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2010/0120 (NLE)

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009,

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009[1] of 30 November 2009 on protection against dumped imports from countries not members of the European Community, ('the basic Regulation') in the proceeding concerning imports of sodium cyclamate originating in the People's Republic of China and Indonesia.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

Council Regulation (EC) No 435/2004 of 8 March 2004 imposing a definitive anti-dumping duties and collecting definitively the provisional duty imposed on imports of sodium cyclamate originating in the People's Republic of China and Indonesia.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceedings 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

[1] OJ L 343, 22.12.2009, p.51.

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.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The request for the expiry review was lodged on 11 December 2008 by "Productos Aditivos S.A.", the sole producer in the EU representing 100 % of the Union production of the product concerned.

Having determined that sufficient evidence existed for the initiation of the expiry reviews, the Commission initiated the case on 10 March 2009[2].

The investigation showed that there is a likelihood of continuation or recurrence of dumping and injury and it is therefore proposed to impose anti-dumping measures for a further period of five years.

It is proposed that the Council adopts the attached proposal for a Regulation, which should be published in the Official Journal of the European Union at the earliest convenience.

Legal basis

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, and in particular article 9(4) and 11(2) thereof.

Subsidiarity principle

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

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

[2] OJ C 56, 10.3.2009, p. 42.

The form of action is described in the basic Regulation and leaves no scope for national decision.

An indication of how financial and administrative burden falling upon the Union, 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: Council Regulation.

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

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[3], ('the basic Regulation'), and in particular Articles 9 and 11(2),

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 435/2004[4] of 8 March 2004, the Council imposed, following an anti-dumping investigation ('the original investigation'), a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('China') and Indonesia ('the countries concerned').

2. Present investigation

2.1. Request for review

(2) A request for an expiry review was lodged on 11 December 2008 by Productos Aditivos S.A., the sole Union producer of sodium cyclamate.

(3) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

2.2. Initiation

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[3] OJ L 343, 22.12.2009, p.51

[4] OJ L 72, 11.3.2004, p. 1.

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation pursuant to Article 11(2) if the basic Regulation on 10 March 2009 by a notice published in the *Official Journal of the European Union*[5] ('the notice of initiation').

2.3. Investigation period

(5) The investigation of likelihood or recurrence of dumping and injury covered the period from 1 January 2008 to 31 December 2008 ('review investigation period' or 'RIP') The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2005 to the end of the RIP ('period considered').

3. Parties concerned by this investigation

(6) The Commission officially advised the applicant Union producer, known importers, suppliers and users, the known exporting producers in China and Indonesia and the authorities of the countries concerned of the initiation of the expiry review.

(7) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation, but no one submitted such a request to the European Commission.

(8) The Commission sent questionnaires to all know exporting producers in China and in Indonesia. Two companies from China, both belonging to the Hong Kong-based group Rainbow Rich Industrial Ltd., and two companies from Indonesia indicated their willingness to cooperate and replied to the dumping questionnaire.

(9) Two additional Chinese producers, Fang Da Food Additive (Shenzhen) Limited, and Fang Da Food Additive (Yan Quan) Limited, made themselves known. The original investigation found that those companies were not dumping in the Union market. As a consequence, Fang Da Food Additive (Shenzhen) and Fang Da Food Additive (Yan Quan) are not subject to the present expiry review.

4. Verification of information received

(10) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the continuation or likelihood of recurrence of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

4.1. Exporting producers in the People's Republic of China:

- Golden Time Enterprises (Shenzhen) Co., Ltd., Shenzhen
- Jintian Enterprises (Nanjing) Co., Ltd., Nanjing
- and the related company Rainbow Rich Industrial Ltd. (Hong Kong)

[5] OJ C 56, 10.3.2009, p. 42.

4.2. Exporting producers in Indonesia:

– PT Golden Sari (Chemical Industry), Bandar Lampung

– PT Tunggak Waru Semi, Solo

4.3. Union industry producer

– Productos Aditivos S.A., Spain

4.4. Unrelated importer/trader

– Beneo Palatinit GmbH, Germany

4.5. User

– Schweppes International Ltd., The Netherlands

5. Disclosure

(11) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of anti-dumping duties on imports of sodium cyclamate originating from China and Indonesia.

(12) In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representation subsequent to this disclosure.

(13) The oral and written comments submitted by the parties were considered and, when appropriate, the definitive findings have been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) The product concerned by this review is the same as the one in the original investigation, i.e. sodium cyclamate ('SC') originating in China and Indonesia ('the product concerned'), currently falling within CN code ex 2929 90 00.

(15) As established in the original investigation and confirmed in the current review, sodium cyclamate is a commodity product used as a food additive, permitted in the European Union and in many other countries as a sweetener for low-caloric and dietetic food and beverages. It is widely used as an additive by the food industry, as well as by the producers of low caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.

2. Like product

(16) As in the original investigation, it was shown that the product concerned produced in China and Indonesia and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold by the applicant on the Union market, or to the one produced and sold on the domestic market in

Indonesia, which also served as an analogue country for the purpose of establishing the normal value with respect of China.

(17) Consequently, all these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(18) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation or recurrence of dumping. It is recalled that in the context of investigations under this article, market economy treatment ('MET') is not reconsidered.

