COUNCIL OF THE EUROPEAN UNION

Brussels, 2 May 2012
(OR. en)

8594/12

Interinstitutional File: 2012/0081 (NLE)

ANTIDUMPING 20
COMER 80

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING REGULATION amending Regulation (EU) No 492/2010 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in, inter alia, the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No … /2012

of

amending Regulation (EU) No 492/2010
imposing a definitive anti-dumping duty on imports of sodium cyclamate
originating in, inter alia, the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[1] ('the basic Regulation'), and in particular Articles 9(4), 11(3), 11(5) and 11(6) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 435/2004 [1], the Council imposed, following an anti-dumping investigation, a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China ('the PRC' or 'the country concerned') and Indonesia ('the original investigation'). Following an expiry review, the Council, by Regulation (EU) No 492/2010 [2] imposed a definitive anti-dumping duty for a further period of five years. The measures were set at the level of dumping and consist of specific anti-dumping duties. The rate of the duty for the PRC ranges between 0 and 0,11 EUR/kilo for individually named Chinese producers with a residual duty rate of 0,26 EUR/kilo imposed on imports from other producers ('current duties').

[1] OJ L 72, 11.3.2004, p. 1.
[2] OJ L 140, 8.6.2010, p. 2.

1.2. Request for a review

(2) A request for a partial interim review ('the current review') pursuant to Article 11(3) of the basic Regulation was lodged by Productos Aditivos S. A., the sole Union producer of sodium cyclamate and the complainant in the original investigation ('the complainant'). The request was limited in scope to dumping and to Golden Time Enterprise (Shenzhen) Co., Ltd. ('GT Enterprise' or 'the company concerned'), member of the Rainbow Rich group ('the group of companies concerned', 'Rainbow group', or "Rainbow"), which was also one of the individually named Chinese producers in the original investigation. The anti-dumping duty applicable to imports of products produced by GT Enterprise is 0,11 EUR/kilo and the duty applicable to imports from the other production companies within the group of companies concerned is 0,26 EUR/kilo (i.e. the residual duty rate).

(3) The complainant provided prima facie evidence that the existing measures are no longer sufficient to counteract the dumping which is causing injury.

1.3. Initiation of a partial interim review

(4) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence to justify the initiation of the partial interim review, the Commission announced, by a Notice of Initiation published in the Official Journal of the European Union[1] on 17 February 2011, the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation limited to the examination of dumping as far as GT Enterprise is concerned.

[1] OJ C 50, 17.2.2011, p. 6.

1.4. Product concerned and like product

(5) The product under review is sodium cyclamate, originating in the People's Republic of China, currently falling within CN code ex 2929 90 00 (‘the product concerned').

(6) As in previous investigations, this investigation has shown that the product concerned produced in the PRC and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in Indonesia which served as an analogue country in the current review. It is therefore concluded that products sold on the domestic market in Indonesia and sold by the group of companies concerned on the Union market are like products within the meaning of Article 1(4) of the basic Regulation.

1.5. Parties concerned

(7) The Commission officially informed the complainant, the company concerned and the representatives of the country concerned about the initiation of the current review. The Commission also advised producers in Indonesia of the initiation of the proceedings, as Indonesia was envisaged as a possible analogue country.

(8) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(9) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the company concerned and received replies from five companies in the Rainbow Group within the deadline set for that purpose. (As the Rainbow group now consists of two production companies (one being GT Enterprise), one raw material supplier, one company previously involved with the product concerned, but now dormant, and a trader in Hong Kong, the review encompassed the activities of the full group).
The Commission also sent questionnaires to producers in Indonesia. One Indonesian producer showed willingness to provide information in the current review and provided a partial reply to the questionnaire.

