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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1905/2003

of 27 October 2003

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of furfuryl alcohol originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) The Commission, pursuant to Regulation (EC) No 781/2003 [2] (the provisional Regulation) imposed provisional anti-dumping duties on imports of furfuryl alcohol (FA) originating in the People's Republic of China (China), expressed as a specific duty amount ranging between EUR 21 and 181 per tonne, corresponding to the injury margins.

2. Subsequent procedure

(2) Following the imposition of provisional anti-dumping duties, parties received a disclosure of the facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission. All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(3) The oral and written comments submitted by the interested parties were considered and, where appropriate, taken into account for the definitive findings.

(4) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings. In addition to the verification visits undertaken at the premises of the companies mentioned in recitals 10 and 11 of the provisional Regulation, it should be noted that after the imposition of provisional measures, an on-the-spot visit was carried out at the premises of the following Community user:

— Bakelite AG, Iserlohn-Lethmate, Germany.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(5) Since no comments were received regarding the product under consideration and like product, the contents and provisional conclusions of recitals 12 to 17 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Market economy treatment (MET)

(6) No further evidence was provided regarding the decision not to grant MET to the four cooperating Chinese exporters. The findings set out in recital 20 of the provisional Regulation are, therefore, confirmed.

2. Individual treatment (IT)

(7) In the provisional Regulation, IT was granted to three cooperating producers and refused to one. The reasons for granting or not granting IT reflected the conditions set out in Article 9(5) of the basic Regulation. It was questioned by the Community industry (CI) whether the Commission could rely on this Article as it came into force only after the initiation of the current proceeding.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 114, 8.5.2003, p. 16.

(8) The determination on the question of IT was based upon the criteria applying when the current proceeding was initiated. These criteria are identical to those set out in Article 9(5) of the basic Regulation, and have been used over a number of years. Therefore, the provisional Regulation referred to Article 9(5) of the basic Regulation substantiating a long-standing practice.

(9) In its provisional determination, the Commission refused IT to one cooperating Chinese exporting producer, Henan Huilong Chemical Industry Co. Ltd (Huilong), which acted both as a producer and as a trader of FA, on the basis that it was not possible to determine the level of State interference in the business activities performed by Huilong. Nevertheless, recital 29 of the provisional Regulation provides for this issue to be further considered at the definitive stage.

(10) The exporter concerned contends that the provisional determination was incorrect and that it should indeed be granted IT. In support of its argument, the company points out that there was no evidence found of any direct State interference in the company itself, and that the traded volume of FA represented less than 5 % of its production during the investigation period (IP). Moreover, some of this traded product was purchased from another cooperating exporter to which IT has already been granted.

(11) Following the imposition of provisional measures, no further information has been found that would point to State interference in the business activities carried out by Huilong. Huilong has agreed to cease its trading activity in FA were it to be granted IT.

(12) Accordingly, it is now concluded that the level of State interference in the business dealings of Huilong, if any, cannot be significant and would in any case not be such as to permit circumvention of the measures. On this basis, it was decided to revise the provisional determination, and to grant IT to Huilong.

3. **Analogue country**

(13) The exporting producers have objected to the choice of the United States of America as the analogue country and repeated their assertion that Thailand would represent a better alternative. This claim is based on the arguments that (i) the production costs are lower in Thailand; (ii) Thailand is the principal source of FA imported into the EU; and (iii) the complainants accept that there is no evidence that imports from Thailand are being made at dumped prices.

(14) As outlined in recital 33 of the provisional Regulation, only one producer, in the United States of America, was prepared to cooperate in the investigation. Furthermore, it was provisionally established that the United States of America fulfilled the necessary criteria to constitute an appropriate analogue country.

(15) There are no indications that Thailand, nor indeed South Africa, would constitute a better alternative as analogue country. No evidence was submitted by the exporting producers as to the production costs of the FA producers in Thailand or South Africa, other than by making an extrapolation from the export prices reported in the complaint and on Eurostat. Moreover, the Thai producer refused to cooperate in the proceedings. Therefore, it was considered that these countries could not reasonably be used to construct a normal value due to the lack of any reliable and verifiable evidence upon which to base any findings.

(16) Accordingly, and in the absence of any new evidence to the contrary, the provisional conclusion reached in recital 33 of the provisional Regulation is confirmed.

4. **Dumping**

4.1. Normal value

(17) The exporting producers asserted that the constructed normal value is too high to be considered reasonable. In support of this claim they point to the lower prices of FA from Thailand, which are not alleged to be dumped, as well as to the lower normal value presented by the complainants prior to initiation of the proceeding.

