

# MINISTRY OF PRODUCTIVE DEVELOPMENT

## Resolution 464/2022

RESOL-2022-464-APN-MDP

City of Buenos Aires, 30/05/2022

Having REGARD TO File No EX-2021-99702221-APN-DGD # MDP, Law on Ministries No 22.520 (text ordered by Decree No 438/92) and its amendments, Law No 24.425, Decree No 1.393 of 2 September 2008, Resolutions No. 437 of 26 June 2007 of the former MINISTRY FOR ECONOMY AND PRODUCTION and its amendments, 366 of 24 July 2020 of the MINISTRY FOR PRODUCTIVE DEVELOPMENT and 1.161 of 28 December 2021 of the Secretary of Industry, ECONOMY OF THE CONOCIMIENTO AND COMERCIAL MANAGEMENT EXTERNAL of the MINISTRY FOR PRODUCTIVE DEVELOPMENT, and

### RECITAL:

By means of the file referred to in the Visto, the petrochemical signatures ARGENTINA S.A. and DUTCH STARCHES INTERNATIONAL S.A. requested the initiation of an investigation into alleged dumping of exports to the ARGENTINE REPUBLIC of 'Benzoato de Sodio' originating in the REPUBLIC POPULAR CHINA and the KINGDOM OF THE NETHERLANDS, which it classifies in the tariff position of the MERCOSUR Common Nomenclature (N.C.M.) 2916.31.21.

By Resolution No 1.161 of 28 December 2021 of the Secretary of State for Industry, the ECONOMY OF CONOCIMIENTO AND EXTERNAL TRADE MANAGEMENT of the MINISTRY FOR PRODUCTIVE DEVELOPMENT, it was declared appropriate to initiate the investigation into alleged dumping of exports to the ARGENTINE REPUBLIC of the product described in the previous recital, originating in the Republic of China and the Kingdom of the Netherlands.

That, on 18 March 2022, the COMMERCIAL POLICY AND MANAGEMENT SUBSTANCE of the Secretariat for Industry, the ECONOMY OF THE CONOCIMIENTO AND EXTERNAL MANAGEMENT of the MINISTRY FOR PRODUCTIVE DEVELOPMENT, drew up the corresponding Preliminary Determination Report of the Dumping Margin, in which it took the view that '... on the basis of the information provided by the signatures submitted and certified in this investigation and in accordance with the technical analysis carried out, there is evidence to make it possible to determine first the existence of dumping practices for the purposes of dumping'.

In that report, it was preliminarily established that the dumping margin for this stage of the investigation for export operations to the ARGENTINE REPUBLIC of the product under investigation originating in the REPUBLIC POPULAR CHINA is two COMA ACCOUNT AND DOS BY CIENTO (2.42 %), and for export operations originating in the Kingdom of the NETHERLANDS is TREINTA AND DOS COMA VEINTIOCHO BY CIENTO (32.28 %).

In accordance with Article 21 of Decree No 1.393 of 2 September 2008, the Sub-Secretariat for Political Affairs and Trade, by letter dated 21 March 2022, sent the above-mentioned report on the preliminary determination of the dumping margin to the NATIONAL COMMISSION FOR EXTERNAL TRADE, a body deconcentrated within the Secretariat of Industry, ECONOMY OF THE CONOCIENT AND COMERCIAL MANAGEMENT EXTERNAL of the MINISTRY FOR PRODUCTIVE DEVELOPMENT.

For its part, the NATIONAL EXTERNAL TRADE COMMISSION was issued in respect of the injury to the domestic industry and its causal link with the dumping established by the GOODS by means of Directory Act No 2426 of 18 April 2022, in which it first established that ‘... the domestic industry of ‘sodium benzoate’ suffers significant injury caused by dumped imports originating in the People’s Republic of China and the Kingdom of the Netherlands, thus establishing the elements of the causal link required to continue the investigation’.

In this regard, the National Commission recommended that “... provisionally apply an ad valorem duty of an amount equivalent to the margin of dumping, i.e. 2.42 % for China and 32.28 % for the Netherlands”.

On 18 April 2022, the National Commission sent a summary of the considerations relating to the preliminary determination of damage made by means of Directory Act No 2426.

