates of an ECS credit set by the RBI Master Circulars can decrease interest costs of an exporter as compared with credit costs set purely in accordance with market conditions and confer in this case a benefit within the meaning of Article 2(2) of the basic Regulation on such an exporter. Only in the case where such interest rate difference was found to exist, was it concluded that a benefit was conferred. The differences in rates between the credits given pursuant to the RBI Master Circulars and commercial 'cash credit' rates cannot be explained by pure market behaviour of the commercial bank.
- (63) Secondly, and despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 2(1)(a)(iv) of the basic Regulation. The RBI is a public body and falls therefore under the definition of a "government" as set out in Article 1(3) of the basic Regulation. It is 100% government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the meaning of the second indent of Article 2(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, *inter alia*, the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 2(1)(a)(i) of the basic Regulation, in this case loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments in the sense of Article 2(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 3(4)(a) of the basic Regulation.

#### 3.8.5. Calculation of the subsidy amount

- (64) The subsidy amount was calculated on the basis of the difference between the interest paid for export credits used during the RIP and the interest rate that would have been payable for ordinary commercial credits used by the particular company. This subsidy amount (numerator) was allocated over the total export turnover during the RIP as appropriate denominator in accordance with Article 7(2) basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The cooperating exporting producer availed of benefits under the ECS and obtained a subsidy of 0,9%.

### 3.9. Amount of countervailable subsidies

- (65) The amount of countervailable subsidies found in the RIP in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is 4.7 %.
- (66) On the basis of the available information, the cooperating exporting producer accounted for 100% of exports of sulphanilic acid from India to the Community during the RIP. No information was available showing that the level of subsidisation of other exporting producers that might exist would be at a lower level.



SCHEME→	EOU (*)	DEPBS	EPCGS	ITES	ALS	Maharashtra State Scheme	ECS (*)	Total
COMPANY↓	%	%	%	%	%	%	%	%
Kokan Synthetics and Chemicals Private Limited	3,2	nil	nil	nil	nil	0,6	0,9	4,7

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

### 3.10. Conclusions regarding the continuation or recurrence of subsidisation

- (67) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.
- (68) It was established that though the subsidy margin found during the expiry review investigation is lower than the one established during the original investigation, the cooperating Indian exporter of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities. As regards the main scheme investigated during the RIP, i.e. the EOUS, the status of an Export Oriented Unit pursuant to the EXIM-policy gives recurring benefits and there is no indication that these programmes will be phased out in the foreseeable future. Under these conditions, it is clear that the exporter of the product concerned will also continue to receive countervailable subsidies in the future.
- (69) Since it has been demonstrated that subsidisation continued at the time of the review and that it is likely to continue in the future, the issue of likelihood of recurrence of subsidisation is irrelevant.

### 3.11. Lasting nature of changed circumstances

- (70) In accordance with Article 19(2) of the basic Regulation, it was also examined whether the changed circumstances with respect to the original investigation regarding subsidisation could reasonably be considered to be of a lasting nature.
- (71) It is recalled that the scope of the interim review is, in the absence of co-operation by any other exporters in India, limited to the level of subsidisation of Kokan Synthetics & Chemicals Pvt. Ltd.
- (72) With regard to the lasting nature of the changed circumstances, in light of the findings set out in recital (68) above, it was concluded that there were no reasons to consider that the changed level of subsidisation was not of a lasting nature.

## 4. DEFINITION OF THE COMMUNITY INDUSTRY

- (73) Within the Community, the like product is manufactured by two producers whose output is deemed to constitute the total Community production of the like product within the meaning of Article 9(1) of the basic Regulation.
- (74) 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 Quimicos Industrials'.

(75) These two producers cooperated in the investigation and supported the request for a review. They therefore constitute the Community industry within the meaning of Article 9(1) and 10(8) of the basic Regulation.

## 5. SITUATION ON THE COMMUNITY MARKET

### 5.1. Consumption in the Community market

(76) 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.

(77) 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
<i>Index</i>	100	98	102	93	94

#### 5.1.1. Current imports from the country concerned

(78) 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.

#### 5.1.2. Import volume and market share of the imports concerned in the RIP

(79) The volumes and market shares of the imports from India developed as set out in the tables below.