(19) In accordance with Article 11(9) of the basic Regulation, the same general methodology was used as in the original investigation, provided that circumstances have not changed. In order to establish the likelihood of continuation or recurrence of dumping, in accordance with standard practice, sampling of transactions was done by taking data from four months, each being the last of one quarter, of the RIP. The outcome was verified by also analysing some other transactions. No operator protested against this approach.

(20) Data from Eurostat database showed that during RIP, between 3,000 and 5,000 tons of product concerned were imported to the Union. Among them, more than 90% came from China and the rest from Indonesia. Practically no imports have been registered from other countries.

2. Dumping of imports during the investigation period

2.1. People's Republic of China

2.1.1. Analogue country

(21) Except for companies that were granted MET in the original investigation, the normal value for China was established in accordance with Article 2(7)(a) of the basic Regulation.

(22) In the previous investigation Indonesia was used as an appropriate market economy country for the purpose of establishing normal value in respect of China.

(23) This choice has been proposed by the European Commission in the notice of initiation, and no interested party has opposed this choice within the time limits.

(24) Prices in Indonesia have been considered a reasonable surrogate for prices in China because Indonesia has a competitive domestic market, with increasing imports from China and where at least six producers are operating. In addition, it appears that the product under investigation is produced only in the Union, the People's Republic of China and Indonesia. No evidence to the contrary has been presented in the current investigation.

(25) Therefore, Indonesia has been used as analogue market economy country for the purpose of the present review.

2.1.2. Cooperating Chinese exporting producers

2.1.2.1. Preliminary remarks

(26) As set in recital (8), two producers belonging to the same Hong Kong-based group, "Rainbow Rich Industries", cooperated in this review. They represent more than half of the exports to the Union during the RIP. Not taking into account the production and sales volumes of the companies not subject to the proceedings, the cooperating producers represented more than three-quarters of total Chinese production and almost half of its capacity. The representativity in terms of exports to the Union was more than 80%. Given this level of cooperation, detailed information obtained from the cooperating exporters was used as a source for the assessment of the likelihood of continuation or recurrence of injurious dumping from China.

(27) One of the cooperators, Golden Time Enterprises (Shenzhen), exported significant quantities to the Union during RIP, while the sister company, Jintian Enterprises (Nanjing), was not exporting to the EU since the imposition of the measures. The data gathered during the on-spot verification visit of the company that did not export, Jintian Enterprises (Nanjing), did however allow for a more detailed insight into the Chinese domestic market, where the company holds a significant part of the market share and of the installed capacity.

(28) During the investigation, one Chinese company alleged that regular meetings are held between major domestic producers to fix a reference price for the Chinese domestic market. Given the dominant position of those producers, this arrangement appears to successfully keep Chinese domestic prices at a relatively high level.

2.1.2.2. Normal value

(29) The normal value for Golden Time Enterprises (Shenzhen) was calculated as the weighted average price of all domestic sales made during the RIP, paid or payable by independent customers, of the type in question.

2.1.2.3. Export price

(30) The export price to the Union of Golden Time Enterprises (Shenzhen) was the price actually paid or payable for the product when sold for export to the EU, duly adjusted.

2.1.2.4. Price comparison

(31) The weighted average normal value was compared with the weighted average export price for each type of the product concerned, on an ex-works basis and at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, differences in factors which were claimed and demonstrated to affect price and price comparability were taken into account. Adjustments were made for ocean and domestic freight, insurance, credit, handling and packaging costs.

2.1.2.5. Dumping margin

(32) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established per product type on the basis of a comparison of the weighted average normal value with the weighted average export prices at the same level of trade. This comparison showed the existence of dumping during the RIP at a significantly higher level than in the original investigation. The weighted average dumping margin expressed as a percentage of the CIF value at the Union frontier was over 30% for Golden Time Enterprises.

2.1.3. Other Chinese exporting producers

2.1.3.1. Preliminary remarks

(33) The residual imports from China accounted for less than 5% of the consumption in the Union.

(34) The Commission based its conclusions about the remaining Chinese exporting producers on the data collected from the investigation and on official Eurostat statistics.

2.1.3.2. Normal value

(35) Normal value for non-cooperating Chinese exporters was established as the weighted average domestic sales prices of the cooperating Indonesian producers to independent customers.

2.1.3.3. Export price

(36) The export price for non-cooperating Chinese exporters was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. In the absence of other more reliable information, this was done by reference to the average CIF Union border import price obtained from the Eurostat import statistics during the RIP.

2.1.3.4. Price comparison

(37) The weighted average export price found for the remaining Chinese exporters was compared with the weighted average normal value of the verified Indonesian producers, on an ex-works basis and at the same level of trade.

(38) In order to ensure a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for ocean and domestic freight, insurance, handling and packaging costs. In the absence of more reliable information, the adjustments were based on verified costs of the Chinese cooperating exporter.

2.1.3.5. Dumping margin

(39) The dumping margin was calculated as the amount by which the normal value, as calculated in recital (35) exceeded the export price, as established in recital (36). The results so obtained point to a clear continuation of dumping practices over the period of validity of the measures, with a dumping margin of over 5%.

2.1.4. Conclusions on dumping from China

(40) In view of the above, it is concluded that dumping has continued from China during the period of application of measures.

2.2. Indonesia

2.2.1. Preliminary remarks

(41) As set out in recital (8), two producers cooperated in this review, PT Golden Sari and PT Tunggak Waru Semi. Their representativity in terms of exports to the Union was between 40% and 60% during RIP[6].

