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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 63/2008

of 21 January 2008

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of dihydromyrcenol originating in India

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. Provisional measures

(1) On 27 July 2007, the Commission imposed by Regulation (EC) No 896/2007 [2] (the provisional Regulation) a provisional anti-dumping duty on imports into the Community of dihydromyrcenol originating in India (the country concerned).

(2) It is recalled that the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (the investigation period or IP). The examination of trends relevant for the injury analysis covered the period from 1 January 2003 to the end of the IP (the period considered).

(3) The addresses of the Community producers listed in recital 7 of the provisional Regulation are rectified as follows:

— Destilaciones Bordas Chinchurreta S.A., Dos Hermanas (Sevilla), Spain,

— Sensient Fragrances S.A., Granada, Spain,

— Takasago International Chemicals (Europe) S.A., Murcia, Spain.

2. Subsequent procedure

(4) Following the imposition of a provisional anti-dumping duty on imports of dihydromyrcenol originating in India, all parties received disclosure of the essential facts and considerations on which the provisional Regulation was based (the provisional disclosure). All parties were granted a period within which they could make written and oral representations in relation to this disclosure.

(5) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(6) All interested 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 (the 'final disclosure'). The interested parties 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, the findings have been modified accordingly.

[1] 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).
[2] OJ L 196, 28.7.2007, p. 3.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments concerning the product concerned and the like product, recitals 9 to 12 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Normal value

(8) Following the imposition of provisional measures, the exporting producer referred to in recital 17 of the provisional Regulation alleged that the analysis carried out by the Commission ignored certain important elements affecting the cost of production and, thus, the normal value determination. It claimed that its normal value should be based on its own cost of production instead of being determined on the basis of the domestic prices in the ordinary course of trade of the other cooperating exporting producer.

(9) Firstly, the aforesaid allegations concerning the cost of production were not found justified. Secondly, pursuant to Article 2 of the basic Regulation, the methodology applied by the Commission in determining the normal value for the exporting producer in question (see recital 17 of the provisional Regulation) is considered to be the most appropriate for the following reasons: (i) the exporting producer in question had no domestic sales of the like product and of the same general category of products in the IP, (ii) the products are perfectly interchangeable and (iii) only one other exporting producer cooperated in the investigation. Moreover, if the normal value had not been based on prices of the other Indian producer, it would have been necessary to determine the amounts for selling, for general and administrative costs and for profits pursuant to Article 2(6)(c) of the basic Regulation. On balance, the use of domestic sales prices of the other Indian producer appears to be the most representative basis for reflecting prevailing sales conditions on the Indian domestic market and hence for establishing normal value. The claim was therefore rejected.

(10) In view of the above and in the absence of any other comments concerning normal value, recitals 13 to 17 of the provisional Regulation are hereby confirmed.

2. Export price

(11) In the absence of any comments, recital 18 of the provisional Regulation is hereby confirmed.

3. Comparison

(12) One exporting producer claimed that the Commission, when determining for comparison purposes the adjustments to the export price, made certain non-justified deductions in relation to certain elements concerning transport, handling and credit costs. The Commission accepted the claim and revised the relevant adjustments accordingly.

(13) In the absence of any other comments in this respect, recital 19 of the provisional Regulation is hereby confirmed.

4. Dumping margins

(14) Following the imposition of provisional measures, one party argued that for those exporting producers which did not cooperate a higher dumping margin should be calculated based on the lowest CIF prices of the cooperating exporting producers. In this respect, it is noted that no indications were found showing that the non-cooperating companies were dumping in the IP at a higher level than the cooperating companies. On the contrary, a comparison between Eurostat data concerning imports originating in India and the volume and value of exports to the Community reported by the cooperating exporting producers shows that (i) the volume of imports into the Community from any non-cooperating exporting producers represented less than 20 % of the total imports from India in the IP (the precise ratio cannot be disclosed for confidentiality reasons), and (ii) the prices charged by any non-cooperating exporting producers on the Community market were apparently higher than those charged by the cooperating companies. This claim was thus rejected.