As regards the material injury to the domestic industry, the National Commission observed that ‘... as in the previous stage, imports of sodium benzoate from China and the Netherlands increased in the full years of the period analysed, maintaining a share of the total imported of more than 71 %. This is accompanied by average FOB prices which in the case of China decreased and which in the case of the Netherlands fluctuated”.

In this regard, the National Commission stated that ‘... in a context where apparent consumption grew throughout the period under analysis, the imports under investigation had a growing market share from 36 % in 2018, 46 % in 2019 and 45 % in 2020. In this framework, DSI decreased its market share over the full years of the investigation period. It should be noted that during the partial months of 2021 imports under investigation decreased their market share to 28 %, in a context where international trade observed exceptional circumstances — stemming from the economic effects of the COVID-19 pandemic — with an anomalous rise in international freight prices, gaps in certain key industrial inputs and delays in the provision of different global chains. Such a context makes it difficult to compare what occurred during the partial period of 2021 in the present investigation.’

The National Commission also pointed out that ‘... during the period under investigation, it was observed in a scenario where the domestic industry was in a position to supply all apparent consumption’.

In turn, the NATIONAL EXTERNAL TRADE COMMISSION added that ‘... as in the previous stage, the relationship between imports from the sources under investigation and domestic production remained at high levels in the full years of the period before falling to 43 % in January-November 2021’.

On the basis of the above, the National Commission stated that ‘... price comparisons show that the price comparisons for the product under investigation were substantially lower than those of the product under investigation’.

The National Commission then noted that ‘... in 2019 and 2020 the costs were rising and the price/cost ratio was always below the unit, with the same behaviour being detected in the specific accounts and in the respective total sales/cost ratio, with the exception of the partial period of 2021 with a value higher than the unit but insufficient according to the CNCE benchmark for the sector’.

The National Commission also observed that ‘... for its part, the average sales prices of the two relief companies showed mostly positive variations in real terms compared to the general and sectoral IPIM’.

In addition, the National Commission held that ‘... as regards the development of the industry volume indicators, based on the information obtained at this stage, it was observed that although domestic production increased in 2020 and 2021 sales to the domestic market did not increase in the same magnitude, resulting in a substantial increase in stocks. Exports increased in the months analysed in 2021, coinciding with the period of lower growth in inventories. The degree of utilisation of the production capacity of the domestic industry remained at low levels, except in the months analysed in 2021 when it reached 59 %. The level of employment of the production area of the like product remained stable throughout the period under investigation and remained at 42 employees.’

Thus, the National Commission took the view that ‘... the quantities of sodium benzoate imported from China and the Netherlands increased significantly in 2019 and 2020. Imports from these origins maintained and even increased their share of the total imported in the full years analysed, with generally decreasing average FOB import prices, and entering with significant levels of undervaluation, adversely affecting the domestic industry’.

Indeed, the NATIONAL EXTERNAL TRADE COMMISSION found that ‘... these imports, which accounted for the majority of the total imported during the period analysed, increased their relative importance on the market in the full years of the period analysed. Although the domestic sodium benzoate industry held a relevant market share, this was at the expense of its profitability given that the price/cost ratio was lower than 1 during the whole period under investigation. Thus, while some volume indicators of the industry showed increasing behaviour in part of the period analysed, this happened through sales which — in general — did not cover the costs, given the pressure exerted by the low prices of the imports under investigation’.

In the light of the above, the said National Commission stated that ‘... the price conditions at which the imports under investigation entered into force and were marketed, and the impact this has had on the domestic industry, as evidenced essentially by the loss of market share, the increase in its stocks, and the suppression of prices which could not increase in the magnitude necessary to obtain profitability, indicate significant injury to the domestic sodium benzoate industry’.

On this basis, the said National Commission considered that “... there is sufficient evidence of material injury to the domestic industry of sodium benzoate by imports originating in China and the Netherlands”.

As regards the causal link between the imports under investigation and the injury to the domestic industry, the National Commission stated that ‘... in accordance with the first paragraph of Article 3.5 of the Anti-Dumping Agreement and Article 22 of Decree No 1393/08, the Commission shall issue the causal link, taking into account the injury findings set out in the preceding section and those made in the preliminary determination of dumping’.

In this regard, the appointed National Commission stated that ‘... as it emerges from the Preliminary Determination Report of the Dumping Margin, dumping practices have been established for exports of sodium benzoate to Argentina, 2.42 % for China and 32.28 % for the Netherlands’.