*Table 2: Imports from the country concerned*

Imports ( )	2003	2004	2005	2006	RIP
<i>Index</i>	100	54	59	56	60

*Source: Eurostat*

*Table 3: Market share of the country concerned*

Market share	2003	2004	2005	2006	RIP
<i>Index</i>	100	55	58	60	64

- (80) Imports from the country concerned decreased by 40% between 2003 and the RIP and market share of Indian imports decreased by 36%.

## 5.2. Price evolution and price behaviour of the imports of the product concerned

Table 4: Prices of the imports concerned

Unit prices	2003	2004	2005	2006	RIP
<i>Index</i>	100	85	96	110	111

Source: Eurostat

- (81) The average price of the imports concerned originating in India increased by 11% over the period considered.
- (82) For the purpose of calculating the level of price undercutting during the RIP, Community industry's ex-works prices to unrelated customers were compared with the CIF Community-frontier import prices of the country concerned, 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. The comparison showed that the adjusted Indian prices were not undercutting the prices of the Community industry. The price increase observed and the absence of undercutting should be seen in the light of the various price undertakings offered by the Indian exporter since the imposition of measures in 2002.

## 5.3. Imports from other third countries

Table 5: Imports from other third countries

Rest of the world	2003	2004	2005	2006	RIP
<i>Imports (Index)</i>	100	93	114	91	91
<i>Market share (Index)</i>	100	95	112	98	97
<i>Average prices (€/tonne)</i>	855	930	1 077	1 059	1 018
<i>Index</i>	100	109	126	124	119

Source: Eurostat

- (83) The volume of imports from other third countries decreased by 9% over the period considered. Their market share slightly decreased by 3%. The main exporting countries, namely the United States of America (US) and the PRC, accounted for almost 100% of these imports during the period considered.
- (84) Prices of sulphanilic acid from other third countries were on average lower than those of the Community industry and also below the Indian prices. It is recalled that the imports of sulphanilic acid originating in the PRC were subject to an anti-dumping duty of 21% in 2002, increased to 33,7% in 2004 following an anti-absorption investigation.

## 5.4. Economic situation of the Community industry

### 5.4.1. Preliminary remarks

- (85) 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.
- (86) In accordance with Article 8(5) of the basic Regulation, all relevant economic factors and indices pertaining to the Community industry were examined.

#### 5.4.2. Data relating to the Community industry

##### (a) Production, installed production capacity and capacity utilization rate

Table 6: Production, installed production capacity, capacity utilization

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

Source: Questionnaire replies of the Community industry

- (87) The Community industry's level of production in the RIP was 17% higher than the level recorded at the start of the period considered. The Community industry's production capacity also increased over the period considered by 12% as one Community producer increased its capacity by investments 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 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.

##### (b) Inventories

- (88) 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

##### (c) Sales volume, market share and growth

- (89) The sales volumes of the Community industry in the RIP were 5% higher than the beginning of the period considered. As Community consumption decreased by 6% over the period considered (see recital (77) 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*

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>RIP</b>
<i>Sales volume - tonnes (index)</i>	100	114	107	105	105
<i>Market share % (index)</i>	100	116	105	113	112

*Source:* Questionnaire replies of the Community industry

- (90) It should be noted that the decrease in the 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.

(d) Factors affecting Community prices

- (91) Average sales prices of the Community industry increased substantially by 26% over the period considered. The developments observed as of from 2005 appear to reflect in particular the effects of the anti-absorption measures taken against Chinese imports 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, marked a price increase of around 45% between 2003 and the RIP.

*Table 9: Sales prices*

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>RIP</b>
<i>Average sales price (index)</i>	100	104	124	125	126

*Source:* Questionnaire replies of the Community industry

(e) Employment and productivity

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

*Table 10: Employment and productivity*

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

(index)					
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Source: Questionnaire replies of the Community industry

(f) Profitability

Table 11: Profitability

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

Source: Questionnaire replies of the Community industry

- (93) 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.
- (94) 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 (91) 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 raise in raw material costs. In 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.

(g) 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

- (95) 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.
- (96) 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.

- (97) 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 financial resources are generally allocated within this group to the most profitable entities.