(15) Following the final disclosure, the same party reiterated the above claim concerning the dumping margin of any non-cooperating exporting producers. No new arguments were brought forward, which could alter the conclusions drawn in recital 14 above. The party concerned only added that it could not verify the import data used in the analysis carried out by the Commission, since they were allegedly kept confidential. The company was informed that the import volume and the average import price were set out in detail in recitals 38 and 39 of the provisional Regulation and that the source statistics, i.e. Eurostat, were open to the public. Thus, the company was in no case prevented from verifying the Commission's conclusions and defending its rights. The claim is therefore rejected.

(16) In the light of the above, the definitive dumping margins, expressed as a percentage of the CIF Community frontier price, duty unpaid, are the following:

Company	Definitive dumping margin
Neeru Enterprises, Rampur	3,1 %
Privi Organics Limited, Mumbai	7,5 %
All other companies	7,5 %

D. **INJURY**

(17) Following the imposition of provisional measures, one exporting producer submitted that the Community producer which had made substantial imports of dihydromyrcenol from India in the IP (see recital 25 of the provisional Regulation) should be excluded from the definition of the Community industry and consequently the injury analysis, including the injury elimination level determination. In this respect, it is recalled that the Community producer in question did not shift its core business from production to importation. Indeed, it had made the aforesaid imports from India in particular in order to maintain its own production of the like product viable. Therefore, no grounds for excluding this company from the Community industry exist. Furthermore, it is noted that even if the producer in question was excluded from the definition of the Community industry, the injury finding would not have been different. The claim was therefore rejected.

(18) The same exporting producer also argued that the overall economic situation of the Community producers was very good; in particular, it had allegedly improved significantly in 2005 and in the IP and such positive trend would most likely continue in the near future according to this exporter. These conclusions were based on the development of the Community industry's production and sales volume, stocks and market share presented in recitals 45 to 47 of the provisional Regulation. This argument cannot be accepted because it does not properly take account of the fact that there was a dramatic drop in sales prices of dihydromyrcenol in the Community (see recitals 47 to 49 of the provisional Regulation), and that the Community industry only managed to increase its production and sales volume and, thus, maintain its share on the expanding Community market at the price of severe losses, a fall in return on investment and cash outflow. The claim was therefore rejected.

(19) Following the final disclosure, the exporting producer referred to in recital 17 above reiterated its claim and added that the Commission had not properly analysed the situation of the Community producer in question, i.e. the producer which had made substantial imports of the product concerned. In particular, the following aspects were allegedly not analysed: (i) the percentage of the total Community production of the product concerned that is accounted for by this importing producer; (ii) the nature of this importing producer's interest in importation; (iii) the level of long term nature of commitment shown by this importing producer to domestic production as opposed to continued importation; and (iv) the ratio of imports to domestic production for this importing producer.

(20) In this respect, it is noted that all of the points raised concerning the situation of the Community producer in question had indeed been properly analysed; however, certain details could not be disclosed in view of their confidential nature. As can be seen from recital 25 of the provisional Regulation and recital 17 above, the main reasons for non-excluding the producer in question from the definition of the Community industry, and from the Community production, were (i) the nature of its interest in importation (i.e. it imported the product concerned in order to maintain its own production in the Community of the like product viable), and (ii) the marginal impact of its situation on the overall situation of the Community industry (i.e. the fact that its possible exclusion would not alter the injury findings). Finally, it goes without saying, that by supporting the complaint and fully cooperating with the investigation this producer aimed at curbing the influx of dumped imports from India. It has therefore clearly demonstrated its commitment to domestic production as opposed to continued importation. The allegations cited in recital 19 above are therefore rejected.

(21) With reference to recital 41 of the provisional Regulation, one exporting producer submitted that the price undercutting should have been based on the average import price from India rather than the import prices of the cooperating exporting producers. In this respect, it is noted that given the level of cooperation in this case, i.e. more than 80 %, and given that the total import statistics are based on an ex CN code, i.e. they may include certain quantity of products other than dihydromyrcenol (see recital 36 of the provisional Regulation), the price comparison based on the average import price would be much less precise than the individual company undercutting margins established. The claim is therefore rejected.

(22) In view of the above and in the absence of any other comments concerning injury, recitals 23 to 56 of the provisional Regulation are hereby confirmed.