(42) The data collected by the Commission revealed that there are at least four more producers of the product concerned in Indonesia. According to those data, the cooperating producers accounted for circa one-third of total Indonesian production and capacity. Therefore, the cooperation from Indonesia in this review has been low.

(43) In view of the above, and according to Article 18 of the Basic Regulation, information on domestic prices, export prices to other countries, production and capacity in Indonesia for the non-cooperating Indonesian exporting producers has been based on best facts available, including the complaint and publicly available information. The relevant Indonesian authorities were notified of the application of Article 18 and the reasons thereof. No comments were submitted by the Indonesian authorities in this respect.

(44) Among the two co-operators, only one, PT Golden Sari, exported to the Union during the RIP. While a dumping margin could not be established for PT Tunggak Waru Semi, since this company did not export to the Union in the RIP, its data was nevertheless used to obtain information, inter alia, on production, capacities and exports to third markets allowing for a more detailed insight into the Indonesian domestic and export markets.

2.2.2. Cooperating Indonesian exporting producers

2.2.2.1. Normal value

(45) The normal value was calculated for PT Golden Sari as the weighted average price of all domestic sales made during the RIP, paid or payable by independent customers, of the type in question.

2.2.2.2. Export price

(46) The export price for PT Golden Sari was established on the basis of export prices actually paid or payable during the RIP to independent customers in the Union.

2.2.2.3. Price comparison

[6] Since only one Indonesian cooperator has exported to the Union during RIP, this figure is expressed as a range, for reasons of confidentiality.

(47) The weighted average normal value was compared with the weighted average export price into the Union of the product concerned, on an ex-works basis and at the same level of trade.

(48) In order to ensure a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for international freight, insurance, domestic freight, packaging and credit costs.

2.2.2.4. Dumping margin

(49) The result of the comparison of normal value and export price showed that no dumping had taken place in the RIP from company PT Golden Sari.

2.2.3. Other Indonesian exporting producers

2.2.3.1. Preliminary remarks

(50) As mentioned above in recital (43), due to the low level of cooperation for Indonesia, the dumping margin of non-cooperating exporters was determined in accordance with Article 18 of the basic Regulation, i.e. on the basis of facts available.

2.2.3.2. Normal value

(51) The normal value was calculated as the weighted average normal value which has been calculated for the two cooperating producers.

2.2.3.3. Export price

(52) In the absence of other more reliable information, the export price for non-cooperating Indonesian exporters was determined on the basis of the average CIF Union border import price obtained from the Eurostat import statistics during the RIP.

2.2.3.4. Price comparison

(53) The weighted average export price into the Union for Indonesia thus obtained, was compared at ex-works level to the weighted average normal value established for the cooperating Indonesian producers

(54) In order to ensure a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. In this respect, adjustments were made for international freight, insurance, domestic freight, handling, packaging and credit costs.

2.2.3.5. Dumping margin

(55) The comparison of normal value and export price as established above, showed the existence of dumping. The dumping margin found, as a percentage of the CIF Union-frontier import price, was close to 30%.

2.2.4. Conclusions on dumping from Indonesia

(56) In view of the above, it is concluded that dumping has continued for a significant part of Indonesian producers during the period of application of the measures.

3. Development of imports should measures be repealed

(57) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping would be likely to recur upon a possible expiry of the measures in force against China and Indonesia.

(58) In order to establish whether dumping would be likely to recur, should the measures be repealed, the Commission examined the available information on the circumstances of the exporters and market conditions. The analysis was primarily based on information provided in the questionnaire replies of the cooperating producers and verified during the on-spot verification visits. Other sources of information have also been used, such as Eurostat imports statistics and official export and market statistics from the countries concerned.

3.1. China

3.1.1. Preliminary remarks

(59) As set in recital (26), the cooperating producers represented more than three quarters of Chinese production during RIP. Since the level of cooperation is high, it was determined that reliable information on exports of the product concerned to the Union during the RIP could be gathered directly from the exporting producer. More generally, data concerning the Chinese domestic market has been gathered from both verified producers.

(60) It is recalled that the investigation showed that dumping from the Chinese companies concerned by this review has continued at a level which is considerably higher than that established in the original investigation.

3.1.2. Unused capacity and stocks

(61) According to the data collected by the Commission during the investigation, the freely available production capacity of the companies concerned by this review in China is many times the size of the Union market. The investigation has shown that domestic consumption in China is not likely to absorb to any significant extent this extra capacity.

(62) One Chinese producer argued that it had the intention to considerably reduce its production capacity after the RIP. However, no tangible evidence in this regard was provided. Even if this could theoretically lead to a decrease in Chinese capacity, it would nevertheless create an incentive to the rest of Chinese producers to increase the utilisation of their freely available capacity in order to fill the gap that would arise in China's exports.

(63) Furthermore, the ability of other third country markets to absorb significant additional volumes of Chinese imports is limited. To start with, several large countries do not import the product concerned for regulatory reasons (inter alia the United States, India,

Japan, Mexico, South Korea, the entire Middle East). In addition, according to information gathered during the investigation, the remaining sizeable markets for sodium cyclamate (South America, South Africa and Asia) are not likely to grow significantly in the coming years. Therefore, the Union market would remain a key outlet for the product, attractive not only because of its size, but also due to the existence of well known, well established distribution channels for importing the product.