(18) In this respect it should be noted that the normal value was established in accordance with Article 2(7)(a) of the basic Regulation, namely on the basis of the information obtained in the analogue country, i.e. the United States of America. It is furthermore confirmed that the constructed normal value was calculated on the basis of actual prices and costs duly verified during an on-the-spot investigation at the premises of the cooperating FA producer in the United States of America.

(19) Therefore, it is considered that, in the absence of verified information in respect of either South Africa or Thailand, the data available from the FA producer in the United States of America represent the best information available for the construction of the normal value. The findings of recital 34 of the provisional Regulation are thus confirmed.

4.2. Export price

(20) The export prices have been adjusted slightly, following comments, duly supported by evidence, on the freight charges used.

(21) The exporting producers also objected to the methodology used to calculate the export price for non-cooperating companies as outlined in recital 36 of the provisional Regulation.

(22) In this regard, it should be recalled that the level of cooperation in this case was low, and that the export prices therefore had to be based on facts available in accordance with Article 18(1) of the basic Regulation. For the provisional Regulation, prices and volumes of the cooperating producer to which IT was not granted, i.e. Huilong, were used.

(23) This producer has now been granted IT and has had its own dumping margin calculated on the basis of its own sales to the EU during the IP. In view of this, the value of the exports for non-cooperating companies had to be recalculated. This new calculation is based on a representative volume of the EU sales of the four cooperating exporters. In order to ensure that the transactions used could be considered reliable, a sample of 25 % by volume was used. This sample comprised those invoices of the four cooperating producers with the lowest average transaction prices. It was considered appropriate to use the lowest transaction prices, as there was no reason to believe that the sales made by non-cooperating companies would have been at prices higher than those made by the cooperating producers. The average price so calculated was then used to determine the residual dumping and injury margins.

4.3. Comparison

(24) In the absence of any comments, the provisional conclusion of recital 37 of the provisional Regulation is confirmed.

4.4. Dumping margin

(25) The dumping margins, which were reviewed in the light of the issues outlined above, are now as follows (expressed as a percentage on the cif import price at the Community border):

Company	*Margin*
Gaoping	93 %
Huilong	90 %
Linzi	78 %
Zhucheng	80 %
All others	112 %

D. **COMMUNITY INDUSTRY**

(26) The four cooperating exporters claimed that Transfurans Chemicals BVBA (TFC), Belgium and International Furan Chemicals BV, the Netherlands (IFC) do not constitute the 'Community industry' within the meaning of Articles 5(4) and 4(1) of the basic Regulation, because these companies are very small in view of the number of employees and are owned by a privately held company in the Dominican Republic, Central Romana Corporation (CRC).

(27) These arguments could not be accepted. First, small and medium-sized companies are clearly entitled to lodge a complaint and can constitute the CI within the meaning of Articles 5(4) and 4(1) of the basic Regulation.

(28) Second, the investigation has shown, as referred to in recital 43 of the provisional Regulation, that FA produced by TFC is of Community origin and that the manufacturing operations, the technological and capital investment for the manufacturing operations and the sales operations take place in the Community. Furthermore, the fact that TFC, IFC and CRC are related through common ownership, as established under recital 42 of the provisional Regulation, does not exclude the application of Articles 5(4) and 4(1) of the basic Regulation.

(29) Therefore, the arguments raised by the Chinese exporting producers were rejected and the findings set out in recital 44 of the provisional Regulation are confirmed.

E. **INJURY**

1. **Consumption of FA in the Community**

(30) In the absence of any new information on consumption, the provisional findings as described in recitals 46 to 48 of the provisional Regulation are confirmed.

2. **Imports of FA into the Community**

(31) In the absence of any new information on imports of FA into the Community, the provisional findings as described in recitals 49 to 63 of the provisional Regulation are confirmed.

3. **Economic situation of the Community industry**

(32) The four Chinese exporting producers claimed that the CI did not suffer injury, as most of the injury indicators (in particular sales volume, sales prices, stocks, profitability, cash flow and investments) established by the Commission could not be reconciled with the published audited accounts of IFC and/or TFC. They argued that some indicators, such as profitability, stocks and cash flow, contained in the audited accounts of IFC and/or TFC showed either increasing or stable trends.

(33) It should be noted that the published audited accounts of IFC and TFC also include activities other than the production of the product concerned. Moreover, the published audited accounts of IFC and TFC cover the period from October 2001 to September 2002 while the IP referred to in recital 4 of the provisional Regulation covered the period from 1 July 2001 to 30 June 2002. Furthermore, as mentioned in recitals 41 and 44 of the provisional Regulation, it was found that TFC is part of a single economic entity consisting of TFC, IFC and CRC. Therefore, in order to make a meaningful assessment of certain injury indicators, it was necessary also to take into account some data from CRC. In addition, it is recalled that IFC's own trading activity in the Community mentioned in recitals 105 and 106 of the provisional Regulation falls outside the scope of the investigation, but forms part of the audited accounts of IFC. Furthermore, the export sales of IFC mentioned in recitals 101 to 104 of the provisional Regulation are included in the audited accounts, whilst the investigation exclusively covered the economic situation of the CI as regards the Community market.

