# COMMISSION

## COMMISSION DECISION

**of 10 January 1994**

**terminating the anti-dumping proceeding concerning imports of gum rosin originating in the People's Republic of China**

(94/82/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 9 thereof,

After consultation within the Advisory Committee,

Whereas:

### A. PROCEEDING

(1) In May 1992, the Commission received a complaint lodged by the 'Associação dos Industriais Exportadores de Produtos Resinosos' (AIEPR) (hereinafter referred to as 'the complainant') on behalf of its member companies whose collective output of gum rosin apparently constituted a major proportion of the total Community production of the product in question.

(2) The complaint contained evidence of the existence of dumping on imports of the product concerned originating in the People's Republic of China (PRC) and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

The Commission therefore announced, in a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of the product in question, which falls within CN code 3806 10 10.

(3) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainant. It also gave the interested parties the opportunity to make their views known in writing and to request a hearing.

(4) The Commission requested and received detailed written comments from the Community producers, the Chinese exporters and a number of importers.

(5) The Commission sought and verified all the information it considered necessary for the purposes of a preliminary determination of dumping and carried out investigations at the premises of the following:

(a) Community producers:

— Socer — Sociedade Central de Resinas SA, Lisbon, Portugal,

— Lagoa, Henriques & Pedroso Lda, Pedrógão Grande, Portugal,

— Resipez — Industria & Comèrcio de Resinas Lda, Leiria, Portugal,

— Mariano Lopes Morgado & Companhia Lda, Arganil, Portugal,

— Manuel Inãcio Pimpáo & Filhos Lda, Maceira Lis, Portugal.

These Community producers are all members of the complainant.

(b) Importers in the Community:

— Abieta Chemie GmbH, Augsburg, Germany,

— Hermann Ter Hell & Co. Hamburg, Germany,

— Hercules BV, Rijswijk, Netherlands,

— Integrated Chemicals BV, Lisse, Netherlands.

(6) The Commission's questionnaire was sent to the seven Chinese exporters known on the initiation of the proceeding. Those exporters all replied to the questionnaire.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 195, 1. 8. 1992, p. 5.

These companies are:

— Hunan Provincial Native Produce & Animal By-products Import & Export Corp., Chang Sha City, Hunan Province, PRC,

— Fujian Provincial Native Produce & Animal By-products Import & Export Corp., Beijing, PRC,

— China (Tuhsu) Forest Chemical Products Import & Export Corp., Beijing, PRC,

— Guangdong Native Produce Import & Export Corp., Guangzhou, PRC,

— Jiangxi Native Produce Import & Export Corp. Nanchang, PRC,

— Yunnan Native Produce Import & Export Corp., Kunming, PRC,

— Guangxi Zhuang Autonomous Region Native Produce Import & Export Corp., Nanning, PRC.

Since the People's Republic of China is a non-market economy country and, consequently, normal value could not be determined on the basis of Article 2 (3) of Regulation (EEC) No 2423/88, no investigation concerning normal value was carried out at the premises of these exporters.

Normal value was thus established by reference to a market economy third country, for the reasons set out in recitals (12) to (16), i.e. Brazil. Therefore, information was requested, received from, and subsequently verified at the premises of the following Brazilian producers:

— Resinas Yser Ltda, Campo Largo (PR), Brazil,

— Resinas Brazil Indústria & Comércio Ltda, Avaré (SP), Brazil.

(7) The investigation period set by the Commission for determining dumping was from 1 July 1991 to 30 June 1992.

## B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT, COMMUNITY INDUSTRY AND INDIVIDUAL TREATMENT

### 1. Product under consideration and like product

(8) The product covered by the notice of initiation of this proceeding is gum rosin, a natural product obtained from fresh oleoresins falling within CN code 3806 10 10.

Gum rosin is used in various sectors of the chemical industry, in particular for the production of glue for paper, paints and varnishes, resinoides, base gum for chewing gum and units of rosin.

There exists only one type of gum rosin. This product is not subject to significant differences in quality, basic physical characteristics, or use.

However, the Chinese exporters submitted that gum rosin originating in China should not be considered as a like product to that manufactured in the Community owing to alleged differences in chemical characteristics such as crystallization time or volatile part, in the manufacturing process which was more basic in China and in certain applications where Chinese gum rosin would be preferred to Community gum rosin.

The Commission rejects this contention. Indeed, the alleged differences in chemical characteristics are only minor and result from a manufacturing process which, while being largely similar, is based on older equipment. This could not render the products different, since they have the same applications and are therefore interchangeable, as shown by the rapid penetration of the Chinese gum rosin on the Community market which partly took the place of the Community product (see recital (20)).

The Commission found therefore that gum rosin produced and sold by the Community producers constitutes a like product to the product imported from China within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88. In addition, it was considered for the same reasons that Brazilian gum rosin was a like product to the Chinese and the Community gum rosin.

### 2. Community industry

(9) The Commission found that during the investigation period the Community producers, on behalf of which the complaint was lodged, manufactured about 61 % of the total Community output of the like product, i.e. a major proportion of the total Community production.