With regard to the analysis of factors of injury other than the imports under investigation, the National Commission pointed out that ‘... in accordance with the terms of the Anti-Dumping Agreement, this should be done in respect of any other known elements, i.e. such analysis must be carried out on the basis of the ‘known’ evidence arising from the file’.

This technical body continued to argue that “... this type of analysis considers, inter alia, the effect that imports of sodium benzoate from sources other than those under investigation may have had on the domestic market of the like product”.

In this regard, the NATIONAL EXTERNAL TRADE COMMISSION noted that ‘... imports from the non-investigated origins, although showing an increasing pattern in 2020 and the months analysed in 2021, showed volumes well below those from China and the Netherlands. During the period under review they had relatively low shares, both in total imported and in apparent consumption, with the maximum shares coinciding with the partial period of 2021, 31.9 % in total imported and 20 % in apparent consumption. Their prices were much higher than the prices of imports from China, both below and above the prices of imports from the Netherlands. Thus, while the behaviour of some of these imports may have influenced the dynamics of the domestic market and industry, the material injury to the domestic industry cannot be attributed to the uninvestigated imports, it being considered that the volumes and participations of these non-investigated origins were far below those recorded for the origins investigated especially during the complete years analysed.”

In addition, the National Commission stated that ‘... another indicator that could usually attract attention in this analysis is the result of the petitioners’ export activity, while its development could have an impact on local industry. In that regard, it should be noted that DSI made exports which increased sharply in the months analysed in 2021, recording its highest export coefficient of 13 % in that year. However, while domestic sales also increased in that period, stocks increased. It was also noted that the relief had idle capacity, having been able to absorb both local and external demand. In this framework, on the basis of the information available at this stage of the proceeding, the material injury determined to the domestic industry cannot be attributed to this factor.’

On this basis, the National Commission considered that ‘... on the basis of the information available at this stage of the proceeding, none of the factors analysed above break the causal link between the injury established on the domestic industry and the dumped imports originating in China and the Netherlands’.

On the basis of the above, the National Commission concluded that ‘... there is sufficient evidence to support the allegations of material injury to the domestic industry of ‘sodium

benzoate', as well as its causal link with dumped imports originating in China and the Netherlands, meeting the requirements of the legislation in force in order to provide for the continuation of this investigation'.

That body continued to state that '... with regard to the CNCE's advice to the SECRETARY DE INDUSTRIA, ECONOMIA DEL CONOCIMIENTO AND TRADE MANAGEMENT EXTERNAL, Article 3 (d) of Decree No 766/94 establishing and establishing the powers of the National Foreign Trade Commission includes in its functions 'proposing appropriate measures, whether provisional or definitive, to mitigate the damage in the cases referred to in the previous paragraphs, including voluntary price agreements, as well as regularly reviewing them and assessing the appropriateness of their continuation...'.

In the same order of ideas, the appointed National Commission stated that '... Article 16 of the aforementioned Decree states that 'In the analysis and recommendation of measures, the Commission shall be guided by the criterion of compensating for the damage... In particular, it shall not propose measures similar to those estimated by the EXTERNAL TRADE Secretariat if it concludes that the damage can be remedied by others that are less restrictive of imports'.

In that regard, the National Commission stated that '... on the basis of the provisions of the abovementioned legislation, the Commission drew up the injury margin calculation for the dumped imports in order to give its recommendation as regards the application of provisional measures to imports of sodium benzoate originating in China and the Netherlands'.

On this basis, the NATIONAL EXTERNAL TRADE COMMISSION warned that '... the analysis carried out shows that it is higher than the dumping margin which, according to the Anti-Dumping Agreement, constitutes the maximum of the measure to be applied'.

That body therefore advised that "... should the imposition of provisional measures be decided, it is the Commission's view that it should consist of an ad valorem duty of an amount equal to the dumping margin, i.e. 2.42 % for China and 32.28 % for the Netherlands".

That, on the basis of its analysis and the conclusion of the NATIONAL COMMISSION FOR EXTERNAL TRADE, the SUBSECRET OF POLICY AND COMERCIAL MANAGEMENT recommended that the investigation into alleged dumping of exports to the ARGENTINE REPUBLIC of 'sodium Benzoate' originating in the KINA REPUBLIC and the Kingdom of the NETHERLANDS should continue, with the application of provisional AD AD measures calculated on the declared FOB values of two COMA ACCOUNT AND DAOS BY CIENT (2.42 %) for the CHINA POPULAR REPUBLIC and TREINTA AND DOS VEINTIOCHO BY CIENT (32.28 %) for the KINGDOM OF THE NETHERLANDS, for the term of CUATRO (4) months.