(34) These facts prevent the injury indicators from being adduced from the published accounts of IFC and TFC as the four Chinese exporting producers have proposed. It is also recalled that the Commission findings are in line with the information contained in the files for the inspection by interested parties.

(35) Therefore, the arguments raised by the Chinese exporting producers were rejected and the findings and the conclusion set out in recitals 86 to 91 of the provisional Regulation are confirmed.

F. **CAUSATION**

(36) The four Chinese exporting producers argued that because there was no injury there was no causation. If there is injury, it is not the Chinese imports but the imports from Thailand that contributed to the economic situation of the CI.

(37) The Chinese exporting producers did not provide any new evidence in support of this claim. It is recalled that in recitals 107 to 111 of the provisional Regulation, and in accordance with Article 3(7) of the basic Regulation, the Commission analysed the total imports of FA into the Community from other third countries as a known factor other than the dumped imports. This analysis also covered imports from Thailand in respect of volumes and prices.

(38) The Thai imports represent around 96 % of the imports of FA from third countries. The import volumes of FA into the Community from Thailand increased in line with the developments described in recital 109 of the provisional Regulation. Furthermore, it was found that import prices from Thailand were far above the level of those of Chinese exporting producers (over 24 % during the IP) and even above those of the CI (over 6 % during the IP).

(39) Therefore, the arguments raised by the Chinese exporting producers were rejected and the findings and conclusions set out in recitals 92 to 113 of the provisional Regulation are confirmed.

G. **COMMUNITY INTEREST**

(40) The Chinese exporting producers and one association claimed that the provisional measures have a larger impact on users and the foundry industry than the Commission findings suggested. In particular it was argued that the interest of the users should prevail given the low employment in the CI compared to the high employment in the foundry industry.

(41) With regard to the claim submitted by the Chinese exporting producers, it should be noted that these producers did not provide any new evidence which could have been relevant for the examination of the Community interest. In any event, the Chinese exporting producers may not qualify as an interested party for the purpose of the determination of the Community interest.

(42) As regards the claim of the association, it should be noted that this was examined, although the association did not cooperate during the investigation and did not provide new evidence in support of its arguments. To this end, the Commission carried out an additional on-the-spot verification visit at the premises of a German user. This more thorough investigation confirmed the result of the analysis made at provisional stage, as set out in recital 126 of the provisional Regulation, and that the overall impact of the proposed definitive measures will be negligible.

(43) Therefore, the arguments raised by the Chinese exporting producers and the association were rejected and the findings and conclusions set out in recitals 114 to 133 of the provisional Regulation are confirmed.

H. **DEFINITIVE MEASURES**

(44) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the CI by dumped imports from China.

1. **Injury elimination level**

(45) It is recalled that it was provisionally found that a profit margin of 10 % on total turnover of FA could be regarded as an appropriate minimum which the CI could reasonably expect to obtain in the absence of injurious dumping. This profit margin would also allow the CI to make the necessary long-term investments.

(46) The CI claimed that the profit margin of 10 % as set out in recital 136 of the provisional Regulation did not reflect a return that it could reasonably expect to achieve in the absence of injurious dumping, and asked for a profit margin of at least 23,15 % on turnover, based on its performance in the previous years.

(47) In order to examine this claim, a further in-depth analysis was made of all the information available on the profit margin which could be regarded as an appropriate minimum which the CI could reasonably expect to obtain in the absence of injurious dumping. The profits realised in the years preceding the IP were re-analysed. It was found that in the previous years the profit rates were indeed much higher than 10 %. It was therefore concluded that a profit margin of 15,17 % based on the average actual profit achieved in the three years preceding the IP could be reasonably expected in view of the development of profitability of the CI and the presence of dumped imports on the Community market. This approach is fully in line with existing jurisprudence, in particular the ruling in the case of EFMA v Council [1].

(48) Consequently, the claim of the Community industry for a profit margin of 23,15 % has been rejected. In the light of the above, the Commission's calculations have been reviewed on the basis of the revised profit margin.

(49) Apart from this change in the profit margin, the injury elimination level was calculated using the same methodology as explained in recital 137 of the provisional Regulation. On this basis, a non-injurious level of prices was determined which would cover the CI's cost of production and allow a reasonable profit to be obtained in the absence of dumped imports from the country concerned. As a result of the revised calculations, injury margins of 8,9 % to 32,1 % were found.