(10) Accordingly, the Commission concludes that they constitute the Community industry, within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

### 3. Individual treatment

(11) The Chinese exporters requested that individual dumping margins be established in their regard.

The Commission recalls in this respect that the grant of individual treatment to some of these exporters may affect or even distort the outcome of the calculation of the countrywide anti-dumping duty thus undermining the proportionality and effectiveness of the measures. In addition, it is in practice extremely difficult to establish, in the case

of a country such as the People's Republic of China, whether a company really enjoys, both legally and in fact, independence from the State and, in particular, whether a company has permanent independence even if it appears to enjoy independence at a certain point in time.

Finally, the Commission cannot, at present, carry out a meaningful verification of the declarations of exporters in China concerning costs and prices due to the continued existence of a centrally planned economy. Therefore, the Commission has come to the conclusion that, in the present case, a departure from the general rule whereby a single anti-dumping duty is established for State trading countries should not be made and that to avoid arbitrary results and the likelihood of circumvention, a single margin should be established.

## C. DUMPING

### 1. Normal value

(a) *Analogue country*

(12) Since the People's Republic of China is a non-market economy country, normal value had to be determined on the basis of information obtained in a market economy third country, i.e. an analogue country, in accordance with Article 2 (5) of Regulation (EEC) No 2423/88.

For this purpose, the complainant suggested the domestic price of gum rosin in Brazil as a basis for establishing normal value.

(13) The Chinese exporters and a number of importers objected to the choice of Brazil on the following grounds:

— the market prices charged by Brazilian producers for domestic sales were unsuitable for establishing normal value because of high inflation in Brazil, and

— the manufacturing process in Brazil was particularly costly and, therefore, not comparable to that existing in China.

As an alternative choice, they proposed Indonesia.

(14) The Commission contacted several Indonesian companies but the Indonesian gum rosin industry indicated that they did not intend to cooperate.

(15) After examination of the suggestion made by the complainant, the Commission concluded, moreover, that Brazil was an appropriate and reasonable choice.

Domestic prices in Brazil were governed by normal market forces given the level of demand in the Brazilian market and the number of competing producers.

Indeed, Brazil was known to be the second largest producer world-wide of this product, and there was, to a large extent, similarity of the manufacturing process and access to raw materials between Brazil and the People's Republic of China.

As far as inflation was concerned, this did not affect the reliability of the domestic prices. Furthermore, the necessary adjustments were made in order to eliminate its effects on the comparison of the value with export prices (see recital (16)).

Finally, a comparison between the volumes exported to the Community by Brazil and the volume on which normal value was based showed that gum rosin was sold in sufficient quantities on the domestic market to allow an adequate calculation of normal value.

(b) *Normal value*

(16) Normal value was established on the basis of the weighted average net selling price for the like product sold by a representative Brazilian producer for consumption in Brazil, as those domestic sales were made at prices permitting the recovery of all costs reasonably allocated in the ordinary course of trade during the investigation period. The effect of inflation in Brazil on this price was corrected by the establishment of a monthly normal value.

### 2. Export price

(17) All export sales were made to independent customers in the Community.

Export prices were therefore calculated on the basis of the actual price paid or payable by independent importers for the product sold for export to the Community in accordance with Article 2 (8) (a) of Regulation (EEC) No 2423/88.

### 3. Comparison

(18) Normal value was compared with the export prices on a transaction by transaction basis at the same level of trade.

For the purposes of a fair comparison, adjustments were made in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88 in respect of differences affecting price comparability for which satisfactory evidence was submitted. As to the allowances in respect of differences in selling expenses, adjustments were made, as appropriate, to both normal value and export price in respect of transport, insurance, packing, payment terms and sales personnel's salaries.

### 4. Dumping margin

(19) The comparison showed the existence of dumping, the dumping margin being equal to the amount by which the normal value, as established, exceeded the price for export to the Community.

The weighted average dumping margin expressed on a percentage of free-at-Community-frontier price is 17,4 %.

## D. INJURY

### 1. Dumped imports

(a) *Volume*

(20) Community consumption of gum rosin rose from 133 549 tonnes in 1989 to 169 091 tonnes during the investigation period, i.e. an increase of 24 %.

Imports of gum rosin from the People's Republic of China increased from 66 460 tonnes in 1989 to 107 730 tonnes during the investigation period. This represents an increase of 62 %. Their market share therefore rose from 48,26 % in 1989 to 61,75 % during the investigation period.

(b) *Prices*

(21) In order to assess the degree of price undercutting, the Commission compared the average price of the imports from China (at the free-at-Community frontier duty paid stage) and the selling price, calculated at the ex-works level, of the product sold by the Community producers.

(22) On this basis, the prices of the product imported from the People's Republic of China were found to be, during the investigation period, significantly below the prices of gum rosin sold by the Community producers. The average price undercutting margin found during the investigation period was 20,7 %.