(10) The Commission sought and verified all information deemed necessary for the analysis of market economy treatment and individual treatment and the determination of dumping.
The Commission carried out verification visits at the premises of the following members of the group of the companies concerned:

– Golden Time Enterprises (Shenzhen) Co. Ltd., Shenzhen, PRC, (GT Enterprise),

– Jintian Industrial (Nanjing) Co. Ltd., Nanjing, PRC,

– Golden Time Chemical (Jiangsu) Co. Ltd., Jiangsu, PRC,

– Nanjing Jinzhang Industrial Co. Ltd., Nanjing, PRC,

– Rainbow Rich Ltd., Hong Kong.

1.6. Review investigation period

(11) The investigation of dumping covered the period from 1 January 2010 to 31 December 2010 ('the review investigation period' or 'RIP').

2. RESULTS OF THE INVESTIGATION

2.1. Market economy treatment (MET)

(12) In anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) thereof. Briefly, and for ease of reference only, the criteria in Article 2(7)(c) of the basic Regulation, fulfilment of which the applicant companies have to demonstrate, are set out in summarised form below:

– business decisions and costs are made in response to market conditions, and without significant State interference and costs of major inputs substantially reflect market values,

– accounting records are independently audited in line with international accounting standards and applied for all purposes,

– there are no significant distortions carried over from the former non-market economy system,

– legal certainty and stability are provided by bankruptcy and property laws,

– currency exchanges are carried out at the market rate.

(13) The group of companies concerned requested MET pursuant to Article 2(7)(b) of the basic Regulation and submitted claim forms for four producers located in the People's Republic of China. The Commission sought and verified at the premises of the companies all information submitted in the companies' requests and deemed necessary.

(14) The current review revealed that the situation of the company concerned changed since the original investigation. It was found that GT Enterprise no longer meets all MET criteria. Furthermore, compared to the original investigation the Rainbow group had been enlarged and restructured. The other companies within the group that submitted claim forms could not demonstrate either that they meet all MET criteria.

(15) With regard to criterion 1 concerning business decisions and state interference, it was found that the local government has the authority to interfere in the hiring and dismissal of personnel in one company within the group. Furthermore, the local government is a major shareholder of the company producing raw materials. Indications of significant state interference were identified in the supply of raw materials to the company (electricity and water) and by the company to its related companies, in labour costs and in the operations and decision-making of this company. As a way of example the state shareholder outsourced personnel to the raw material producer at terms that the company could not specify. Furthermore, the company has been continuously loss-making due to selling raw material at abnormally low prices to its related companies and without any further compensation e.g. in the form of profit distribution. Through the accumulation of these losses, the state-owned raw material producer influenced the decisions of the related companies with regard to purchase of raw materials for the production of sodium cyclamate. Finally, interference and influence could be detected in the financing and investment decisions of another company within the group by a local government agency.

(16) With regard to criterion 2 concerning accounting, the investigation showed that accounting records of all members of the group of companies concerned were not in line with international accounting standards as a number of material accounting shortcomings and errors were found which were not reported by the auditors.

(17) With regard to criterion 3, it was found that distortions were carried over from the non-market economy system through the provision of infrastructure investments to one company of the group for free. The same company benefited from favourable rental conditions for the land it uses. The other companies within the group could not demonstrate that they acquired their land use rights in return for a consideration and/or that the consideration would have reflected a market value. Finally one company was not able to demonstrate that certain assets transferred to it were made for monetary consideration or otherwise at prices reflecting market values.

(18) Finally, with regard to criteria 4 and 5, it was found that the companies met the criteria as the companies were subject to bankruptcy and property laws which guaranteed stability and legal certainty. Currency conversions were carried out at or following the official rate published by the Bank of China.

(19) The group of companies concerned and the complainant were given an opportunity to comment on the above findings. The complainant had no comments but the group of companies concerned objected on several grounds. Some of these comments were reiterated after final disclosure of the facts and considerations on the basis of which it was proposed to impose definitive measures. The most important comments received are described in the recitals below.