(64) It was finally considered whether the excess capacity could be channelled into the manufacturing of other products within the companies involved. This would not, however, be likely as the verified producers do not manufacture any other product in significant quantities and there is no evidence that other Chinese producers of sodium cyclamate could easily switch to other products.

(65) The foregoing point to a likely continuation of large export volumes from China to the Union, should the measures be repealed.

3.1.3. Relationship between prices in the Union and prices in the Chinese domestic market

(66) The Commission found that the high volumes of imports from China were made at prices in the Union that were lower than the prices in the Chinese domestic market. The sale prices of those imports, given their level and market share of the Chinese dumped imports, must be considered as the reference price in the Union: other Chinese exporters wishing to enter the market in significant quantities would in all likelihood align themselves to these low prices—engaging in dumping.

3.1.4. Relationship between export prices to third countries and prices in the Chinese domestic market

(67) The Commission compared verified Chinese export prices to third countries with verified Chinese domestic price, to further examine the price behaviour of Chinese exporters in case the measures would be terminated.

(68) It was found that export prices to third countries were consistently lower than the domestic prices and in line with export prices to the EU, underlining a pattern of dumping behaviour which appears to be structural in this sector in China.

3.1.5. Relationship between export prices to third countries and the price level in the Union

(69) The Commission compared the Chinese export prices to third countries with prices prevailing in the Union, so as to establish whether there would be an incentive to shift exports to the Union in case of termination of measures.

(70) Chinese export prices to third countries were generally in line with the price level in the Union. This confirms that Chinese exporters are not likely to shift exports away from the EU to other markets.

3.1.6. Conclusions on China

(71) The assessment of the above-mentioned factors showed that the exporters concerned by the review have continued to export very significant volumes of the product concerned to the Union, at dumped prices. Chinese exports to other third countries are

also made at dumped prices, underlining a structural pattern of dumping behaviour. Chinese domestic prices are high and there are no indications that they will decrease in the foreseeable future. Given the large freely available capacity of Chinese exporters, the lack of other sizeable outlets for such capacity, and the attractiveness of the EU market, there is therefore an incentive for Chinese exporting producers to direct even larger volumes at dumped prices to the Union market, should measures be repealed.

(72) Having considered the data and information above, it is concluded that dumping from China is likely to continue or recur if the measures were allowed to lapse.

3.2. Indonesia

3.2.1. Preliminary remarks

(73) As explained in recital (42), the cooperating producers represented a minority of the Indonesian production and capacity and therefore Article 18 has been applied.

(74) It is also recalled that the investigation concluded that dumping from Indonesia has continued in the RIP for the non-cooperating producers.

3.2.2. Unused capacity and stocks

(75) During the review, it was established that the total freely available capacity in Indonesia is more than three fourths of the size of the Union market. Even if the cooperating exporter were to be excluded, the remaining free capacity would still account for almost half of the Union market. Official Indonesian statistics show that Indonesian producers appear to be losing market shares to the aggressive pricing policy of Chinese competitors, both in the domestic and the international market. It is, therefore, likely that Indonesia's freely available capacity will grow even further in the near future.

(76) It was examined whether the total freely available capacity in Indonesia could be absorbed by sales to third countries, but as concluded in recital (63), third countries' markets are not foreseen to significantly absorb the excess capacity at hand. It was also examined whether the excess capacity could be absorbed by sales in the domestic market. However, as said before, according to Indonesian official data, the market share of Indonesian producers in the domestic market is shrinking under the pressure of Chinese imports. Finally, the possibility of a switch of production to other similar products was considered; for the same reason as explained in recital (64), it is not likely that excess capacity could be utilised in such a way.

(77) In conclusion, the large (and increasing) available capacity in Indonesia would, to a significant extent, be directed towards the Union should measures be repealed.

3.2.3. Relationship between prices in the Union and prices in the Indonesian domestic market

(78) The prices in the Indonesian domestic market are higher than the prices in the Union market, notwithstanding the increasing pressure exerted by Chinese exports in the Indonesian market. Given the low price levels of Chinese imports in the Union for such a rather homogeneous product, those prices would be the reference price to which Indonesian exporters would in all likelihood align themselves to—thus engaging in

dumping, should the measures lapse. This consideration is applicable to both cooperating and non-cooperating exporters.

(79) If measures were to lapse only for Indonesia and not for China, this would render the Union market even *more* attractive for Indonesian producers from a price perspective. Indeed, without anti-dumping duties, they would be able to increase their prices to take advantage of the anti-dumping duty still payable by Chinese exporters. It should be added that under the similar scenario as regards price levels and price differentials of Chinese and Indonesian exporters witnessed in the original investigation, the latter exported significant volumes to the EU.

(80) Finally, it should also be noted that Indonesian exports to the EU have consistently decreased after the imposition of the measures which would reinforce the conclusion that Indonesian exporters are not able or willing to sell significant quantities in the EU market at non-dumped prices.

3.2.4. Relationship between export prices to third countries and prices in the Indonesian domestic market

(81) As regards the cooperating exporting producers, their verified export prices to third countries have been found to be higher than Indonesian domestic prices.

