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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 435/2004

of 8 March 2004

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

(1) On 18 September 2003, the Commission imposed, by Regulation (EC) No 1627/2003⁽²⁾, a provisional anti-dumping duty on the imports into the Community of sodium cyclamate originating in the People's Republic of China ('PRC') and Indonesia (the 'provisional Regulation').

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to the end of the IP (the 'period considered').

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of sodium cyclamate originating in the PRC and Indonesia, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) As explained under recital 5 of the provisional Regulation, the dumping verification visits to the PRC and Indonesia which normally take place before provisional findings are made, were cancelled due to the introduction of travel restrictions because of SARS. A notice concerning the consequences of SARS on anti-dumping and anti-subsidy investigations has been published in the *Official Journal of the European Union*⁽³⁾.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. After the travel restrictions relating to SARS were lifted, verification visits were carried out at the premises of the following companies:

(a) *Exporting producers and their related companies in PRC and Hong Kong,*

— Zhong Hua Fang Da (H.K.) Limited, Hong Kong,

— Fang Da Food Additive (Shen Zhen) Limited, Shenzhen, PRC,

— Shanghai Shumi Co. Ltd., Shanghai, PRC,

— Rainbow Rich Industrial Ltd., Hong Kong,

— Golden Time Enterprise (Shenzhen) Co. Ltd., Shenzhen, PRC;

(b) *Exporting producer in Indonesia*

— PT. Golden Sari (Chemical Industry), Bandar Lampung, Indonesia.

(6) Following the expiry of the deadline for comments on the provisional findings and well after the verification visits, another Indonesian company made itself known and requested the exporting producers' questionnaire in order to reply. The company was informed that it should have made itself known and request the questionnaire at the time of initiation of the investigation. It was further informed that at such advanced stage of the investigation no new information could be considered and that findings would be based for it on facts available. It was, nevertheless, given an opportunity to comment and its comments were considered, but they have not changed the above conclusion.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

⁽²⁾ OJ L 232, 18.9.2003, p. 12.

⁽³⁾ OJ C 191, 13.8.2003, p. 2.

- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, taken into account for the definitive findings.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (8) No comments regarding the product concerned and like product were received and, therefore, the conclusions set out in recitals 7 to 13 of the provisional Regulation are hereby confirmed.

D. DUMPING

1. GENERAL METHODOLOGY

- (9) This section explains the general methodology used to establish whether the imports into the Community of the product concerned have been dumped. Specific issues raised by the investigation for each country concerned are described in recitals 23 to 49.

1.1. Normal value

For cooperating exporting producers in Indonesia and exporting producers in the PRC for which market economy treatment ("MET") has been granted

1.1.1. Overall representativity of domestic sales

- (10) In accordance with Article 2(2) of the basic Regulation, it was first examined whether the domestic sales of sodium cyclamate to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was at least 5 % of the total volume of its corresponding export sales to the Community.

1.1.2. Product type specific representativity

- (11) Subsequently, it was examined whether the domestic sales of the exported product types could be considered as representative. For this purpose, the comparable types sold on the domestic market had to be identified first. The investigation considered those product types of sodium cyclamate sold domestically as being identical or

directly comparable with the types sold for export to the Community when they were of the same form as defined in recital 8 of the provisional Regulation.

- (12) Domestic sales of a particular product type were considered sufficiently representative when the total domestic sales volume of that type sold to independent customers during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.

1.1.3. Ordinary course of trade test

- (13) It was examined whether the domestic sales of each exporting producer could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

- (14) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, not sold at a loss on the domestic market during the IP:

(a) For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs and where 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 during the IP, paid or payable by independent customers, of the type in question irrespective of whether these sales were profitable or not.

(b) For those product types where at least 10 %, but not more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs only, of the type in question.

1.1.4. Normal value based on actual domestic price

- (15) When the requirements set out in recitals 10 to 14(b) were met, normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of the exporting country during the IP, as provided for in Article 2(1) of the basic Regulation.

For exporting producers in the PRC without MET

- (16) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that are not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country) for the like product.

