

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

COMMISSION

Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain broad spectrum antibiotics originating in India

(2007/C 212/12)

The Commission has decided on its own initiative to initiate a partial interim review limited to the level of subsidization for certain Indian exporting producers pursuant to Article 19 of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation')⁽¹⁾.

1. Product

The product under review is amoxicillin trihydrate, ampicillin trihydrate and cefalexin not put up in measured doses or in forms or packings for retail sale originating in India ('the product concerned'), currently classifiable within CN codes ex 2941 10 10, ex 2941 10 20 and ex 2941 90 00. These CN codes are given only for information.

2. Existing measures

The measures currently in force are a definitive countervailing duty imposed by Council Regulation (EC) No 713/2005⁽²⁾ on imports of certain broad spectrum antibiotics originating in India.

3. Grounds for the review

There is sufficient *prima facie* evidence available to the Commission that the circumstances with regard to subsidisation on the basis of which measures were established have changed and that these changes are of a lasting nature.

Indeed, the benefits from two subsidy schemes (the Duty Entitlement Passbook Scheme ('DEPBS') and the Income Tax Exemption under Section 80 HHC of the Income Tax Act ('ITES')) appear to have significantly decreased. This is due to the modification of the relevant basic Indian laws on which these schemes are based.

As a consequence, the level of subsidisation is likely to have decreased for those companies whose measures are based either fully or partly on benefits obtained from one or both of the aforesaid two schemes in the investigation period used in the investigation that led to the determination of the level of the existing measures.

This indicates that the measures mentioned in the preceding paragraph on imports of the product under review at their present level may no longer be necessary to counteract the current subsidisation. Therefore, the measures should be reviewed for the companies in question.

These companies include those listed in the Annex and any other producer of the product under review that makes itself known to the Commission within the deadline set in point 5(b)(i) below and demonstrates within the same time limit that (1) it enjoyed benefits from one or both of the two schemes mentioned above during the investigation period used in the investigation that led to the determination of the level of the measure to which they are subject (1 April 2002-31 March 2003), and that (2) given the structural changes in these schemes as mentioned above, the benefit accruing from these schemes has decreased.

In addition, if the review investigation shows or any interested party provides sufficient *prima facie* evidence within the deadline set in point 5(a)(i) below that exporters of the product concerned that are concerned by the current review are benefiting from subsidy schemes other than those mentioned above, an investigation of these schemes may also be made within the framework of the current review.

Insofar as the modified subsidy margins resulting from the current investigation could have an impact on the measures applicable for cooperating companies in the investigation that set the level of the measures and/or on the residual measure applicable for all other companies, these rates may be revised accordingly.

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

⁽²⁾ OJ L 121, 13.5.2005, p. 1.

4. Procedure

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an *ex officio* partial interim review, the Commission hereby initiates a review in accordance with Article 19 of the basic Regulation.

The investigation will assess the need for the continuation, removal or amendment of the existing measures in respect of those companies having benefited from one or both subsidy schemes mentioned above and, for those companies, in respect of other schemes where sufficient evidence is provided as mentioned in point 3, paragraph 6 above. The investigation will also assess the need, depending on the findings of the current investigation, to revise the measures applicable to other companies that cooperated in the investigation that set the level of the existing measures and/or the residual measure applicable for all other companies.

(a) Sampling

In view of the apparent number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 27 of the basic Regulation.

(i) Sampling for exporters/producers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 5(b)(i) and in the formats indicated in point 6:

- name, address, e-mail address, telephone, and fax numbers and contact person,
- the turnover in local currency and the volume in kg of the product concerned sold for export to the Community during the period 1 April 2006 to 31 March 2007,
- the turnover in local currency and the sales volume in kg of the product concerned sold on the domestic market during the period 1 April 2006 to 31 March 2007,
- whether the company intends to claim an individual subsidy rate (individual subsidy rates can only be claimed by producers) ⁽¹⁾,

⁽¹⁾ Individual margins may be claimed pursuant to Article 27(3) of the basic Regulation for companies not included in the sample.

- the precise activities of the company with regard to the production of the product concerned and the production volume in kg of the product concerned, the production capacity and the investments in production capacity during the period 1 April 2006 to 31 March 2007,
- the names and the precise activities of all related companies ⁽²⁾ involved in the production and/or selling (export and/or domestic) of the product concerned,
- whether the company received benefits under the DEPBS and/or the ITES in (i) the investigation period used in the investigation that led to the determination of the level of the measure to which it is currently subject (1 April 2002-31 March 2003) and/or (ii) in the period 1 April 2006 to 31 March 2007,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have co-operated in the investigation. The consequences of non-cooperation are set out in point 7 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country, and any known associations of exporters/producers.

(ii) Final selection of the sample

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in point 5(b)(ii).

The Commission intends to make the final selection of the sample after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the sample must reply to a questionnaire within the time limit set in point 5 (b)(iii) and must co-operate within the framework of the investigation.

⁽²⁾ For guidance on the meaning of related companies, please refer to Article 143 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 (OJ L 253, 11.10.1993, p. 1).

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 27(4) and 28 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 7.

(b) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled companies and to the authorities of the exporting country concerned.

(c) *Collection of information and holding of hearings*

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 5(a)(i).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 5(a)(ii).

5. Time limits

(a) *General time limits*

- (i) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies, in particular the authorities of the exporting country concerned, or any other information, including that mentioned in point 3 sixth paragraph, within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

(ii) *Hearings*

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) *Specific time limit in respect of sampling*

- (i) The information specified in point 4(a)(i) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (ii) All other information relevant for the selection of the sample as referred to in 4(a)(ii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

6. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 29(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'FOR INSPECTION BY INTERESTED PARTIES'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate H
Office: J-79 4/23
B-1049 Brussels
Fax (32-2) 295 65 05

7. Non-cooperation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

⁽¹⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 28 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

8. Schedule of the investigation

The investigation shall be concluded, according to Article 22(1) of the basic Regulation, within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

9. Other interim reviews under Article 19 of the basic Regulation

The scope of the current review is as set out in point 4 above. Any party wishing to claim a review on the basis of other grounds may do so in accordance with the provisions of Article 19 of the basic Regulation.

10. Processing of personal data

Please note that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

ANNEX

- KDL Biotech Ltd, Mumbai
 - Nectar Lifesciences Ltd, Chandigarh
 - Nestor Pharmaceuticals Ltd, New Delhi
 - Ranbaxy Laboratories Ltd, New Delhi
 - Surya Pharmaceuticals Ltd, Chandigarh
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⁽¹⁾ OJ L 8, 12.1.2001, p. 1.