(82) As for non-cooperating exporters, it was not possible to obtain individual data during the investigation. Available official Indonesian statistics on average export prices of all Indonesian exports appear to be inaccurate in absolute terms, overstating export prices by very significant amounts. Nonetheless, from the same statistics it can be inferred that export prices to third countries appear to be lower than export prices to the Union. This would indicate that, for at least a significant part of Indonesian exports to third countries, these would also be dumped. In any event, Indonesian export statistics point to a sharp decrease of exported volumes, underlining that, at the current price levels, Indonesian exporters are suffering from Chinese competition.

3.2.5. Relationship between export prices to third countries and prices in the Union

(83) For the cooperating producer, export prices to third countries were found to be generally higher than price levels in the Union. However, regarding the rest of Indonesian producers, the available official Indonesian statistics suggest an opposed picture. This indicates that for a significant part of Indonesian exporters, dumping would exist also when exporting to third countries.

(84) This price differential between export prices to the Union and export prices to the rest of the world underlines the Indonesian exporters' incentive to divert exports to the Union. This conclusion is reinforced were measures on imports originating in the PRC allowed to lapse.

3.2.6. Conclusions on Indonesia

(85) The assessment of the above-mentioned factors showed that Indonesian exports have to a significant extent been made at dumped prices in the Union and in third country markets, underlining a structural pattern of dumping behaviour. Given the large freely available capacity of Indonesian exporters, the lack of other sizeable outlets for such capacity, and the attractiveness of the EU market, there is therefore an incentive for

Indonesian exporting producers to direct large volumes at dumped prices to the Union market, should measures be repealed.

(86) Having considered the data and information above, it is concluded that that dumping from Indonesia is likely to continue or recur if the measures were allowed to lapse.

4. Comments following disclosure

(87) The Indonesian authorities did not provide any reaction within the specified time limit to the notification that Article 18 may be applied to the non-cooperating producers. However, following disclosure, the Indonesian authorities as well as one of the Indonesian cooperating producers claimed that the two cooperating Indonesian producers represent a considerable segment of the Indonesian industry. The parties claimed that as a result, the degree of cooperation of Indonesia should be considered as being significant and Article 18 should not be applied. Furthermore, the above-mentioned parties have claimed that since several Indonesian producers did not export to the Union during RIP, they were not in a position to cooperate. Finally, it was claimed that, since one of the cooperating producers represents an extremely large part of Indonesian exports, those cooperating producers should be considered as being representative thereof and the fact that dumping was not found for this company should lead to the lapse of measures for Indonesia.

(88) It should be clarified that Article 18 has *not* been applied to the cooperating producers, whose data have been fully taken into consideration during the investigation. As to the application of Article 18 to the rest of the Indonesian producers, it follows that, in the absence of information from these parties, the Commission services have no choice but to rely on the best facts available. It should be recalled that in order to assess the likelihood of continuation and / or recurrence of dumping in expiry reviews, the Commission services have also to assess elements concerning the state of the totality of the exporting country's industry, such as domestic capacity, production and prices, exports to third countries.

(89) As the Indonesian producing companies which did not cooperate represent a large part of the Indonesian industry in terms of exports to the Union as well as in terms of production and exports to third countries, the Commission confirms the application of Article 18 with reference to the non-cooperating Indonesian producers as set in recital (43).

(90) As for the request to lift measures on Indonesian exports, it should be noted that the Indonesian authorities did not provide data that could change the Commission's conclusion on the representativity of the cooperating exporter, which corresponds to between 40% and 60% of the total Indonesian exports during RIP, as set in recital (41). Therefore, the cooperating exporter found not to be dumping could not be considered as being representative of the entire Indonesian exports. The rest of Indonesian exports have been made at dumped prices, as set in recital (55). Therefore, the conclusion that dumping continued from that part of Indonesian exports is confirmed. Furthermore, the lack continuation of dumping is not, *per se*, a sufficient reason to discontinue anti-dumping measures, if the likelihood of recurrence is established, as it is the case in the present expiry review. To conclude, the request to discontinue measures on the basis of the lack of dumping from the cooperating Indonesian exporter could not be accepted.

(91) The Indonesian authorities and one Indonesian cooperating producer have also asked that the figures of total Indonesian exports to the Union be fully disclosed. It is however recalled that the indexation of those data (see note to recital (41)) was necessary to protect the Indonesian exporting producer from disclosure of business sensitive data. The small size of the market and the limited number of interested parties justify the indexation of those figures. In sum, there is good cause to maintain confidentiality and the request to disclose the figures of total Indonesian exports to the Union can therefore not be accepted.

5. Conclusion on the likelihood of a continuation and/or recurrence of dumping

(92) On the basis of the above, it is concluded that dumping from both counties concerned by this review is likely to continue, should measures be repealed.

D. SITUATION ON THE UNION MARKET

1. Definition of the Union Industry

(93) Sodium cyclamate is manufactured in the Union only by the applicant producer, Productos Aditivos S.A. This company was therefore deemed to constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.

2. Union consumption

(94) Data on Union consumption was based on the cumulated volumes of imports of the product concerned into the Union based on Eurostat statistics and on the total verified sales of the Union industry on the Union market. Taking into account that these data are derived from two sources and that sales by the applicant should be kept confidential, the development of consumption is reported below in indexes.

(95) Union consumption of SC ranged between 5.000 and 7.000 tonnes during the period considered. It increased by 6% between 2005 and 2006 and by 15 % between 2006 and 2007. It dropped by 18 % between 2007 and the RIP.

