COMMISSION REGULATION (EC) No 1648/94

of 6 July 1994

imposing a provisional anti-dumping duty on imports of furazolidone originating in the People's Republic of China

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 Communities [1], as last amended by Regulation (EC) No 522/94 [2], and in particular Article 11 thereof,

After consultations within the Advisory Committee;

Whereas:

A. PROCEDURE

(1) In November 1993 the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of furazolidone originating in the People's Republic of China.

The proceeding was initiated as a result of a complaint lodged by Orphahell BV, a Community producer representing the total Community production of the product concerned.

The complaint contained evidence of dumping of the product originating in the People's Republic of China, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

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

(3) One producer and a number of exporters in the People's Republic of China, two importers and the complainant Comunity producer made their views known in writing. Representatives of the Chinese producer and exporters requested and were granted a hearing.

(4) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out an investigation at the premises of the Community producer, Orphahell BV, Mijdrecht, Netherlands.

(5) Since the People's Republic of China is a non-market economy country, normal value was established by reference to a market economy third country, namely India (as explained in recitals 11 and 12). Information was requested and received from an Indian producer and subsequently verified at its premises:

Kemwell Private Ltd — Bangalore

(6) The investigation of dumping covered the period from 1 October 1992 to 30 September 1993 (hereinafter referred to as 'the investigation period').

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

I. Description of the product concerned

(7) The product covered by the proceeding is furazolidone which is an antibiotic product, with the chemical name 3-(5-nitrofurfurlideneamino)-2-oxazolidone, falling within CN code 2934 90 40.

(8) Furazolidone is used in medicated feedstuffs for the treatment of diseases in swine and poultry and can also be used for the treatment of cholera and other human or veterinary diseases.

There exists only one type of furazolidone. This product is not subject to significant differences in quality or use.

II. Like product

(9) The Commission found that furazolidone produced by the Community industry and the Indian producer was comparable in its essential physical characteristics, application and use to that produced in the People's Republic of China and exported to the Community.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 302, 9. 11. 1993, p. 2.

Consequently, the Commission considered that furazolidone imported from China is a like product to that produced and sold by the Community industry, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

III. Community industry

(10) The Commission found that during the investigation period, the Community producer on behalf of which the complaint was lodged, represented the total Community production of the like product. Accordingly, the Commission concludes that it constitutes the 'Community industry' within the meaning of Article 4 (5) of the Basic Regulation.

C. DUMPING

I. Analogue country

(11) Since the People's Republic of China is a non-market economy country, normal value was determined on the basis of information obtained in a third country, having a market economy namely an analogue country, in accordance with Article 2 (5) of the Basic Regulation. For this purpose, the complainant had suggested India.

(12) The Chinese producer and exporters objected to the choice of India, alleging that the market prices charged by the Indian producer for domestic sales were particularly high and, accordingly, were not suitable for the establishment of normal value. In addition, the exporter stated that the scale of production of the product concerned in India was small.

As an alternative, they proposed Hungary or Mexico which, they argued, were both countries manufacturing and exporting furazolidone on a large scale. The Commission, consequently, contacted producers in those countries in order to explore whether an alternative to the complainant's suggestion was advisable.

The Hungarian producer known to the Commission subsequently stated that it had ceased production of the product in 1990, while no reply was received from the known producer in Mexico which is also understood to have ceased production.

After examination of the Indian market for furazolidone, the Commission concluded that the use of India as an analogue country was an appropriate and reasonable choice within the meaning of Article 2 (5) of the Basic Regulation or the following reasons:

— domestic prices in India are governed by normal market forces as there is a reasonable degree of competition existing on the Indian market between furazolidone produced locally and imported supplies;

— the volume produced in India was considered sufficiently representative, when compared to the volume exported to the Community from China, to allow an adequate calculation of normal value;

— there is, to a large extent, similarity between China and India in the production process used;

— finally, given the withdrawal from the market of the Hungarian and Mexican producers, India appears to be the only other worldwide producer of the product concerned.

Normal value was therefore established on the basis of information supplied by the sole Indian producer as to its domestic production of the like product.

II. Normal value

(13) The investigation of the Indian company revealed that its domestic sales of the product were not profitable during the investigation period. Therefore, normal value was established for this company in accordance with Article 2 (5) (b) of the Basic Regulation, — that is to say, it was constructed on the basis of the material and manufacturing costs for the product concerned in the country of origin plus a reasonable amount for selling, administrative and other general expenses, and profit.

The amount for selling, general and administrative expenses was calculated by reference to the expenses incurred by the Indian producer concerned on sales in India within the same business sector as furazolidone. The amount of profit added (9 %) was that regarded as reasonable by the Indian producer concerned for sales in the same business sector in India.

III. Export price

(14) As all export sales were made to independent customers in the Community, the export prices were determined on the basis of the actual prices paid or payable for the product sold for export to the Community, in accordance with Article 2 (8) (a) of the Basic Regulation.