(20) The Rainbow group firstly stated that the Commission illegally imposed an obligation to re-qualify for MET as the group was given MET in the original investigation and the expiry review and thus the legal obligation to apply the same methodology in reviews as in the original investigation was breached. It argued that the Commission has not shown that circumstances of this company had changed in a way that would justify a different method to that applied in the original investigation. According to the claimant several of the issues indentified by the Commission had already existed at the time of the original investigation and thus the Commission's new findings do not relate to new circumstances but are merely a different interpretation of the same circumstances.

(21) It should be noted that, contrary to the claimant's statement, the same methodology was applied both in the original investigation and in the current review whereas due account was taken of the fact that certain circumstances have changed since the original investigation. Even if the claimant's argumentation would be correct in relation to certain facts that were indeed the same during both the original and current investigations, namely in relation to GT Enterprise's land use right agreement, the following can be noted. The current review established additional other facts that - even though they had already existed during the original investigation - were not disclosed at that time by GT Enterprise, such as the local government's authority to approve the hiring and dismissal of its personnel. Finally, the circumstances of the company have also changed since the original investigation in respect of criterion 2. That is because it was established in the current review that during the RIP GT Enterprise had not had a clear set of accounting records that were independently audited in line with international accounting standards and applied for all purposes.

(22) The claimant later explained that it considers that it had disclosed the local government's authority to approve the hiring and dismissal of its personnel by providing in the original investigation the same Articles of Association as in the current review. However, the translation of this document provided by the claimant both during the original and current investigation was incomplete as it did not disclose the powers given by the Articles of Association to the local government.

(23) The Rainbow group further argued that the MET regime was introduced for countries with an economy in transition, i.e. from the former non-market economy system towards a market economy. It would therefore be illogical to require a company that previously qualified for MET to once again submit sufficient evidence in an interim review that it still qualifies for MET. In this respect it should be noted that there is nothing in the basic Regulation which would support such an interpretation and which would prevent the application of Article 2(7)(c) of the basic Regulation in reviews initiated pursuant to Article 11(3) of the basic Regulation. Therefore, this argument had to be dismissed.

(24) The Rainbow group also invokedthe procedural requirement in Article 2(7)(c) that an MET determination shall be made within three months of the initiation of the investigation. Rainbow itself acknowledges that exceeding this deadline is in itself insufficient ground to contest the results of the investigation, but it highlights that the Commission services already had all the information necessary to calculate the dumping margin at their disposal when MET findings were disclosed. In its argumentation Rainbow however ignores the fact that even though the Commission indeed for administrative efficiency requested and verified all necessary information from the group of companies concerned at the same time, it had not had at its disposal information about the analogue country that would have made it possible to determine the dumping margin in case of rejecting MET. Indeed, information concerning the normal value in the analogue country was made available to the Commission only after the findings concerning MET had been disclosed to Rainbow. Thus the timing of the MET determination could not have any impact on its content. In the light of the above, this claim is rejected as unfounded.

(25) With respect to criterion 1, it has been submitted as a general comment that the theoretical possibility of state influence or state control per se does not automatically mean that there is an actual and significant state interference within the meaning of Article 2(7)(c). Rainbow repeatedly quotes a decision of the Court of First Instance [1] to argue that state control does not equal significant State interference because this would "lead to the exclusion, in principle, of state-controlled companies from entitlement to MES, irrespective of the real factual, legal and economic context in which they operate." Rainbow also claims that it would mean an unreasonable burden of proof on MET applicants if they were to show that there can never be a possibility for the state to interfere in business decisions. Further it argues that the state action would have to render the company's decisions incompatible with market considerations so as not to be in line with criterion 1.

[1] Zhejiang Xinan Chemical Industrial Group Co. Ltd. v Council, Case T-498/04, 2009 ECR II-1969, at paragraph 92.

(26) Contrary to the above assertions by the Rainbow group, the current investigation established specific and significant state interference in the operations of several companies within the group. In the case of the group company in which the hiring and dismissal of personnel was subject to the approval of the local government, it is the company's own rules of internal functioning, i.e. its Articles of Association, that clearly provide the authority for the state to interfere in its operational decisions. In the case of another group company, the state partner was found to have had an influence in the company in a manner which is incompatible with market considerations. Firstly, the state partner had contributed most of the capital to this company without this fact being reflected in the share of its ownership of the company. Secondly, the company's operations were always loss-making, which was mostly detrimental to the state partner given the capital it invested. Thirdly, the state partner itself incurred continuous losses as it supplied inputs such as water and electricity to the group company at below market prices and without proper receipt of payment.