1.2. Export price

- (17) According to Article 2(8) of the basic Regulation, the export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.

1.3. Comparison

- (18) In order to ensure a fair comparison between the normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, level of trade, packing costs, credit costs, commissions, discounts and bank charges have been granted where applicable and justified.
- (19) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade.

1.4. Dumping margin*For cooperating exporting producers in Indonesia and exporting producers in the PRC granted MET*

- (20) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type, as determined under recitals 10 to 15, was compared with the adjusted weighted average export price, as determined under recital 17.

For non-cooperating companies

- (21) For those exporting producers which neither replied to the questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation. The above approach was also considered necessary in respect of non-cooperating

exporting producers, in order to prevent such non-cooperating exporting producers benefiting from their non-cooperation.

- (22) Where the overall level of cooperation found was low, it was considered appropriate to set a country wide dumping margin for the non-cooperating companies at a higher level than the highest dumping margin established for a cooperating company. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating exporting producers in the country concerned generally having dumped at a higher level than any cooperating exporting producer in the same country.

2. SPECIFIC ISSUES RAISED BY THE INVESTIGATION WITH REGARD TO THE ESTABLISHMENT OF THE DUMPING MARGIN FOR EACH OF THE COUNTRIES CONCERNED**2.1. Indonesia**

- (23) In total, one exporting producer cooperated in the investigation.

2.1.1. Normal value

- (24) It was first established that the domestic sales of sodium cyclamate of the sole cooperating exporting producer were representative during the IP (see recital 10 above). It was further established that the sole product type of sodium cyclamate sold on the domestic market by the cooperating exporting producer was identical to the sole type sold for export to the Community.

- (25) For this product type, since more than 80 % by volume was not sold at a loss on the domestic market and its weighted average sales price was higher than its weighted average production cost, the normal value was calculated as the weighted average price of all domestic sales made during the IP, paid or payable by independent customers, of the type in question, as set out in Article 2(1) of the basic Regulation.

2.1.2. Export price

- (26) Exports were made only to unrelated customers in the Community and, therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable during the IP.

2.1.3. Comparison

- (27) In order to ensure a fair comparison, allowances were made for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, level of trade, packing costs, credit costs and commissions, where applicable and justified.
- (28) The exporting producer claimed an adjustment to the normal value for an amount corresponding to import charges, indirect taxes and income taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in Indonesia and not collected or refunded in respect of the product exported to the Community. However, the company concerned could neither demonstrate that those taxes were actually not paid or refunded in respect of the export sales to the Community nor that any such taxes not paid or refunded were included in the domestic prices. Therefore, the claim was rejected.
- (29) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the exporting producer concerned claimed an adjustment for certain advertising expenses and an adjustment for the expenses of certain representative offices involved in some domestic sales. However, it was established that the exporting producer had already included these expenses in the quantification of the level of trade adjustment it had claimed earlier. Furthermore, the level of trade adjustment granted covered any price difference between sales through different channels due to different functions, including those concerning advertising and the sales representative offices. Consequently, and in order to avoid duplication when making adjustments as provided for in Article 2(10) of the basic Regulation, it was not considered appropriate to grant any further adjustment for such expenses. Therefore, the claim was rejected.

2.1.4. Dumping margin

- (30) The definitive dumping margin expressed as a percentage of the cif Community frontier price duty unpaid is for PT. Golden Sari (Chemical Industry) 16,3 %.
- (31) The residual definitive dumping margin for Indonesia was set at a higher level than the dumping margin established for the cooperating company as the overall level

of cooperation in Indonesia was low. In order to establish the overall level of non-cooperation, the volume of exports to the Community reported by the cooperating exporting producer was compared with the equivalent Eurostat import statistics. This showed a level of non-cooperation of around 40 % of the total volume of imports.

- (32) In order to calculate the residual definitive dumping margin, and since the cooperating company only exported one product type, the average import price into the Community for Indonesia, as reported in the Eurostat statistics, adjusted for ocean freight and insurance costs was compared to the normal value, as established for the cooperating exporting producer, adjusted for freight and packing costs. The residual definitive dumping margin thus established is 18,1 %.