IV. Comparison

(15) Normal value was compared with the export price, transaction by transaction, at the same level of trade on an ex-works basis. For the purposes of a fair comparison, adjustments were made in accordance with Article 2 (9) and (10) of the Basic Regulation in respect of differences affecting price comparability, such as transport costs, insurance, payment terms and commission, for which satisfactory evidence was submitted.

V. Dumping margin

(16) The comparison showed the existence of dumping, the dumping margin being equal to the amount by which the normal value, as established, exceeded the prices for export to the Community. The weighted average dumping margin expressed as a percentage of the free-at-Community-frontier price was 93 %.

(17) One Chinese producer requested that an individual margin be calculated on the basis of its export prices, claiming that as a Sino-Japanese equity joint venture company, it received no assistance, subsidies or allocations from the Chinese Government and was free to negotiate and determine the level of its income independently of any decision by the State.

(18) In this regard, it must be borne in mind that the Basic Regulation merely requires that anti-dumping regulations specify the country and the product on which the duty is imposed. Individual treatment is therefore not a requirment of the Basic Regulation and is appropriate only where this gives a more proportionate and effective remedy against injurious dumping than a single, country-wide duty. This is generally not the case for countries referred to in Article 2 (5) of the Basic Regulation (which includes the People's Republic of China).

(19) The Commission has, in the past, noted that the grant of individual treatment to exporters in these countries sometimes caused inappropriate levels of duty to be imposed and gave rise to an opportunity for the State to circumvent anti-dumping measures by channelling exports through, or concentrating production in, the exporter with the lowest duty. The Commission has concluded, therefore, that departures from the general rule whereby a single anti-dumping duty is established for State-trading countries should be made only in the very exceptional circumstances where it was completely satisfied that the difficulties outlined above did not arise.

(20) The Commission noted that, in this proceeding, the Chinese producer concerned had not provided any evidence that would justify such exceptional treatment. Forthis reason, and those stated in recitals (16) and (17), the Commmission considers that individual treatment is not justified in the present case.

D. INJURY

I. Community consumption, volume and market share of the dumped imports

(21) Community consumption of the product concerned was 790 tonnes in 1990, 868 tonnes in 1991, 857 tonnes in 1992 and 856 tonnes during the investigation period. The volume of the dumped imports from the People's Republic of China increased from 234 tonnes in 1990 to 338 tonnes in 1991, to 331 tonnes in 1992 and to 544 tonnes during the investigation period — by 132 % over the period. The Community market share of these imports was 29,6 % in 1990, 38,9 % in 1991, 38,6 % in 1992 and 63,6 % during the investigation period.

II. Prices of the dumped imports

(22) Prices of the imported product during the investigation period were found to be significantly below the prices applied by the Community industry. Price undercutting was established by comparing Chinese export prices for sale to the first independent customer in the Community with weighted average prices of the Community industry at the same level of trade.

Adjustments were made, where appropriate, to ensure comparability in terms of transport costs and customs duty.

The average price undercutting margin found during the investigation period was 19 %.

III. Situation of the Community industry

(a) *Production and capacity utilization*

(23) The volume of production of the product by the Community industry was, on an indexed basis, 100 in 1990, 107 in 1991, 84 in 1992 and 69 during the investigation period.

The capacity utilization rate of the industry fell from 81 % in 1990 to 71 % in 1991, to 54 % in 1992 and to 60 % during the investigation period.

(b) *Sales and market share*

(24) The volume of sales in the Community by the Community industry was, on an indexed basis, 100 in 1990, 120 in 1991, 94 in 1992 and 90 during the investigation period — a decrease of 10 % between 1990 and the investigation period, during which time apparent consumption in the Community increased by more than 8 %. This development of sales volume, compared to that of apparent Community consumption, shows a market share held by the Community industry which decreased by almost 16 % between 1990 and the investigation period.

(c) *Price depression*

(25) Because of the downward pressure on prices resulting from the dumped imports, the Community industry was forced to lower its prices by almost 19 % between 1990 and the investigation period in an attempt to maintain its capacity utilization and market share. Prices, on an indexed basis, were 100 in 1990, 132 in 1991, 106 in 1992 and 81 during the investigation period.

(d) *Profitability*

(26) The profitability of the Community industry on sales of the product concerned on the Community market was completely eroded between 1990 and the investigation period. While profits were made in 1990 and 1991, significant losses were incurred in 1992 and during the investigation period.

IV. Conclusion

(27) The preliminary examination of the facts on injury shows that the Community industry, despite reducing its prices in an attempt to compete with the dumped imports from the People's Republic of China, experienced a decrease in sales volume and market share. The combined effect of the decrease in prices and sales volume has resulted in substantial financial losses for that industry.

(28) The Commission concludes, therefore, that the Community industry suffered material injury within the meaning of Article 4 (1) of the Basic Regulation.

E. CAUSATION

(29) The Commission examined whether the injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

I. Effect of dumped imports

(30) In its investigation, the Commission found that the increase in volume and market share of the dumped imports from the People's Republic of China coincided with the worsening situation of the Community industry. As a result of the low prices at which the imported product was sold on the Community market, the Community industry was forced to reduce its prices in a vain attempt to maintain its capacity utilization and market share. This price reduction led to a worsening of the financial situation of the Community industry. This situation corresponded closely in time with the substantial increase in the low-priced imports from the People's Republic of China.