E. **CAUSATION**

(23) Following the imposition of provisional measures, one exporting producer claimed that imports from India had not caused injury to the Community industry because their price was on the rise and their market share fell by 2,4 percentage points in the IP. This line of reasoning omits several important aspects of the development of the dumped imports from India and of the situation on the Community market. As it was demonstrated in recitals 38 to 42 of the provisional Regulation, the volume of dumped imports of the product concerned from India into the Community increased from around 25 000 kilograms in 2003 to around 760 000 kilograms in the IP. The market share of these imports increased from 0,7 % in 2003 to 17,3 % in the IP. The slight decrease of their share in the IP was due to a sudden expansion of the Community market in this period, rather than any decline in their volume; indeed, the volume of the dumped imports from India continued increasing in the IP, although not at the same rate as in the previous period. Overall, the presence of dumped imports from India on the Community market increased much more significantly than the Community consumption over the period considered. Finally, it is recalled that the dumped imports from India undercut the prices of the Community industry by substantial margins. The surge of dumped imports at prices significantly undercutting the Community industry's prices clearly coincided in time with the worsened situation of the Community industry. The claim was therefore rejected.

(24) The same exporting producer further argued that any injury sustained by the Community industry had been self-inflicted. They alleged that otherwise it was not possible to suffer losses in an environment of increasing demand, increased prices, consequently increasing sales and turnover, and increasing productivity. As a possible explanation, this party cited the increased average salary by 24 % from 2003 to the IP.

(25) Firstly, although the Community industry's sales price on the Community market increased by 2 % between 2005 and the IP, it was more than 30 % lower than in 2003, while the volume of sales of the Community industry only increased by 22 % between 2003 and the IP (see recital 47 of the provisional Regulation). As a result, the sales revenue of the Community industry on the Community market decreased significantly, i.e. by around 15 % over the period considered. Secondly, the average labour cost development must be seen together with the employment and productivity trends. As explained in recital 51 of the provisional Regulation, the 24 % increase over the period considered of the labour cost per worker was due, *inter alia*, to the changes in employment structure towards a higher share of qualified labour. The figures confirm that these changes resulted in higher productivity, which in turn compensated the increased average labour cost. As a result, the total labour cost per unit produced remained the same. Moreover, production of dihydromyrcenol is not labour-intensive. It is thus considered that the increased salaries could not have contributed to the Community industry's losses. The claim was therefore rejected.

(26) Following the final disclosure, the same exporting producer adduced several new arguments concerning causation. These can be summarised as follows: (i) the injury was self-inflicted by imports of the product concerned made by the Community producer referred to in recital 17 above; (ii) the injury was self-inflicted by massive investments made by the Community industry in their new production capacity and by the loans taken for this purpose from financial institutions; (iii) the development of export sales of the Community industry was not analysed; (iv) the injury was self-inflicted by increasing the production capacity and hiring additional qualified labour and, thus, increasing the production costs.

(27) In respect of these new arguments, it is noted that (i) imports of the product concerned made by one of the Community producers could not have affected the overall situation of the Community industry because they were minor (see recitals 17 and 20 above). In addition, it is recalled that these imports had been made in reaction to the massive influx of the dumped imports from India and the losses caused to the Community industry thereby, i.e. after the material injury had already taken place; (ii) no new investments whatsoever into the production capacity took place during the period considered; on the contrary, capacity remained unchanged and investment significantly decreased (see recitals 45 and 49 of the provisional Regulation); (iii) the export performance of the Community industry was analysed in recital 68 of the provisional Regulation and was not found breaking the causal link; and (iv) no additional labour was hired by the Community industry. As can be seen from recital 51 of the provisional Regulation, the employment decreased by 15 % between 2003 and the IP. The changes in employment structure were achieved by laying-off unqualified labour. As to the production capacity, it is recalled that no expansion whatsoever took place. The arguments cited in recital 26 above are thus rejected.

(28) In view of the above and in the absence of any other comments concerning causation, recitals 57 to 76 of the provisional Regulation are hereby confirmed.