(27) Concerning the conclusion on state interference in the financing and investment decisions of another member of the group of companies concerned, it was submitted that factual findings of the Commission on a loan and its conditions were incorrect. The Commission however, has evidence collected during the verification showing that the company was instructed by a local government agency to take a loan which was not related to its business operations. The company reasons that the financing decisions were taken as a favour to this government agency and not as an obligation and the transaction in question was without further risk to the company since it would have had the possibility to seek compensation through the non-payment of utilities' invoices issued to it by the agency. The evidence collected by the Commission shows that the land use right of the company is indirectly used as a security in the relevant financial transaction; therefore the company bears significant risk. The land use right itself was acquired through the same government agency to whom the company alleges to have been providing only a favour. The allegation that a compensation would have been possible through non payment for utilities demonstrates a basic misunderstanding of basic accounting standards (offsetting) and contradicts the company's further claim that influence on financial operations as such do not mean an influence on "decisions on firms regarding prices, costs and inputs" as required by Article 2(7)(c). Furthermore, investment decisions are clearly and significantly influenced by the government agency as there are company-specific requirements set in the land use right agreement of the company on the investment to be performed and these requirements go beyond local zoning laws contrary to what has been suggested by the company. Therefore the claim that state interference in the financing and investment decisions do not amount to an influence according to Article 2(7)(c) is rejected.

(28) As to the group company producing one of the raw materials used in the production of sodium cyclamate, it was claimed that any shortcomings with respect to the company's decision-making and financial situation would have a very limited impact as the raw material produced by this company represents only around 10 % of the cost of production of sodium cyclamate. As the Commission was able to calculate the difference between profitable sales price and actual sales price of the raw material, the company suggests that it would be more appropriate to adjust the costs of low-priced raw material rather than rejecting MET. However, the objective of the MET assessment is to ascertain that inputs reflect market values and business decisions are made in response to market signals. It should be noted that Article 2(7)(c) of the basic Regulation explicitly requires that costs of major inputs substantially reflect market value in order the conditions for the MET to be met without making any reference to the possibility of adjusting the distorted costs of major inputs. Therefore this claim has to be rejected.

(29) The company's claim concerning the abnormally low prices paid for water and electricity and labour costs - arguing that these are not major inputs only representing in total around 14 % of the total cost of production of the raw material - had to be rejected as this is considered, both individually and cumulatively, a significant enough cost element to have an impact on the total costs of the company. In the case of labour costs it is also noted that it was not possible to fully verify these elements as the company was not able to provide contracts or other documentation. Therefore it could not be ascertained that these costs reflected market values.

(30) With respect to criterion 2 it was argued that the Commission ignored the materiality principle pursuant to which omissions or misstatements of items are material only if they could influence the economic decisions that users make on the basis of financial statements and that such immaterial shortcomings would not need to be reported by the auditor either.

(31) Contrary to what the group claims, there were serious shortcomings in the accounting of the companies in relation to basic accounting principles (see, for more details, the next paragraph). Secondly, the objective of requiring a clear set of accounts for MET purposes is not for a user making economic decisions but to ensure that the financial statements provide a true and fair view of revenues, costs, etc. The objective of the MET investigation is to establish whether accounts are kept and audited in accordance with international accounting standards.

(32) The Rainbow group disputed that its companies breached the elements of the IAS rules and accounting practices mentioned in the MET assessment such as the accrual principle, faithful representation of transactions principle and offsetting, going concern principle, correct classification of balance sheets items, recognition of losses, only business related transactions and recordings within the accounts, correct classification and depreciation of expenses, respect of IAS and/or Chinese GAAP rules on the recognition of the value and depreciation of assets. The above-mentioned breaches of IAS were identified from the information provided by the group in its MET claim form and all issues were subject to verification at the premises of the companies. The arguments presented by the companies on these issues following the disclosure of the MET findings were not such as to warrant a change in the conclusion that, in regard to these issues, the companies failed criterion 2.