Table 1

UNION CONSUMPTION

	2005	2006	2007	2008 (RIP)
INDEX	100	106	122	103

3. Imports from the countries concerned

3.1. Cumulation

(96) The Commission considered whether the effects of dumped imports from the countries concerned should be assessed cumulatively, on the basis of the criteria set out in Article 3(4) of the basic Regulation. This Article provides that the effects of imports from two or more countries simultaneously subject to anti-dumping investigations shall be assessed cumulatively only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as

defined in Article 9(3) of the basic Regulation and that the volume of imports of each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product.

(97) In this respect, it was firstly found that the dumping margins established for each of the countries concerned were more than *de minimis*. In addition, the volume of the dumped imports from each of those countries was not negligible in the sense of Article 5(7) of the basic Regulation. Indeed, the import volume represented for China and Indonesia around 50 % of the Union consumption during the RIP. In calculating the import volume, non-dumped imports have been excluded.

(98) The investigation further showed that the conditions of competition both between the dumped imports and between the dumped imports and the like Union product were similar. It was found that, irrespective of their origin, sodium cyclamate produced/sold by the countries concerned and the one produced/sold by the Union industry compete against each other since they are alike in terms of their basic characteristics, largely interchangeable from the user's point of view and distributed via the same distribution channels. The prices relating to imports from China subject to measures and dumped imports from Indonesia were also in the same range of magnitude. In addition, when comparing the prices at the same level of trade, these prices were found to undercut the Union industry's prices.

(99) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met regarding imports from China subject to measures and dumped imports from Indonesia and that the effect of these imports should be assessed cumulatively.

3.2. Volume and market share of dumped imports

(100) The evolution of dumped imports from China and Indonesia and their market shares during the period considered was as follows:

Table 2

Total dumped imports	2005	2006	2007	2008 (RIP)
Index	100	109	198	195

Table 3

Market share of dumped imports	2005	2006	2007	2008 (RIP)
Index	100	103	161	189

(101) Volumes of dumped imports as well as market share of dumped imports have nearly doubled during the period considered.

3.3. Price evolution and price behaviour of the imports of the product concerned

3.3.1. Evolution of prices

(102) The average price of dumped imports from the countries concerned developed as follows over the period under consideration:

Table 4

Average prices of dumped imports	2005	2006	2007	2008 (RIP)
Index	100	103	104	99

(103) Table 4 was sourced from the available statistical data, including Eurostat. The general trend of the import prices into the Union shows an increase until 2007 and then a decrease in the RIP below the 2005 level.

3.3.2. Price undercutting

(104) For the determination of price undercutting, the Commission based its analysis on the information submitted in the course of the investigation by the cooperating exporting producer in China. For other companies from both China and Indonesia that did not cooperate with the case, price undercutting was established by reference to Eurostat data.

(105) The approach to calculate the price undercutting follows that of the original investigation. The import prices, including the anti-dumping duties, of the exporting producer were compared to the Union industry prices, on the basis of weighted averages for the same product qualities during the RIP. The Union industry prices were adjusted to an ex-works level and compared to CIF Union border import prices, adding anti-dumping and customs duties. This price comparison was made at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.

Table 5

Price Undercutting	2008 (RIP)
China:	
- Golden Time	21.6%
- Other companies	3.2%
Indonesia:	
- Other companies	18.7%

4. Imports from other countries

Imports from other third countries were negligible (less than 50 tons yearly) during the period considered and therefore could not have had any impact on the situation of the Union industry.

5. Economic situation of the Union Industry

(106) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry from 2005 to the RIP.

(107) In order to respect confidential business information, it has been necessary to present information concerning the Union Industry in indexed form.

5.1. Production, production capacity and capacity utilisation

(108) The production of the Union industry decreased by 13% from 2005 to the RIP. As production capacity remained unchanged during the same period, the capacity utilisation decreased by 10% in line with the development in production.

Table 6

In Indexes	2005	2006	2007	2008 (RIP)
Production capacity	100	100	100	100
Production volume	100	106	88	87
Capacity utilisation	100	106	88	87

5.2. Sales in the Union

(109) The data in table 7 indicates a clear decrease in sales volumes of the Union industry. This situation is exacerbated by the fact that the overall consumption, as shown in Table 1, increased by 3 % over the same period. The market share of the Union industry dropped significantly between 2005 and the RIP. This is in contrast to the continuously increasing market shares (see recital (100)) of cumulated dumped imports from China and Indonesia throughout the period considered. The Union industry did increase its unit selling prices against a background of falling volumes. On balance, despite the increase in unit prices the Union industry still generated losses on its sodium cyclamate sales in the RIP.

Table 7

In Indexes	2005	2006	2007	2008 (RIP)
Volume of sales	100	93	81	72
Market share	100	88	66	70

Unit selling prices	100	100	108	123

5.3. Stocks

(110) The stock level of the Union producer fluctuated significantly between 2005 and the RIP, dropping nearly by half over the period considered.

Table 8

Index	2005	2006	2007	2008 (RIP)
Stock (tonnes)	100	113	29	53

5.4. Profitability

(111) Despite an overall slight improvement, Union industry's profitability remained consistently negative throughout the period considered.