2.2. The People's Republic of China

- (33) In total, three exporting producers cooperated in the investigation.

2.2.1. Market Economy Treatment (MET)

- (34) As set out in recitals 21 to 25 of the provisional Regulation, MET was granted to all three exporting producers in the PRC who applied for it.

2.2.2. Normal value for exporting producers granted MET

- (35) During the verification visit to Rainbow Rich Industrial Ltd., the mother company of Golden Time Enterprise (Shenzhen) Co. Ltd., it was found out that the production and sales of sodium cyclamate during the IP of another related producing company in the PRC, San Lian Industrial, situated in Nanjing⁽¹⁾, had neither been reported in the questionnaire responses nor subsequently during the course of the investigation. Neither was MET requested in respect of this related company. Therefore, domestic sales information and cost of production of this company could not be verified during the on-spot verification. It was found that these non-reported domestic sales were significant, i.e. around 45 % of the total domestic sales of the related companies in question.

⁽¹⁾ As of October 2002, the company is called Jintian Enterprises Nanjing Co. Ltd.

- (36) According to Article 18 of the basic Regulation, provisional or final findings may be made on the basis of facts available when an interested party refuses access to, or otherwise does not provide necessary information within the time limits provided in the basic Regulation. It is noted that the production costs and the domestic sales information of San Lian Industrial are necessary information in order to establish the normal value to be compared with the export price established for Golden Time Enterprise (Shenzhen) Co. Ltd. Since neither MET was granted to San Lian Industrial, nor information concerning its domestic sales and cost of production was provided and verified during the investigation, the determination of the normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. shall be based on facts available. The party concerned was informed accordingly of the consequences of this partial non-cooperation and given an opportunity to comment. The comments confirmed that San Lian Industrial produced and sold in the domestic market during the IP sodium cyclamate on behalf of its mother company Rainbow Rich Industrial Ltd. and that the details have never been reported. Therefore, the conclusion to establish normal value on the basis of the facts available is hereby confirmed.
- (37) Since the normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. would normally include all domestic sales of the related companies and one related company is considered as not having cooperated and MET was not granted to it, an analogue country was selected as the best facts available for the establishment of normal value. In this respect, it is noted that following the imposition of provisional measures no comments were received concerning the selection of Indonesia as an analogue country as set out in recital 28 of the provisional Regulation. Therefore, prices in Indonesia were considered a reasonable surrogate for prices in the PRC. The average domestic prices of the cooperating Indonesian exporting producer, as verified during the on-spot verification visit, have therefore been used to establish normal value for the Chinese exporting producer Golden Time Enterprise (Shenzhen) Co. Ltd.
- (38) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the cooperating Indonesian exporting producer and the Indonesian Government argued that normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. and for any other non-cooperating Chinese exporting producer (see recital 49) should not be based on data from the sole cooperating Indonesian exporting producer, but on data from the complaint. They further argued that it would be discriminatory to use the data of the cooperating Indonesian exporting producer to calculate normal value for non-cooperating Chinese exporting producers, because the dumping margin established for one Chinese exporting producer, which has partially cooperated during the investigation, was found lower than that for the cooperating Indonesian exporting producer. Firstly, it is noted that the dumping margin is the result of the comparison of a normal value with an export price. Therefore, the level of the dumping margin depends on two parameters (normal value and export price) and conclusions, including the abovementioned discrimination, cannot be drawn by comparing only one of these parameters, i.e. the normal value. Furthermore, in accordance with the provisions of Article 18(5) of the basic Regulation, if determinations, including those regarding normal value, are based on the facts available, any such facts, including the information supplied in the complaint, shall be checked by reference to official import statistics or information obtained from other interested parties during the investigation. Therefore, since there was on the record verified information concerning normal value obtained from the sole cooperating Indonesian exporting producer, it was not considered appropriate to disregard this information and use instead as facts available information supplied in the complaint.
- (39) As regards the exporting producer Fang Da Food Additives situated in both Shenzhen and Yang Quan, when examining whether the domestic sales were made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation, the selling, general and administrative expenses as reported by Fang Da Food Additives and its related companies for their domestic sales were adjusted in order to take into account expenses which were recorded in the accounting of the related company, Zhong Hua Fang Da Ltd. in Hong Kong. The verification confirmed that these expenses were closely linked to the operations in the domestic market and not to the export activities as initially claimed by the company.
- (40) The examination whether the domestic sales were made in the ordinary course of trade was then carried out by establishing the proportion of domestic sales to independent customers, of each of the two representative types, not sold at a loss on the domestic market during the IP.
- (41) For those product types where more than 80 %, by volume, of sales were 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 type in question.