(33) With respect to criterion 3, the Rainbow group claims that the provision of infrastructure investments to one company for free is a normal activity that also takes place in market economies in order to attract investments and that the impact of this subsidization would be negligible on the financial situation of the company in the RIP. However, the fact that a company could avoid payments for infrastructure developments and at the same time benefited from very low rental prices for the same land do not reflect a normal situation in a market economy. This benefit on the other hand had a direct impact on the financial position of the production company and its ability to take decisions in response to market signals.

(34) The Commission accepted the claimant's arguments concerning GT Enterprise's land use right as explained in recital (21). Arguments presented concerning the land use right by the other companies however were not such as to reverse findings as the company itself acknowledges that it had not paid the agreed amount for its land use right in one case. In the case of another land use right the Rainbow group claims that prices of land in that region had been rising sharply and thus it is normal that the land was valued significantly higher a few years after its acquisition date. However, the evidence provided by the company referred to price increases for residential properties in the region and thus it is irrelevant. Rainbow ultimately claimed that the Commission's approach of requiring positive evidence that a company has paid a price that reflects market value imposes an unreasonable burden of proof. However, Article 2(7)(c) of the Basic Regulation explicitly requires that a claim for market economy treatment must "contain sufficient evidence that the producers operates under market economy conditions". Therefore this argument had to be rejected.

(35) Rainbow group contests the finding on assets transferred to one company without a monetary consideration or otherwise at prices reflecting market values on the basis that this company had stopped production in the RIP. Indeed the company stopped production. However, the company was still selling its previously produced products on the domestic market. Thus an MET assessment had to be performed for this company as well to ascertain that there were no significant distortions carried over from the former non-market economy system that could affect prices.

(36) It is therefore considered that GT Enterprise failed to meet the first and second criteria for MET, Jintian Industrial (Nanjing) Ltd. failed to meet criterion two and three, Golden Time Chemical (Jiangsu) Ltd. failed to meet criteria one and two and three for MET and Nanjing Jinzhang Industrial Ltd. failed to meet criteria one, two and three. If one related company associated with the production and sale of the product concerned does not qualify for MET, MET cannot be granted to the group of related companies. Therefore, as all of the companies assessed for MET individually failed to meet the relevant criteria it is concluded that the Rainbow group cannot be granted MET. In these circumstances, after consulting the Advisory Committee, the group of companies concerned was denied MET.

2.2. Individual treatment (IT)

(37) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation to be granted IT. Briefly, and for ease of reference only, these criteria are set out below:

– in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits,

– export prices and quantities, and conditions and terms of sale are freely determined,

– the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from state interference,

– exchange rate conversions are carried out at the market rate, and

– state interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(38) The two exporting producers within the group having exported sodium cyclamate during the RIP claimed IT. It was not necessary to make an IT assessment for the other companies in the Rainbow group given that they are not exporters of the product concerned. On the basis of the information available and verified during the verification visits, it was found that these two exporting producers fulfilled the requirements foreseen in Article 9(5) of the basic Regulation and thus could be granted IT.

2.3. Dumping

2.3.1. Analogue country

(39) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country).

(40) In the Notice of Initiation the Commission indicated its intention to use Indonesia (the analogue country in the original investigation) as appropriate analogue country for the purpose of establishing normal value and invited interested parties to comment thereon.

(41) The Commission has received no comments on the choice of the analogue country.

(42) The Commission sought cooperation from producers in Indonesia. Letters and relevant questionnaires were sent to all known companies. Of the several companies contacted, only one producer submitted the necessary information for the determination of normal value and agreed to partially cooperate with the review. As the company could not accept a verification visit at its premises, the Commission analysed the information provided for completeness and consistency. The information was found to be sufficient and reliable for the determination of the normal value and, whenever necessary, the Indonesian producer provided clarifications sought by the Commission. The information used was cross-checked with information provided in the review request.