The INDUSTRIA, ECONOMY OF THE CONOCIMIENTO AND EXTERNAL COMMERCIAL MANAGEMENT issued an issue concerning the continuation of the investigation for alleged dumping with the application of provisional AD AD VALUS measures for the term of CUATRO (4) months, sharing the approach adopted by the SUBSecretaría DE POLÍTICA Y GESTIÓN COMERCIAL.

According to the above recitals, we are meeting the points required by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994,

incorporated into Spanish law by Law No 24.425, in order to continue the investigation with the application of provisional anti-dumping measures, to export transactions to the ARGENTINE REPUBLIC of sodium Benzoate originating in the REPUBLIC POPULAR CHINA and the KINGDOM OF THE NETHERLANDS.

Resolution No 437 of 26 June 2007 of the former MINISTRY FOR ECONOMY AND PRODUCTION and its amendments establishes the content and procedures relating to the control of non-preferential origin, in accordance with the provisions of the Agreement on Rules of Origin forming part of the General Agreement on Tariffs and Trade of 1994, approved by Law No 24.425.

Decision No 366 of 24 July 2020 of the MINISTRY OF DESARROLLO PRODUCTIVE provides that the control of import destinations for consumption of the goods covered by the measure, irrespective of the declared origin, must be carried out in accordance with the verification procedure provided for in the cases dealt with by the Red de Selectivity Canal.

The competent areas have taken action in this area.

The Directorate-General for Legal Affairs of the MINISTRY FOR PRODUCTIVE DEVELOPMENT has taken the appropriate action.

This Resolution is issued in accordance with the powers conferred by Law on Ministries No 22.520 (text ordered by Decree No 438/92) and its amendments, and Decree No 1.393/08.

For this reason,

THE MINISTER FOR PRODUCTIVE DEVELOPMENT

DECIDES:

Article 1.- the investigation into alleged dumping of exports to the ARGENTINE REPUBLIC of “sodium Benzoate” originating in the REPUBLIC POPULAR CHINA and the KINGDOM OF THE NETHERLANDS, goods classified under the tariff heading of the MERCOSUR Common Nomenclature (N.C.M.) 2916.31.21, will continue.

Article 2.- for export to the ARGENTINE REPUBLIC of ‘Sodium Benzoate’, a provisional AD VAT duty calculated on the declared FOB values of DOS COMA CUARENT AND DAOS BY CIENT (2.42 %) for those originating in the Republic of China and TREINTA AND DOS COMA VEINTIOCHO BY CIENT (32.28 %) for those originating in the KINGDOM OF THE NETHERLANDS.

Article 3.- when the goods described in Article 1 of this Decision are released, the importer must provide a security equivalent to the provisional anti-dumping duty established in accordance with Article 2 on the declared FOB value.

Article 4.- be notified to the Directorate-General for Customs, which is part of the FEDERAL ADMINISTRATION OF PUBLIC INGRESS, an autonomous body within the framework of the MINISTRY OF ECONOMY, in accordance with the provisions of Decision No 366 of 24 July 2020 of the MINISTRY FOR PRODUCTIVE DEVELOPMENT.

Article 5.- inform the Directorate-General of Customs that the import operations released for the product described in Article 1 of this Decision are subject to the control system for non-preferential origin established by Decision No 437 of 26 June 2007 of the former MINISTRY OF ECONOMY AND PRODUCTION and its amendments, additional rules and customs provisions regulating them.

Article 6.- join the relevant notifications under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994, transposed into Spanish law by Law No 24.425, governed by Decree No 1.393 of 2 September 2008.

Article 7.- this measure shall apply from the date of its publication in the Official Gazette and shall be valid for the period of CUATRO (4) months, in accordance with Article 7.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994, approved by Law No 24.425.

Article 8.- to be communicated, published, given to the National DIRECTORATE-GENERAL OF THE OFFICIAL REGISTRATION and archived.

Matías Sebastián Kulfas

e. 31/05/2022 N° 39076/22 v. 31/05/2022

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