(42) For those product types where at least 10 %, but not more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs, of the type in question.

2.2.3. Export prices for exporting producers granted MET

(43) All export sales to the Community by all cooperating exporting producers in the PRC were made to independent customers in the Community via related companies in Hong Kong. The investigation established that in all cases the functions relating to export sales of the exporting producers in the PRC were carried out by their related companies in Hong Kong. Therefore, the export price was established pursuant to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable to the related companies in Hong Kong.

2.2.4. Comparison for exporting producers granted MET

(44) In order to ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary costs, credit, packing, discounts and bank charges where applicable and justified.

(45) Since for all cooperating exporting producers in the PRC sales to the Community were made via related companies in Hong Kong, the export prices were adjusted as indicated in recital 44 in order to bring them at ex-factory level in the PRC.

(46) The cooperating exporting producers and their related domestic sales companies claimed an adjustment to the domestic sales prices (normal value) for credit costs. The claim was rejected because the companies could not show any written evidence about agreed terms of payment at the date of sale, i.e. in their domestic sales invoices or other correspondence.

2.2.5. Dumping margin for exporting producers granted MET

(47) The comparison of normal value and export price as indicated in recital 19 showed no dumping for the two companies of Fang Da Food Additive situated in Shenzhen and Yang Quan. The investigation should therefore be terminated for these companies without imposition of measures.

(48) As explained in recital 37, normal value for Golden Time Enterprise (Shenzhen) Co. Ltd. was established using prices in an analogue country, Indonesia. The comparison of normal value and export price as indicated in recital 19 showed a dumping margin of 6,9 %.

2.2.6. Dumping margin for exporting producers without MET

(49) As set out in recital 34 of the provisional Regulation, there was significant non-cooperation from the PRC (around 47 % of total imports as reported in Eurostat). Following the imposition of provisional measures no comments were received concerning this finding. Furthermore, given that the PRC is an economy in transition, prices of an analogue country have been used in establishing a normal value for the calculation of the country wide dumping margin. For the reasons set out in recital 37, Indonesia has been used as an appropriate analogue country for this purpose.

(50) The definitive country wide dumping margin applicable to all companies without MET in the PRC was set at 17,6 %, corresponding to the difference between the export price calculated on the basis of facts available; i.e. average import price in the Community, as reported in the Eurostat statistics adjusted for ocean freight and insurance costs, and the normal value as established for Indonesia in recital 32.

(51) The definitive dumping margins for the PRC expressed as a percentage of the cif Community frontier price duty unpaid are summarised as follows:

Exporting producers in the PRC	(%)
Fang Da Food Additive (Shen Zhen) Limited	0 %
Fang Da Food Additive (Yang Quan) Limited.	0 %
Golden Time Enterprise (Shenzhen) Co. Ltd.	6,9 %
All other companies	17,6 %

E. COMMUNITY INDUSTRY

(52) No comments were received following the imposition of provisional measures concerning the composition of the Community industry. Therefore, the findings as set out in recital 37 of the provisional Regulation are hereby confirmed.