II. Effect of other factors

(31) The Commission examined whether the injury suffered by the Community industry could have been caused by factors other than the dumped imports. In particular, the Commission looked at the evolution and impact of imports from third countries not included in this proceeding and the trend of consumption in the Community market.

(32) The volume of imports from third countries not included in the proceeding decreased by more than 92 % between 1990 and the investigation period, resulting in a market share for these imports of a mere 2,1 % during the investigation period. In the same period, apparent Community consumption of the product concerned increased by more than 8 %.

In the light of the above, the decrease in sales and market share of the Community industry cannot therefore be attributed to the changing trend of consumption on the market or to the effect of imports from other sources.

(33) The Commission also examined the claim made by the Chinese exporters that decreases in the price of the product are essentially the consequence of the prohibition of most substances belonging to the nitrofuran group (which includes furazolidone) and the uncertainty about future applications of the product.

The Commission noted, however, that furazolidone is not one of the nitrofuran substances whose administration to food-producing animals is prohibited in the Community. In fact, Council Regulation (EEC) No 2377/90 [1], as last amended by Regulation (EC) No 3426/93 [2], laid down a period within which further studies of furazolidone are to be carried out in order to allow the European Communities' Committee for Veterinary Medicinal Products to make a recommendation on its continued use in food-producing animals. Indeed, the fact that the Community industry is now prepared to invest heavily in these studies is an indication of its belief in the future of the product.

(34) Accordingly, the Commission does not consider that the prohibition on the use of certain nitrofuran substances can explain the significant decrease in the price of furazolidone on the Community market. It should also be noted that these factors have not affected the demand for the product which has continued to grow in recent years.

(35) The Commission has concluded, therefore, that the dumped imports originating in the People's Republic of China, because of their prices, their penetration of the Community market, the resulting loss of market share and dramatic deterioration in the financial situation of the Community industry, have caused material injury to that industry.

F. COMMUNITY INTEREST

(36) In assessing the Community interest, the Commission took account of certain essential elements. One such element is that a key purpose of anti-dumping measures is to stop the distortion of competition arising from unfair commercial practices and thus re-establish open and fair competition on the Community market — this is fundamentally in the Community interest. Furthermore, failure to take provisional measures would aggravate the already precarious situation of the Community industry, especially noticeable in the total lack of profitability which threatens its viability.

(37) The Community industry has indicated to the Commission that, aside from its own production, the only alternative source of supply of furazolidone in the Community now consists of imports from the People's Republic of China. This fact seems to be borne out by the level of imports into the Community from other countries, which was only 18 tonnes (2,1 % of the market) during the investigation period. Should the Community industry be forced to cease production, the market would be rendered entirely dependent on Chinese imports.

(38) As to the interests of users of the product in the Community, the short-term price advantages gained from the dumped prices have to be seen against the background of the longer-term effects of not restoring fair competition. Indeed, to refrain from taking action would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce competition to a single source of supply, to the ultimate detriment of users.

(39) The Commission considers, therefore, that it is in the Community interest to remove the effects of the injury suffered by the Community industry and to restore fair competition by the imposition of provisional anti-dumping measures on imports of the product originating in the People's Republic of China.

G. DUTY

(40) For the purpose of establishing the level of the provisional duty, the Commission took account of the dumping margins recorded and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(41) Since the injury consisted mainly of price depression, loss of market share and, in particular, financial losses, the removal of such injury requires that the industry be put in a position in which its prices could be increased to a profitable level without a loss of sales volume. In order to achieve this, the price of the imports originating in the People's Republic of China should be increased accordingly.

For calculating the necessary price increase, the Commission considered that prices of the dumped imports had to be compared with selling prices reflecting the cost of production of the Community industry plus a reasonable amount of profit.

[1] OJ No L 224, 18. 8. 1990, p. 1.
[2] OJ No L 312, 15. 12. 1993, p. 15.

(42) On this basis, the weighted average export prices were compared, for the investigation period, on a free-at-Community-frontier level increased by customs duty, with the cost of production of the Community producer concerned plus a margin of profit, provisionally set at 8 %. This profit margin was claimed by the complainant as the minimum required in this business sector and was, in effect, the margin achieved by the producer concerned before the impact of the dumped imports became significant.

This comparison shows an injury margin which, expressed on a weighted average basis as a percentage of the free-at-Community-frontier-price, was 70,6 %.

(43) Since the margin of dumping recorded was greater than the corresponding increase in export prices necessary to remove the injury as calculated above, the provisional duty to be imposed should, therefore, correspond to the injury margin established.

H. FINAL PROVISION

(44) In the interests of sound administration, a period should be fixed in which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of furazolidone falling within CN code 2934 90 40 and originating in the People's Republic of China.

2. The rate of anti-dumping duty applicable to the net free-at-Community-frontier price before duty shall be as follows : 70,6 %

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and ask to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 July 1994.

For the Commission

Leon BRITTAN

Member of the Commission