(43) The investigation established that Indonesia has a competitive market for the like product.

(44) The investigation further revealed that the production volume of the cooperating Indonesian producer constitutes considerably more than 5 % of the volume of Chinese exports of the product concerned to the Union, hence the production was representative in terms of volume. As for the quality, technical specifications and standards of the like product in Indonesia, no major overall differences were found when compared to Chinese products. Therefore, the Indonesian market was deemed sufficiently representative for the determination of normal value.

(45) It is noted that to the Commission's knowledge there are no other production facilities elsewhere in the world, besides the known producers in Spain, the PRC and Indonesia.

(46) In view of all the above it was concluded that Indonesia constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

2.3.2. Determination of normal value

(47) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of information received from the producer in the analogue country as set out below. It is noted that the Indonesian producer was investigated in a previous investigation concerning imports of sodium cyclamate from Indonesia[1]. The data now provided by the company in its questionnaire response were found to be reliable and a solid basis to establish normal value for the purposes of this investigation. Indeed, average sales prices as well as the average cost of production followed a similar trend in line with the evolution of the average raw material cost. In addition, this trend could be confirmed by a similar evolution of the average raw material cost observed in the Union market.

(48) The domestic sales of the Indonesian producer of the like product were found to be representative in terms of volume compared to the product concerned exported to the Union by the group of companies concerned in the PRC.

[1] See Regulation (EU) No 492/2010 (OJ L 140, 8.6.2010, p. 2).

(49) The Commission subsequently identified those product types, sold domestically by the producer in the analogue country, that were identical or directly comparable to the types sold for export to the Union. The standard product type of the Indonesian producer was found to be directly comparable.

(50) For the standard product type sold by the producer in the analogue country on its domestic market and found to be directly comparable with the type sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of sodium cyclamate were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type exported to the Union by the group of companies concerned.

(51) An examination was also made as to whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing for the standard product type the proportion of profitable sales to independent customers on the domestic market during the investigation period. Since the volume of profitable sales of the like product per product type represented more than 80 % of the total sales volume of that type and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

(52) In the determination of the normal value for the product type that had not been sold on the domestic market by the producer in the analogue country, the weighted average sales price of all the sales of the standard product type was used, after having adjusted for differences within the two product types.

2.3.3. Export price

(53) All exporting producers within the group of companies concerned made export sales to the Union through their related trading company located outside the Union. The export price was established on the basis of the prices of the product when sold by the related trading company to the Union, i.e. to an independent buyer, in accordance with Article 2(8) of the basic Regulation on the basis of prices actually paid or payable.

2.3.4. Comparison

(54) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport, insurance, handling, loading and ancillary costs and credit cost where applicable and supported by verified evidence.

2.3.5. Dumping margin

(55) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price for all exporting producers, in accordance with Article 2(11) of the basic Regulation.

(56) This comparison showed a dumping margin of 14,2 %, expressed as a percentage of the CIF frontier price, duty unpaid.

2.4. Lasting nature of changed circumstances

(57) In accordance with Article 11(3) of the basic Regulation, it was examined whether the circumstances on the basis of which the current dumping margin was based have changed and whether such change was of a lasting nature.

(58) The current findings are based on the rejection of the claim for the market economy treatment to the group of companies concerned in the current review whereas the member of the group of related companies investigated in the original investigation GT Enterprise was granted MET. The circumstances that led to the different conclusion are firstly due to the fact that in the current review four companies within the group were investigated as compared to only GT Enterprise in the original investigation. The group was recently enlarged and reorganized with considerable investments and there is no indication that this situation would change in the foreseeable future. Secondly, as regards GT Enterprise, it was found that the company's practice of not keeping a clear set of accounting audited in line with international accounting standard is an established practice and nothing indicates that this would change in the future. Also, its Articles of Association allowing for state influence had been in force for a longer period and there were no indications for their amendment in the future. In these circumstances, it is considered that the non-MET status of the group is of a lasting nature.