5.5. Employment, productivity and wages

(112) Employment of the Union industry decreased by 19% during the period under consideration. The productivity per employee (established on the basis of the number of tonnes produced divided by the number of employees) increased. The average employment cost per employee increased by 5 % over the period considered.

Table 9

In indexes	2005	2006	2007	2008 (RIP)
Employment	100	88	91	81
Employment cost per employee	100	99	81	105
Productivity (per employee)	100	121	97	107

5.6. Investments, return on investment

(113) During the period considered, investments declined by almost half, mirroring the overall negative state of the Union producer. The level of the return on investment expressed as the relation between the net profit of the sole Union producer and the gross book value of its fixed assets mirrors the profitability trend. It sharply declined by almost 80% over the period considered.

Table 10

In indexes	2005	2006	2007	2008 (RIP)

Investment	100	44	7	53
Return on Investment	100	54	20	21

5.7. Cash flow and ability to raise capital

(114) The Union industry's cash flow could only be assessed in relation to the total activity of the Union industry. It remained slightly positive in 2005 but deteriorated in the subsequent period and became negative in the rest of the period considered. It also became more difficult for the Union industry to raise capital because of the losses suffered during the period considered.

5.8. Magnitude of dumping

(115) Dumping from both countries concerned continued during the RIP, with the exception of the cooperating Indonesian exporting producer. Given the total volume exported and the prices of the dumped imports from the countries concerned, this impact cannot be considered negligible.

5.9. Recovery from past dumping

(116) Anti-dumping measures against imports of sodium cyclamate originating in China and Indonesia were imposed in March 2004. In this period only a partial recovery of the situation of the Union producers has been observed as detailed above.

5.10. Conclusion on injury

(117) The presence of low-priced imports from China and Indonesia significantly increased on the Union market. Some injury indicators for the Union industry show signs of recovery while others indicate a negative development.

(118) Taking into account the overall worsening situation of the only Union producer as well as the magnitude of dumped imported volumes from China and Indonesia and the significant price undercutting found, it is considered that the Union industry has suffered material injury.

6. Impact of dumped imports from the countries concerned and impact of other factors

6.1. Impact of the dumped imports from the countries concerned

(119) As explained above (recital (100) , the cumulated volume and market share of dumped imports from the countries concerned have almost doubled in the period considered. Significant price undercutting was also found for both countries concerned. Taking into account the clear coincidence in time between the deterioration of the situation of the Union industry and the significant increase of cumulated dumped imports from China and Indonesia, these imports have caused injury to the Union industry. Indeed, dumped imports from China and Indonesia have increased their penetration of the EU market and have taken over significant market shares previously held by the Union producer.

6.2. Impact of other factors

(120) The Commission analysed whether any other known factors than the dumped imports could have had a bearing on the continued injury suffered by the Union producer in order to ensure that possible injury caused by any such factors was not attributed to the dumped imports.

6.2.1. Impact of non-dumped imports from China and Indonesia

(121) The volume of non-dumped imports from China and Indonesia continuously decreased in the period considered. Corresponding prices of these imports were consistently higher than those of the dumped imports. On these grounds, the non-dumped imports from China and Indonesia have not contributed to the injury suffered by the Union industry.

6.2.2. Performance on export markets

(122) Export sales of the Union's producer outside the EU represented less than 25% of its total sales. Contrary to sales in the Union, export sales profitability has improved over the period considered and therefore it could not have contributed to the injury suffered by the Union's industry.

6.2.3. Fluctuation of raw material prices

(123) Price fluctuations of raw materials of SC may have had some negative effect on the performance of the Union industry. This factor however is not sufficient to break the causal link between the injury suffered and the dumped imports. The latter should have been affected by raw materials price changes in similar proportion as the costs of the Union producer, since they are closely linked to oil and urea prices.

6.2.4. Changes in consumption patterns

(124) Changes in consumption patterns with the emergence of new products on the market did not have a noticeable impact on consumption of SC. Indeed, it appears that there is no direct product substitution between SC and these new products.

6.3. Conclusion

(125) On these grounds it is concluded that dumped imports from China and Indonesia have caused material injury to the Union industry and that no other factor broke this causal link.

E. LIKELIHOOD OF CONTINUATION OF INJURY

1. Impact of the projected volume and price effects on the state of the Union industry in case of repeal of measures

(126) In accordance with Article 11(2) of the basic Regulation, imports from the countries currently being reviewed were assessed in order to establish if there was a likelihood of continuation of injury.

(127) With regard to the likely effect on the Union industry of the expiry of the measures in force, the following factors were considered in line with the elements summarised above in respect of the likelihood of continuation of dumping.

1.1. China

(128) As concluded above in recitals (40) , exports from China made by the exporters concerned by this review continue to be made at dumped prices. Chinese exports to other third countries also appear to be dumped, indicating a structural pattern of dumping behaviour.

(129) An analysis of available capacities in China has shown that the freely available production capacity of the companies concerned by the review in China is many times the size of the Union market (see recital (61)). The ability of other third country markets to absorb significant additional volumes of Chinese imports is also limited (see recital (63)). There is therefore an incentive for Chinese exporting producers to direct large export volumes at dumped prices to the Union market, should measures be repealed (see recital (65)).

(130) The significant levels of dumping and undercutting observed indicate that the export volumes to the Union mentioned above would be made at dumped prices which would lie significantly below the prices and costs of the Union producer.