F. INJURY

- (53) Following the imposition of provisional measures, no comments were received concerning the analysis of Community consumption and, therefore, the findings set out in recitals 38 and 39 of the provisional Regulation are hereby confirmed.
- (54) No comments were also received following the imposition of provisional measures concerning the cumulative assessment of the effects of the imports concerned. Furthermore, the changes in the definitive dumping margins do not affect the findings set out in recitals 40 to 44 of the provisional Regulation. However, following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty, the Indonesian Government claimed that there was no justification to cumulate exports from Indonesia with those from the PRC, because Indonesian exports declined substantially during the IP whilst Chinese imports increased substantially. In this respect, the investigation established that, although dumped imports from Indonesia decreased slightly between 2001 and the IP, overall they increased during the period considered. The fact that Chinese dumped imports increased faster than Indonesian dumped imports during the period considered does not justify the non-cumulative assessment of the effects of the dumped imports from the two countries under investigation in accordance with the provisions of Article 3(4) of the basic Regulation. Therefore, since no other comment was raised concerning the findings as set out in recitals 40 to 44 of the provisional Regulation, the claim is rejected and these findings are hereby confirmed.
- (55) However, given the no dumping finding for two related Chinese exporting producers (see recital 47), the volume and the market share of the dumped imports have been reassessed. Indeed, non-dumped imports have been deducted from the imports as established in recitals 45 and 46 of the provisional Regulation. The evolution of the volume of the dumped imports from the PRC and Indonesia and their market share during the period considered is therefore as follows:

Total dumped imports (tonnes)	1999	2000	2001	IP
Index	100	65	147	315

Market share of dumped imports	1999	2000	2001	IP
Index	100	62	125	210

- (56) Dumped imports increased during the period considered by 215 %. A higher increase was noticed after the year 2000. Between 2001 and the IP dumped imports increased by 114 %.
- (57) The market share of the dumped imports also increased during the period considered by 110 %. Again, the increase was higher after the year 2000. A 68 % increase was noticed between 2001 and the IP. It should be noted that the market share of dumped imports during the IP was very substantial. For reasons of confidentiality the precise figures, however, cannot be given.
- (58) Given that the export prices as reported by the cooperating exporting producers were overall in line with Eurostat import prices and no comment was received following the imposition of provisional measures, the findings as set out in recital 47 of the provisional Regulation are hereby confirmed.

- (59) For the determination of price undercutting during the IP the methodology set out in recital 48 of the provisional Regulation was followed. However, the average import price of the cooperating Indonesian exporting producer has now been used in the calculation. For the non-cooperating exporting producers in the PRC and Indonesia the undercutting was calculated using the Eurostat import prices for these countries. These prices were at cif level and an appropriate adjustment was made to include any customs duty normally paid on importation.
- (60) On that basis, the existence of price undercutting was established for dumped imports from the PRC and Indonesia. The level of undercutting, expressed as a percentage of the Community industry's average selling price ranged from 11 % to 15 % for the PRC and it was found to be at around 20 % for Indonesia.
- (61) Following the imposition of provisional measures no written comments were received concerning the situation of the Community industry and the conclusion on injury. However, one Chinese exporting producer argued in the course of a hearing that the Community industry has not suffered material injury because during the period considered its production and prices remained relatively stable and its sales in the Community and the employment increased.
- (62) It is noted that this exporting producer has not provided any evidence indicating that the relevant findings as set out in the provisional Regulation were not accurate. According to these verified findings, the production and the prices of the Community industry decreased during the period considered by 10 % and 3 % respectively. Moreover, this has to be put into context with the development of consumption. Indeed, during the same period, despite the consumption in the Community increasing by 50 %, the sales of the Community industry increased by only 1 %. Thus, the Community industry could clearly not benefit from the expanding market, and on the contrary lost market share. As regards employment, it is noted that it has increased by 7 % between 1999 and 2000, but then remained stable until and during the IP. Consequently, there was no increase in the number of employees which could have affected the situation of the Community industry during the IP. Furthermore, the employment cost per employee has increased overall in line with inflation during the period considered. It is, therefore, concluded that these arguments do not show that the Community industry has not suffered material injury during the IP.
- (63) Accordingly, the findings set out in recital 50 to 69 of the provisional Regulation that the Community industry suffered material injury mainly in the form of financial losses are hereby confirmed.