F. COMMUNITY INTEREST

(29) One exporting producer submitted that imposing measures would greatly disturb importers and users in the Community, thereby jeopardising thousands of jobs and tax revenues, but did not adduce any evidence in this respect. These allegations were considered irrelevant. Indeed, none of the importers and users opposed the provisional conclusions concerning their interest (see recitals 87 and 88 of the provisional Regulation), which has shown that these parties were not likely to be substantially affected by any anti-dumping measures. The claim was therefore rejected. The exporting producer was also informed that exporting producers are normally not considered parties concerned by the Community interest analysis.

(30) Following the final disclosure, this exporting producer reiterated its claim and submitted that it had right to comment on any aspect of the anti-dumping proceeding, Community interest included. No substantiated arguments were, however, brought forward, which could alter the conclusions drawn in recital 29 above. In respect of the exporting producers' rights to raise comments on any aspect of the proceeding, it is noted that they are indeed not barred from doing so. Nevertheless, according to Article 21(2) of the basic Regulation, these parties are normally not concerned by the Community interest analysis and their comments may be disregarded, in particular when they are not supported by any factual evidence.

(31) In the absence of any other comments concerning the Community interest assessment, recitals 77 to 90 of the provisional Regulation are hereby confirmed.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

(32) It is recalled that one exporting producer submitted that the Community producer which had made substantial imports of dihydromyrcenol from India in the IP should be excluded from the definition of the Community industry and consequently the injury elimination level determination should be based on the remaining two Community producers only. As explained in recitals 14 and 15 above, this claim was not found justified. In this view and in the absence of any other comments concerning the injury elimination level, recitals 92 to 94 of the provisional Regulation are hereby confirmed.

2. Form and level of measures

(33) In the light of the foregoing, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since for both cooperating exporting producers the injury elimination level was found to be higher than the dumping margin.

(34) With reference to recitals 14 and 15 above, it is considered appropriate to set the duty for any other companies, which had not cooperated in the investigation, at the level of the higher duty to be imposed on the cooperating companies.

(35) On the basis of the above, the definitive duty rates are as follows:

Producer	Anti-dumping duty
Neeru Enterprises, Rampur	3,1 %
All other companies (including Privi Organics Limited, Mumbai)	7,5 %

(36) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures, Neeru Enterprises proposed a price undertaking in accordance with Article 8(1) of the basic Regulation. However, it is noted that the product concerned has shown in the last years a considerable volatility in prices and therefore it is not suitable for a fixed price undertaking. As an alternative approach, the possibility of indexing the minimum import price to the price of the main raw material, namely alpha-pinene, was explored. However, this alternative was also not found workable for the following reasons: (i) the fluctuation in the price of the product concerned cannot be sufficiently explained by the fluctuation in the price of alpha-pinene, and (ii) alpha-pinene is not a commodity product for which any generally accessible statistics showing its market prices would be available. On the basis of the above, it was concluded that any price undertaking is impractical in this case and therefore cannot be accepted. The exporter concerned was informed accordingly and given an opportunity to comment. However, its comments have not altered the above conclusion.

(37) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the country-wide duty applicable to all other companies) is thus exclusively applicable to imports of products originating in the country concerned and produced by the company and thus by the specific legal entity 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 that specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.

(38) Any claim requesting the application of this individual company anti-dumping duty rate (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 forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. Collection of provisional duty

(39) 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 anti-dumping duty imposed by the provisional Regulation, be collected definitively to the extent of the amount of the duty definitively imposed by the present Regulation. Where the definitive duty is lower than the provisional duty, the duty shall be recalculated and the amounts secured in excess of the definitive duty rate should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of dihydromyrcenol of a purity by weight of 93 % or more, falling within CN code ex 2905 22 90 (TARIC code 2905 22 90 10), originating in India.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for products manufactured by the companies listed below shall be as follows:

Producer	Anti-dumping duty (%)	TARIC Additional Code
Neeru Enterprises, Rampur, India	3,1	A827
All other companies	7,5	A999

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

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EC) No 896/2007 on imports of dihydromyrcenol of a purity by weight of 93 % or more, falling within CN code ex 2905 22 90 (TARIC code 2905 22 90 10), originating in India, shall be definitively collected in accordance with the rules set out above. The amounts secured in excess of the amount of the definitive anti-dumping duty shall be released.

Article 3

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

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

Done at Brussels, 21 January 2008.

For the Council

The President

I. JARC