(131) The combined effect of such volumes and prices would as such be capable to lead to a deterioration of the Union industry's already precarious situation. Such a scenario would in all likelihood lead to further depressed prices and/or lower production and sales by the Union industry. The financial position of the Union industry would further deteriorate, leading to increased injury. Such developments may likely end the existence of the only Union producer.

1.2. Indonesia

(132) The investigation has shown that dumping from Indonesia has continued in the RIP. The investigation has also shown that the total freely available capacity in Indonesia is more than three fourths of the size of the Union market and is likely to grow even further in the near future (see recital (75)). As there is no indication that other third markets or the domestic market could absorb this excess capacity, this could cause an increase of exports at a lower price to the European Union, should measures be allowed to lapse.

(133) As in the case of China, the significant level of dumping and undercutting observed indicates that the export volumes from Indonesia to the Union would be made at dumped prices which would significantly be below the prices and costs of the Union producer. Similarly, the combined effect of such volumes and prices would as such be capable to lead to a further deterioration of the Union producers' already precarious situation and would likely end of the existence of the only Union producer. As in the case of China, Indonesian exports to other third countries also appear to be indicatively dumped as far as they are below the prices relating to exports to the European Union, showing also a structural pattern of dumping behaviour.

2. **Conclusion on the likelihood of continuation of injury**

(134) The Union industry has been suffering from the effects of the dumped imports for several years and is currently still in a precarious economic situation.

(135) As established above, the investigation has shown that the injurious situation of the Union industry has continued in the RIP. The continuation of injury is, according to Article 11(2) of the basic Regulation, in itself a strong indicator that injury is likely to continue in the future which would suggest that the measures should be maintained.

(136) The findings pertaining to imports show that imports of large volumes at dumped prices are likely to continue and that price pressure is likely to intensify the competition between dumped imports and the Union-produced SC. The investigation has not identified any factors that would break the strong link between the dumped imports and the injury the Union industry would suffer.

(137) Should measures be terminated, the situation of the Union industry would deteriorate and the very existence of the only Union producer would be jeopardized.

(138) Therefore, it is concluded that there is, due to dumped imports from China and Indonesia, a clear likelihood of continuation of injury to the Union industry.

F. UNION INTEREST

1. Introduction

(139) Pursuant to Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, i.e. those of the applicant Union producer, of importers, of suppliers and users.

2. Interest of the applicant Union producer

(140) As far as the only Union producer is concerned, it should be noted that its loss-making situation has resulted from its difficulties to compete with low-priced dumped imports, which held a significant market share already at the beginning of the period considered and which have increased their market share considerably during the period considered.

(141) It is considered that the continuation of measures would benefit the Union producer which should then at least be able to increase the volume and, perhaps, its sales prices thereby generating the necessary return level which would enable it to continue to invest in its production facilities. By contrast, the discontinuation of the measures would halt recovery and lead to continuation and even exacerbation of the injury suffered by the Union producer. It would seriously threaten the viability of the Union producer and as a consequence, it may even cease to exist, thus reducing supply and competition on the market.

3. Interest of importers

(142) A questionnaire was sent at initiation to twenty unrelated importers. Three of them replied that they were no longer active on the market of the product concerned. Two

other importers replied to the questionnaire. The cooperating unrelated importers represented 7% of total imports concerned.

(143) The investigation found that having a diversity of sodium cyclamate suppliers is essential. Importers have to rely on both Asian and European sources of supply because of quality and food security reasons.

4. Interest of users

(144) On initiation, a questionnaire was sent to thirteen potential users but only two of them replied to the Commission.

(145) The main users of the product concerned in the Union are in the food, beverage and pharmaceutical industries. The demand for the product concerned is therefore dependent upon the situation of these industries.

(146) The users that came forward showed robust profit margins on downstream products using SC. Indeed, the effect of the anti-dumping duties on their total costs was so minimal (less than 1%) that they were not disproportionally affected by the existing measures.

5. Interest of suppliers

(147) A questionnaire was sent to eight potential suppliers but none of them replied to the Commission. From available information, it appears that their SC business-related portfolio is rather negligible. In any event, further deterioration of the sole Union producer may have some negative, even though limited, knock-on effects on the sole producer's suppliers of raw materials. On these grounds it is not unreasonable to assume that the measures would also benefit the supplier industry as they would help keeping in place one of their customers.

6. Conclusion on Union interest

(148) Taking into account all of the above factors, it is concluded that there are no compelling reasons against the imposition of anti-dumping measures.

G DEFINITIVE ANTI-DUMPING MEASURES

(149) In view of the conclusions reached above, the measures in force applicable to imports of the product concerned originating in China and Indonesia should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently falling 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 for the products described in paragraph 1 and produced by the companies below shall be as follows:

Country	Company	Rate of duty (EUR per kilogramme)	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, People's Republic of China	0	A471
	Fang Da Food Additive (Yang Quan) Limited, Da Lian Dong Lu, Economic and Technology Zone, Yangquan City, Shanxi 045000, People's Republic of China	0	A472
	Golden Time Enterprise (Shenzhen) Co. Ltd., Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, People's Republic of China	0,11	A473
	All other companies	0,26	A999
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 Community Customs Code[7], 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.

[7] OJ L 253, 11.10.1993, p. 1.

Article 2

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
[…]