G. CAUSATION OF INJURY

- (64) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports of sodium cyclamate originating in the PRC and Indonesia have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.
- (65) No written comments concerning the causation of injury were received following the imposition of provisional measures. However, one Chinese exporting producer argued during the course of a hearing that imports from the PRC are not a cause of injury, because the Community industry enjoyed a near-monopoly situation before sodium cyclamate was exported from the PRC and Indonesia, the prices from the PRC increased during the period considered, the sales of the Community industry have not decreased during the same period and the Community industry maintained its dominant market share.

- (66) These arguments have no factual basis. The investigation has shown that at the beginning of the period considered, i.e. 1999, imports into the Community held a market share of more than 35 %. Therefore, the Community industry was not enjoying a near-monopoly situation. Furthermore, as set out in recital 47 of the provisional Regulation, the prices of the dumped imports decreased by 8 % during the period considered. As regards the evolution of the sales of the Community industry, recital 62 explained that they increased by only 1 % during a period when consumption increased by 50 %. As set out in recitals 55 and 56 above, dumped imports increased during the same period by 215 %. Finally, the market share of dumped imports during the IP was found to be higher than the market share of the Community industry. Consequently, the arguments cannot be accepted and the conclusions set out in recitals 71 and 72 of the provisional Regulation are hereby confirmed.
- (67) The same exporting producer further argued that any injury was caused by other factors, i.e. the Community industry was insufficiently prepared to compete on its domestic and foreign markets, its profitability has been affected by its own business decisions on investments in order to maintain state of the art facilities and comply with its legal environment (strict environmental regulations), the Community industry is present only in a high-end segment which only indirectly competes with the low-end segment satisfied by imports from the PRC and certain Chinese producers enjoy comparative advantages that allow them to be more competitive than the Community industry.
- (68) It is noted that no evidence was provided to support the argument that the Community industry was not prepared to compete on its domestic and foreign markets. Moreover, the investigation did not show any such reason. Recital 73 of the provisional Regulation set out the reasons why the export performance of the Community industry could not have contributed significantly to the injury suffered. To the contrary, the significant price undercutting by the dumped imports (see recital 60) clearly shows that the imports under investigation were the main cause of injury to the Community industry and, therefore, the claim cannot be accepted.
- (69) As to the investments, it is noted that the Community industry invested when its profitability was positive. During the IP, when it realised losses, investments fell sharply by 13 times in comparison with the previous profitable year (see recital 57 of the provisional Regulation). There is therefore no indication that investments, including any for environmental purposes, have contributed to the injury suffered during the IP and the claim is rejected.
- (70) With regard to the lack of direct competition of the Community industry with imports from the PRC, the investigation established that both forms of sodium cyclamate were exported from the PRC to the Community and both forms were produced and sold in the Community market by the Community industry during the IP. Therefore, direct competition existed. Furthermore, given the existence of certain substitutability between the two forms, indirect competition also existed. Consequently, the claim cannot be accepted.
- (71) As far as the allegation that certain Chinese producers enjoyed comparative advantages which allow them to be more competitive than the Community industry, it is noted that no details of these alleged advantages were provided. It is also considered that the exporting producer concerned can benefit from any comparative advantages it may be enjoying as long as it does not dump the product concerned within the meaning of the basic Regulation.
- (72) The investigation has further established that the non-dumped imports from the PRC were not undercutting the prices of the Community industry during the IP and, therefore, could not have contributed significantly to the injury suffered by the Community industry.

- (73) Consequently, the findings and conclusions set out in recitals 73 to 77 of the provisional Regulation that the material injury suffered by the Community industry was mainly caused by the dumped imports are hereby confirmed.