2. **Form and level of the definitive duty**

(50) In accordance with Article 9(4) of the basic Regulation, as the injury margins were lower than the dumping margins found for all the exporting producers concerned, the definitive duty should be set at the level of the injury margins.

(51) The CI requested that the definitive measures take the form of a combined application of a specific duty (fixed amount EUR/tonne) and a variable duty (equal to the difference between the import price and a predetermined minimum price) or as a variable duty in the form of a minimum import price. Furthermore, the CI argued that the difference between the amounts of duty imposed on the exporters was so high that additional risks of circumvention, such as compensatory arrangements or absorption, could exist.

(52) In order to examine this claim, the different possible forms of measures were analysed in depth. In view of the need to ensure the efficiency of measures, it was considered that neither a combined application of a specific duty (fixed amount EUR/tonne) with a variable duty nor a variable duty alone would be sufficient to remove the injury caused by dumping. The former is only exceptionally used when the particular circumstances of a case, e.g. clear indications of price manipulation, so require, whilst the latter results in inherent problems of enforcement. As laid down in the provisional Regulation, the duty to be imposed should be in the form of a specific amount of EUR/tonne in order to ensure the efficiency of the measures and to minimise the existing risk of substituting the product concerned for products within the same general category of goods (e.g. furfural), especially as price manipulation has been observed in some previous proceedings involving furfural [2].

(53) However, in order further to minimise the risks of circumvention due to the substantial level of non-cooperation (40 %) and the high difference in the amounts of duty, it is considered that special provisions are needed in this case to ensure the proper application of the anti-dumping duties. These special provisions include the presentation to the customs authorities of the Member States of a valid commercial invoice, which is to conform to the requirements set out in the Annex. Only imports accompanied by such an invoice may be declared under the applicable TARIC additional codes of the producer in question. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters. The companies concerned have also been invited to submit regular reports to the Commission in order to ensure a proper follow-up of their sales of FA to the Community. In cases where reports are not submitted, or where the reports disclose that the measures are not adequate to eliminate the effects of injurious dumping, it may be necessary to initiate an interim review in accordance with Article 11(3) of the basic Regulation.

(54) The calculation of the injury threshold related to cif import price results in duties ranging between EUR 84 and 250 per tonne.

[1] Judgement of the Court of First Instance of 28 October 1999 in Case T-210/95.

[2] OJ L 328, 22.12.1999, p. 1.

(55) The correction made to the dumping and injury margins had no effect on the application of the lesser duty rule. Therefore, the methodology used for establishing the anti-dumping duty rates as described in recital 138 of the provisional Regulation is hereby confirmed. The definitive duties will therefore be:

Company	*Ad valorem*	*Specific duty*
Gaoping	18,3 %	160 EUR/tonne
Huilong	17,9 %	156 EUR/tonne
Linzi	8,9 %	84 EUR/tonne
Zhucheng	10,3 %	97 EUR/tonne
All others	32,1 %	250 EUR/tonne

I. **DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(56) In view of the magnitude of the dumping margins found for the exporting producers in China and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

(57) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of FA currently classifiable within CN code ex 2932 13 00 (TARIC code 2932 13 00 90), originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable for the product originating in the People's Republic of China shall be as follows:

Companies	Rate of anti-dumping duty (EUR/tonne)	TARIC additional code
Gaoping Chemical Industry Co. Ltd	160	A442
Linzi Organic Chemical Inc.	84	A440
Zhucheng Huaxiang Chemical Co. Ltd	97	A441
Henan Huilong Chemical Industry Co. Ltd	156	A484
All other companies	250	A999

3. The application of the individual duty rates specified for the four companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. 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 Common Customs Code [1] 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.

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

Article 2

The amounts secured by way of provisional anti-dumping duties pursuant to the provisional Regulation on imports of FA currently classifiable within CN code ex 2932 13 00 (TARIC code 2932 13 00 90), originating in the People's Republic of China shall be definitively collected as follows.

The amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

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 Luxembourg, 27 October 2003.

For the Council
The President
A. MATTEOLI

ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an officer of the company, in the following format:

1. The name and function of the official of the company which has issued the commercial invoice.
2. The following declaration:

   'I, the undersigned, certify that the [volume] of furfuryl alcohol currently classifiable within CN code ex 2932 13 00 (TARIC code 2932 13 00 90) sold for export to the European Community covered by this invoice was manufactured by [company name and address] in the People's Republic of China; I declare that the information provided in this invoice is complete and correct.'
3. Date and signature

[1] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 1335/2003 (OJ L 187, 26.7.2003, p. 16).