(59) Furthermore, as regards export price, the investigation showed certain stability in pricing policies of the group of companies concerned over a longer period since the price of the product concerned charged to the Union and to other third countries did not differ significantly and followed the same trend between 2007 and the RIP. This supports the conclusion that the newly calculated dumping margin is likely to be of a lasting nature.

(60) It was therefore considered that the investigation showed that the structure and behaviour of the group of companies concerned, including the circumstances that led to the initiation of the current review, were unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer sufficient to offset dumping.

3. AMENDMENT OF THE ANTI-DUMPING MEASURES

(61) In view of the findings of increased dumping as well as the lasting nature of the changed circumstances, it is considered that the existing measures are no longer sufficient to counteract the dumping which is causing injury. The measures imposed by Regulation (EU) No 492/2010 on imports of sodium cyclamate originating in the PRC should therefore be modified for GT Enterprise and the same duty should be imposed to the other exporting producer within the group by amending that Regulation accordingly.

(62) No individual injury margin can be established in the current review, since it is limited to the examination of dumping as far as the GT Enterprise and its related companies within the group are concerned. Therefore, the dumping margin established in the current review was compared to the injury margin as established in the original investigation. Since the latter was higher than the dumping margin found in the current review, a definitive anti-dumping duty should be imposed for the group of companies concerned at the level of the dumping margin found in the current review.

(63) Regarding the form of the measure, it was considered that the amended anti-dumping duty should take the same form as the duties imposed by Regulation (EU) No 492/2010. To ensure efficiency of the measures and to discourage price manipulation it was considered appropriate to impose duties in the form of a specific amount per kilo. As a result, the anti-dumping duty to be imposed on imports of the product concerned produced and sold for export to the Union by the group of companies concerned, calculated on the basis of the dumping margin as established in the current review expressed as a specific amount per kilo, should be EUR 0,23 per kilo.

4. DISCLOSURE

(64) The group of companies concerned as well as the other parties concerned were informed of the essential facts and considerations on the basis of which it was intended to propose the amendment of the anti-dumping measures in force.

(65) Rainbow group commented on the final disclosure. These comments related mostly to the withdrawal of the complaint in the ongoing investigation concerning imports of sodium cyclamate originating in the People's Republic of China limited to two Chinese exporting producers, Fang Da Food Additive (Shen Zhen) Limited and Fang Da Food Additive (Yang Quan) Limited ("Fang Da group") ("parallel proceeding")[1]. Rainbow claimed that the withdrawal of the complaint in the parallel proceeding should, logically and legally, also result in the termination of anti-dumping measures against other producers in the PRC or, at the least, result in the termination of the current review with respect to Rainbow group.

[1] OJ C 50, 17.2.2011, p. 9.

(66) It demanded the termination of the anti-dumping measures imposed by Regulation (EU) No 492/2010 arguing that in the absence of any finding that imports by Fang Da were not dumped and/or imports by Fang Da were not causing injury, the principle of non-discrimination contained in Article 9(5) of the basic Regulation mandates the termination of the anti-dumping measures imposed. To support its argument it referred to previous Council Regulations where simultaneous interim reviews concerning imports of some countries were terminated without the imposition of measures following the non-imposition of measures in anti-dumping investigations concerning the imports of the same products from other countries (LAECs [1], Flat-Rolled Products of Iron or Non-Alloy Steel[2]). However, it should be noted that these cases refer to investigations where several countries were concerned and the principle of non-discrimination was applied vis-à-vis imports from different countries. Secondly, in these cases the reason for terminating the measures on some countries was that measures on other countries were not imposed because the Council did not adopt the proposal within the statutory time limits (LAECs, Flat-Rolled Products of Iron or Non-Alloy Steel). Therefore even though indeed it was found necessary to terminate the proceedings of anti-dumping measures in the simultaneous proceedings in the quoted cases in order to respect the principle of non-discrimination, these have no relevance for the current review. A further reference to the approach taken in Monosodium Glutamate [3] concerns a case where the complainant intended to withdraw its complaint concerning imports of Brazil even though these were found to have been dumped. In that case it was envisaged not to accept the withdrawal of the complaint because it was concluded that to take measures against the other countries in the absence of measures against Brazil would have been discriminatory.