### 2. Situation of the Community industry

(23) Production by the Community industry declined from 31,400 tonnes in 1989 to 29 400 tonnes in 1990, to 26 240 tonnes in 1991 and to 25 528 tonnes during the investigation period. This represents a fall in production of 18 % between 1989 and the investigation period.

(24) The capacity utilization for the product concerned by the Community producers fell from 59 % in 1989 to 55 % in 1990, to 49 % in 1991 and to 48 % during the investigation period.

(25) Sales by the Community industry on the Community market were 29 000 tonnes in 1989, 33 000 tonnes in 1990, 29 000 tonnes in 1991 and 24 000 tonnes during the investigation period, i.e. a decrease of 17,2 % between 1989 and the investigation period, while the size of the market increased during the same period by 24 %.

(26) This development represents a change in the market share held by the Community producers from 19,2 % in 1989 to 21,10 % in 1990, to 16,20 % in 1991 and to 13,14 % during the investigation period.

(27) The Community industry's selling prices, expressed in constant values, remained stable between 1989 and the investigation period.

(28) The development in prices and costs of production resulted in losses being incurred from 1989 to the investigation period by most of the Community producers concerned.

During the investigation period this trend was confirmed as all the Community producers were incurring losses on most sales. On average the losses amounted to 7 % of turnover.

(29) Employment in the Community industry fell throughout the period, by ± 9 % in 1990, by ± 12 % in 1991, by ± 17 % during the investigation period. This resulted in an overall fall of ± 34 % between 1989 and the investigation period.

### 3. Conclusion

(30) While the Community market has expanded by 24 % over the last four years which should have allowed the Community industry to benefit from increased sales, leading to reduced costs and increased profits, its situation has, on the contrary, deteriorated by experiencing falling production and sales, declining capacity utilization, loss of market share to the Chinese exporters, and financial losses.

All the above factors have affected negatively the economic and financial situation of the Community industry which accordingly is considered to have suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

## E. CAUSAL LINK BETWEEN THE DUMPED IMPORTS AND THE INJURY

### 1. Effects of the dumped imports

(31) The Commission found that the fall in market share and sales volume by the Community industry, and the deterioration of its financial results leading to losses, coincided with the significant increase in the volume of imports of Chinese gum rosin.

Moreover, since the market for this product is transparent and since price is the most important factor in marketing this product the low prices of the dumped gum rosin could not fail to have a negative impact on the performances of the Community industry.

### 2. Effect of other factors

(32) The Commission examined whether the injury to the Community industry could be attributed to other factors such as in particular the volume and prices of imports originating in other countries.

(33) Imports from China represented 86 % of all imports of gum rosin into the Community during the investigation period. The other imports originated mainly in Indonesia. Given the only very recent penetration of imports from Indonesia and their relatively small market share as compared with the imports from China, the Commission has no reason to conclude that the material injury could be attributed to their effects.

(34) The Commission concludes, therefore, that dumped imports of gum rosin originating in the People's Republic of China, because of their low prices and their large presence in the Community market, have, taken in isolation, caused material injury to the Community industry.

## F. COMMUNITY INTEREST

(35) When carrying out the consultations provided for under Article 6 of Regulation (EEC) No 2423/88, the Commission received representations from a large majority of Member States claiming that it was not in the interests of the Community to impose anti-dumping measures in the present case.

These representations pointed out, in particular, that the negative effects of anti-dumping measures on the users of gum rosin would be overwhelmingly disproportionate to the benefits arising from anti-dumping measures in favour of the Community industry. As far as the latter is concerned, it consists of medium-sized firms, solely in one Member State, which make use of a limited natural resource. Should anti-dumping measures be imposed, the Community market would continue to be largely dependent on imports, since the Community industry's capacity of production can cover only a minority share.

In contrast, gum rosin is a primary product used in numerous industries (e.g. tyres, paper manufacturing, painting, adhesive and varnish), based in most of the Member States, where they represent a high added value and support a large number of jobs. The imposition of anti-dumping measures would result, for these companies, in a substantial increase in the respective costs of production of the above products as they have to maintain a steady and abundant supply of gum rosin. It would, therefore, potentially jeopardize the situation of these industries.

In addition, it was argued that the imposition of anti-dumping measures would not be adequate to remove the injury, since it would provoke a significant increase in the price of gum rosin and result in a quick penetration of the Community market by substitute products which, for the time being, are not a viable alternative because of their high prices.

(36) In the light of the above, the Commission concludes that protective measures would not be appropriate and that it would not be in the Community interest to continue the proceeding.

## G. ADVISORY COMMITTEE

(37) Objections to the termination of this anti-dumping proceeding were raised in the Advisory Committee. Consequently, in accordance with Article 9 of Regulation (EEC) No 2423/88, the proceeding shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise. This Decision shall then be published in the *Official Journal of the European Communities,*

HAS DECIDED AS FOLLOWS:

*Sole Article*

The anti-dumping proceeding concerning imports of gum rosin originating in the People's Republic of China falling within CN code 3806 10 10 is hereby terminated.

Done at Brussels, 10 January 1994.

*For the Commission*

Leon BRITTAN

*Member of the Commission*