H. COMMUNITY INTEREST

1. GENERAL REMARKS

- (74) No comments were received following the imposition of provisional measures concerning the findings on Community interest. However, shortly before the imposition of provisional measures one raw material supplier and two importers sent letters claiming that it would not be in the Community interest to impose measures against the cooperating Indonesian exporting producer. The Commission re-examined whether, despite the final conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

2. INTERESTS OF COMMUNITY SUPPLIERS

- (75) The supplier which made itself known shortly before the imposition of provisional measures, i.e. a supplier other than those mentioned in recitals 83 and 84 of the provisional Regulation, alleged that it is mainly selling cyclohexylamine (the basic raw material to produce sodium cyclamate) to the Far East and in particular to Indonesia. It further claimed that since the sole cooperating Indonesian exporting producer is its main client, there is a risk of losing significant sales volume if an anti-dumping duty is imposed. This would also have some knock-on effects on other parties in the downstream supply chain.
- (76) It is noted that beyond a short letter which was submitted well outside the time limits set for that purpose in the notice of initiation, the supplier in question has not provided any actual evidence which could substantiate its claims as provided for in Article 21(7) of the basic Regulation. No further comments were submitted after the imposition of provisional measures and the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty. Furthermore, it was found that this supplier was also providing cyclohexylamine to the Community industry. It is therefore concluded that the imposition of definitive measures could not have a significantly negative effect on its business.
- (77) No other comments concerning the interest of suppliers were received and, therefore, the conclusions set out in recital 83 and 84 of the provisional Regulation are hereby confirmed.

3. INTEREST OF IMPORTERS

- (78) The two importers which made themselves known shortly before the imposition of provisional measures, alleged that the imposition of an anti-dumping duty on Indonesia is not justified as their supplier, the sole cooperating Indonesian exporting producer, has shown a strong commitment to 'hold the prices on a level economically justified'. Furthermore, they claimed that the 'pricing of the Indonesian producer have always been higher than the Chinese, resulting in reasonable market prices for the end-users'.
- (79) However, these importers have not made themselves known and have not provided necessary information within the time limits set for that purpose in the notice of initiation. Their claims were not supported by any actual evidence that could substantiate them. Furthermore, no relevant information which could support such allegations existed on the record. On the contrary, the investigation established that the prices of the Indonesian exporting producer in question were lower than the Chinese prices (see recital 60). Thus, as the submissions were not supported by actual evidence, they shall not be taken into account in accordance with Article 21(7) of the basic Regulation.

- (80) No further substantiated comments concerning the interest of importers were received and, consequently, the conclusions set out in recitals 85 to 87 of the provisional Regulation are hereby confirmed.

4. INTEREST OF USERS

- (81) No comments concerning the interest of users were received following the imposition of provisional measures and, therefore, the conclusions set out in recitals 88 to 92 of the provisional Regulation are hereby confirmed.

5. INTEREST OF THE COMMUNITY INDUSTRY

- (82) No comments concerning the interest of the Community industry were received following the imposition of provisional measures and, therefore, the conclusions set out in recitals 93 to 95 of the provisional Regulation are hereby confirmed.

6. COMPETITION AND TRADE DISTORTING EFFECTS

- (83) No written comments concerning the competition and trade distorting effects were received following the imposition of provisional measures. However, although in accordance with Article 21 of the basic Regulation exporting producers are not considered interested parties in the framework of the Community interest analysis, one Chinese exporting producer argued in the course of a hearing that the Community interest does not warrant measures because the imposition of provisional measures restricted the number of players/exporters in the Community market without reducing supply from the countries concerned, the Community industry cannot satisfy the market demand and the imposition of definitive measures will reinforce the dominant position of the Community industry.
- (84) It is noted that the aim of anti-dumping measures is not to eliminate exporters from the Community market, but to restore fair trading conditions. The fact that the Community industry's production cannot meet, at present, Community demand is not a reason to allow unfair trade practises to continue. It is further noted that the Community industry does not hold a dominant position since its market share was less than 50 % during the IP. Moreover, while it is true that the only countries which produce sodium cyclamate outside the Community are Indonesia and the PRC, there are also important PRC producers which were not found to be dumping and which can therefore supply the Community market as before. Therefore, the arguments cannot be accepted and the conclusions set out in recital 96 to 99 of the provisional Regulation are hereby confirmed.

7. CONCLUSION ON COMMUNITY INTEREST

- (85) On the basis of the above, it is concluded that the imposition of definitive anti-dumping measures would not be against the Community interest.