(h) Cash flow

- (98) The cash flow significantly decreased, by 85% between 2003 and the RIP, but still remained positive. The 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
<i>Index</i>	<i>100</i>	<i>41</i>	<i>64</i>	<i>32</i>	<i>15</i>

Source: Questionnaire replies of the Community industry

## 5.5. Conclusion

- (99) 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.
- (100) 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 compensate the rise in the cost of production and profit margins therefore decreased.
- (101) In addition, the decrease in the Community consumption in 2006 and in the RIP somewhat hindered the recovery of the Community industry.
- (102) Overall, it is clear that the introduction of the anti-subsidy measures enabled the Community industry to stabilize its situation, but not to fully recover from its injurious situation because of the increase in raw material costs 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.
- (103) 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 hand, 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 it had not fully recovered from the effects of injurious subsidisation.

## 6. LIKELIHOOD OF RECURRENCE OF INJURY

### 6.1. General

(104) Pursuant to Article 18(2) of the basic Regulation, the 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 country concerned was examined in particular, as well as their likely effects on the situation of the Community industry in the absence of measures.

## **6.2. Development of import volumes and prices from the country concerned should measures be repealed**

(105) It is recalled that even with anti-subsidy measures in place, the imports from the country concerned had a market share of 9,7% in the RIP.

(106) The investigation showed that the cooperating Indian exporting producer has significant spare capacity, above 30% of Community consumption. This unused capacity indicates that the said exporting producer has the possibility to increase its current production and thus also to increase its exports of sulphanilic acid to the Community.

(107) It is also noted that Community consumption slightly decreased over the period considered and it is not expected that the demand in the next years would be such as to absorb the potential increase in imports from India should the measures be terminated. In this scenario, exports from India of sulphanilic acid 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 than those of the Community industry.

(108) The investigation established that the Community market remains attractive for the Indian exporting producer. Indeed, it was found that the average export price of its sales to other third countries was significantly below the average export price to the Community. The fact that no price undercutting was found to exist for the Indian export prices is explained by the price undertaking, and thus the measures, in place for India. However, even then, the Indian CIF export prices were found, on average, to be lower than the average price of the Community industry (around 7%).

(109) Therefore, it is likely that without any measures in place, the Indian exporting producer would have an incentive to use significant quantities of unused capacity and to re-direct its exports to other third countries to the more attractive Community market, at price levels significantly below the current price levels in the Community industry.

## **6.3. Conclusion on likelihood of recurrence of injury**

(110) On the basis of the foregoing, it can be concluded that, should measures lapse, imports into the Community market from the country concerned would very likely occur in significant volumes and at subsidised 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 partly achieved over the period considered, leading to a likely recurrence of injury.

## **7. COMMUNITY INTEREST**



### **7.1. Introduction**

- (111) According to Article 31 of the basic Regulation, it was examined whether maintenance of the existing anti-subsidy 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.
- (112) The fact that the present investigation is a review, thus analysing a situation in which anti- subsidy measures have already been in place, should allow the assessment of any undue negative impact on the parties concerned by the current anti-subsidy measures.
- (113) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious subsidisation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

### **7.2. Interest of the Community industry**

- (114) 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 start again to suffer injury from increased imports at subsidised prices from the country concerned and that its currently fragile financial situation will deteriorate.
- (115) On this basis, it can be concluded that the continuation of measures would be in the interest of the Community industry.

### **7.3. Interest of importers**

- (116) It is recalled that in the original investigation it was found that the imposition of measures would not have had a serious impact on Community importers of sulphanilic acid. This seems to be confirmed by the lack of cooperation in this investigation. Therefore, no compelling reasons were presented that the imposition of measures would be against the interest of the importers.

### **7.4. Interest of users**

- (117) 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 all these users regarding the effect of the measures and the proportion that sulphanilic acid represented in their manufacturing costs was not meaningful.
- (118) 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.
- (119) Three users have made the same points opposing the continuation of measures on the grounds that the production capacity of the Community industry is insufficient to meet domestic demand and on the grounds that measures are harming their competitiveness

on the downstream products. The fourth user remained silent on whether it was in favour or against the maintenance of the measures.