---

1 OJ L 22, 27.1.2000, p. 1, recitals (134) and (135).
2 OJ L 294, 17.9.2004, p. 3.
3 OJ L 264, 29.9.1998, p. 1.

(67) Furthermore, the two situations are quite different. In the parallel proceeding, the complaint was withdrawn and it was concluded that the termination was not against the Union interest. In the current review, the request was maintained and it was found that the dumping by the Rainbow group increased. Therefore, increasing the duty for that group does not constitute discrimination.

(68) The Rainbow group also demanded that the withdrawal of the complaint should result in the termination of the current review with respect to Rainbow group as the two proceedings were initiated on the basis of the same procedural document, covered the same period of investigation and in the complaint the Complainant treated Fang Da group and Rainbow group together for all practical purposes.

(69) Secondly, it claimed that despite the investigation against Fang Da group being initiated under Article 5 of the basic Regulation, the investigation concerning imports of the Fang Da group and the interim review concerning the imports of Rainbow group are legally and for all practical purposes in essence the same proceeding. Finally it stated that having created the distinction between proceedings and investigations, Article 9(3) of the basic Regulation in effect means that even though Fang Da group was subject to a zero duty following the original investigation, it remained subject to the proceeding. For this reason, the withdrawal of the complaint concerning the imports by the Fang Da group should thus in view of the Rainbow group concerned result in the termination of the current review as well.

(70) It should be noted in this respect that the document presented by the complainant constituted both the complaint for the anti-dumping investigation on the basis of Article 5 of the basic Regulation and the request for this interim review on the basis of Article 11(3) of the basic Regulation. It also presented sufficient evidence to justify initiating both proceedings individually. Indeed, the Commission has initiated the Article 5 investigation and the interim review in two separate Notices of initiation. Thus the anti-dumping investigation based on Article 5 of the basic Regulation and the interim review based on Article 11(3) of the basic Regulation are two different proceedings.

(71) Rainbow group presented further arguments speculating on the possible reasons for the withdrawal of the complaint. As these arguments are hypothetical and irrelevant, they cannot be addressed and are thus rejected.

(72) Finally, Rainbow group stated that the Commission has manifestly violated its rights to have ten days to comment on the final disclosure as a non-confidential version of the withdrawal letter was disclosed to it 7 days before the deadline to submit comments.

(73) As explained in recital (70), the Article 5 investigation in the framework of which Rainbow group received an information letter about the withdrawal of the complaint is a separate proceeding from the current review. Rainbow group was an interested party in the Article 5 review and only for this reason was it notified of the withdrawal of the complaint. This notification letter was not part of the final disclosure in the current review. The Rainbow group had 30 days to comment on the final disclosure in the current proceeding. Therefore its right to have sufficient time to comment was not violated.

(74) To sum up, the comments received were not such as to change the above conclusion,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Council Regulation (EU) No 492/2010 is hereby amended by replacing the following:

"

Country	Company	Rate of duty (EUR per kilogramme)	TARIC additional code
The People's Republic of China	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

"

with the following:

"

Country	Company	Rate of duty(EUR per kilogramme)	TARIC additional code
The People's Republic of China	Golden Time Enterprise (Shenzhen) Co. Ltd, Shanglilang, Cha Shan Industrial Area, Buji Town, Shenzhen City, Guangdong Province, People's Republic of China ; Golden Time Chemical (Jiangsu) Co., Ltd., No. 90-168, Fangshui Road, Chemical Industry Zone, Nanjing, Jiangsu Province, People's Republic of China	0,23	A473

".

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