I. DEFINITIVE ANTI-DUMPING MEASURES

1. INJURY ELIMINATION LEVEL

- (86) Based on the methodology explained in recitals 101 to 104 of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be definitively imposed. Since no comments on the methodology used for establishing the injury elimination level were received, this methodology is hereby confirmed. However, the average import prices used have been revised as for the final undercutting calculations in recital 59.

2. DEFINITIVE MEASURES

- (87) As the injury elimination levels are higher than the dumping margins established for all parties concerned, the definitive measures should be based on the latter.
- (88) It is noted that information on the record indicates that one of the cooperating exporting producers may intend to lower its prices in order to absorb the duty. The attention is drawn to Article 12 of the basic Regulation, which stipulates that the investigation can be reopened and the dumping margins recalculated in case there is sufficient evidence that the measures have not led to a sufficient movement in the prices in the Community. It is the intention of the investigating authority to swiftly proceed with a reinvestigation in cases where sufficient information on duty absorption is submitted to it. Additionally, in order to ensure the efficiency of the measures and to discourage price manipulation, it is appropriate to impose the duty in the form of a specific amount per kilo.
- (89) It is further noted that according to Eurostat import statistics there are imports of the product concerned from countries (e.g. Hong Kong), where there is no production of sodium cyclamate. According to information available on the record, production of sodium cyclamate exists only in Spain, Indonesia and the PRC. Should sufficient information on circumvention of the measures be submitted, the investigating authority is prepared to swiftly initiate an investigation in accordance with Article 13 of the basic Regulation.
- (90) On the basis of the above, the rate of the duty shall be equal to the fixed amount per kilo of sodium cyclamate as shown in the table below:

	Dumping margin	Rate of definitive duty (per kilo)
The PRC:		
Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, PRC	0 %	EUR 0
Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, PRC	0 %	EUR 0
Golden Time Enterprise (Shenzhen) Co. Ltd., Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, PRC	6,9 %	EUR 0,11
All other companies	17,6 %	EUR 0,26
Indonesia:		
PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1-D2, Jalan Pakin No. 1, Sunda Kelapa, Jakarta 14440, Indonesia.	16,3 %	EUR 0,24
All other companies	18,1 %	EUR 0,27

- (91) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (92) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

3. COLLECTION OF THE PROVISIONAL DUTY

- (93) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional duty imposed by Regulation (EC) No 1627/2003 be definitively collected to the extent of the amount of the duty definitively imposed by the present Regulation if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected. Amounts secured in excess of the amount of the definitive anti-dumping duty shall be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently classifiable within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia.
2. The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

	Rate of duty (EUR per kilo)	TARIC additional code
The People's Republic of China:		
Fang Da Food Additive (Shen Zhen) Limited, Gong Le Industrial Estate, Xixian County, Bao An, Shenzhen, 518102, PRC	0	A471
Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, PRC	0	A472
Golden Time Enterprise (Shenzhen) Co. Ltd., Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, PRC	0,11	A473
All other companies	0,26	A999

⁽¹⁾ European Commission — Directorate General for Trade — Directorate B - J-79 5/17 — Rue de la Loi/Wetstraat 200 — B-1049 Brussels.

	Rate of duty (EUR per kilo)	TARIC additional code
Indonesia:		
PT. Golden Sari (Chemical Industry), Mitra Bahari Blok D1-D2, Jalan Pakin No. 1, Sunda Kelapa, Jakarta 14440, Indonesia.	0,24	A502
All other companies	0,27	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of provisional anti-dumping duty, pursuant to Regulation (EC) No 1627/2003, on imports of sodium cyclamate, currently classifiable within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia shall be definitively collected in accordance with the rules set out below.

The amounts secured in excess of the amount of the definitive anti-dumping duty shall be released. Where the amounts of the definitive anti-dumping duty are higher than the provisional anti-dumping duty, only the amounts secured at the level of the provisional duty shall be definitively collected.

Article 3

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, 8 March 2004.

For the Council

The President

D. AHERN

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).