- (120) Regarding the supply situation on the Community market, it is to be noted that the current production capacity of the Community industry could satisfy around 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 country concerned entering the Community market but to ensure that they are made at non-subsidised and non-injurious prices. It is therefore expected that imports from the country concerned will continue to enter the market as it has been the case following the imposition of measures in 2002.
- (121) It should be also noted that sulphanilic acid production outside the Community is now restricted to 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.
- (122) 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-subsidy measures would increase the full costs of optical brighteners and of dyes to containing sulphanilic acid by less than 1%.
- (123) On the basis of the above, similarly to the conclusion drawn in the original investigation, it is considered also in the framework of the expiry review investigation that the maintenance of measures would not have a major adverse impact on the situation of users.

#### **7.5. Conclusion on Community interest**

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

### **8. COUNTERVAILING MEASURES**

- (125) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained and amended. They were also granted a period to make representations and to comment. No comments which were of a nature to change the above conclusions were received.
- (126) In view of the conclusions reached in the context of the expiry review with regard to the likelihood of continuation of subsidisation, likelihood of recurrence of injury and Community interest, the countervailing measures on imports of sulphanilic acid originating in India should be maintained in order to prevent a recurrence of injury being caused to the Community industry by the subsidised imports.
- (127) With regard to the findings of the partial interim review limited to the level of subsidisation concerning the cooperating exporting producer in India, it is considered appropriate to amend the countervailing duty rate applicable from 7,1 % to 4,7 %. As the cooperating exporting producer accounted for 100% of the exports of sulphanilic acid from India to the Community in the RIP, it is considered appropriate that this rate of duty should also apply to imports manufactured by other Indian producers. The duty

rate will not be applicable for imports of the product concerned which are manufactured and sold for export to the Community by the co-operating exporting producer from which an undertaking has been accepted by Commission Decision 2006/37/EC. In this regard, it is noted that the minimum import prices of the undertaking accepted from the Indian company have been amended in order to reflect the decrease in the combined overall duty rate (anti-dumping and countervailing) applicable to this company.

- (128) The amendment of the countervailing duty rate will have an impact on the definitive anti-dumping duty of 18,3% imposed on imports of sulphanilic acid from India by Regulation (EC) No [INSERT], as the latter was adjusted in order to avoid any double-counting of the effects of benefits from export subsidies (it is recalled that the definitive anti-dumping duty was based on the dumping margin since the latter was found to be lower than the injury elimination level). Article 24(1) of the basic Regulation and Article 14(1) of the basic anti-dumping Regulation provide that no product shall be subject to both anti-dumping and countervailing measures for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It was found in the original investigation that certain of the subsidy schemes investigated which were countervailable, constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies affected the export price of the Indian exporting producer, thus leading to an increased margin of dumping. Therefore, pursuant to Article 24(1) of the basic Regulation, the definitive anti-dumping duty was adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies (see recital (46) of Regulation (EC) No 1339/2002).
- (129) Consequently, the definitive anti-dumping duty rate for India must now be adjusted to take account of the revised level of benefit received from export subsidies in the RIP of the current anti-subsidy investigation. As the benefits from export subsidies amounted to 4.1% in that RIP and the level of the dumping margin originally established in Council Regulation (EC) No 1339/2002 was 24.6%, the revised level of anti-dumping duty should be 20.5%. Regulation (EC) No [INSERT] should be amended accordingly.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is hereby imposed on imports of sulphanilic acid falling within CN code ex 2921 42 10 (TARIC code 2921 42 10 60) and originating in India.
2. The rate of the definitive countervailing duty applicable to the net, free-at-Community-frontier price, before duty, shall be 4,7%.
3. Notwithstanding paragraph 1, the definitive duty shall not apply to imports released for free circulation in accordance with Article 2.
4. Unless otherwise specified, the provisions in force concerning 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 the Commission Decision 2006/37/EC, as from time to time amended, shall be exempt from the countervailing 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 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 (<sup>14</sup>). The customs debt incurred shall be recovered upon withdrawal by the Commission of the acceptance of the undertaking.

## Article 3

Article 1(2) of Regulation (EC) No [INSERT] is replaced by the following:

"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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<sup>14</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

*Article 4*

This Regulation shall enter into force on the day following that of 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.

Done at Brussels, [...]

*For the Council*

*The President*

*[...]*

## 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."