COMMISSION REGULATION (EC) No 1783/94

of 18 July 1994

imposing a provisional anti-dumping duty on imports of furfuraldehyde 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 Community [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 January 1993, the Commission received a complaint lodged by Furfural Español, S. A., the only producer of furfuraldehyde in the Community.

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

(2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of furfuraldehyde originating in the People's Republic of China, falling within the CN code 2932 12 00, and it commenced an investigation.

(3) The Commission officially notified the exporters and importers known to be concerned and the representatives of the exporting country of the initiation of the proceeding and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(4) Representatives of the main Chinese exporter, China National Chemical Import & Export Corporation Sinochem, Beijing, were granted a hearing and made their views known in writing.

(5) The Commission sought and verified all the information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following:

(a) Community producer:

— Furfural Español S. A., Alcantarilla, Spain,

(b) Importers in the Community:

— Quaker Oats Chemicals Inc., Antwerp, Belgium (unrelated importer).

Otto Aldag GmbH & Co., Germany, an unrelated importer, made its views known in writing and requested a hearing, which the Commission granted. Limited information has been supplied by two other importers: I. C. Chemikalien GmbH, Germany, and COPCI, France.

(6) Sinochem, which was, until the end of 1992, the sole and is still the main Chinese trading organization exporting furfuraldehyde to the Community, replied to the Commission's questionnaire.

The Commission has received information that from 1 January 1993 a number of other Chinese producers or exporters began selling the product concerned to the Community. The Commission has received no cooperation from any of these companies.

(7) As Argentina has been used as an analogue country for the purpose of calculating normal value, (see recitals 14 and 15) the Commission conducted an investigation at the premises of two Argentinian producers of furfuraldehyde.

(8) The investigation of dumping covered the period from 1 July 1992 to 30 June 1993 the 'investigation period'.

B. PRODUCT UNDER INVESTIGATION

1. Description of the product concerned

(9) The product concerned is furfuraldehyde, a light yellow liquid with a characteristic pungent odour, which is obtained by processing different kinds of agricultural waste. Its two main applications are as a

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 208, 31. 7. 1993, p. 8.

selective solvent in petroleum refining for the production of lubricating oils and as raw material for processing into furfural alcohol, which is used to make synthetic resin for foundry moulds.

(10) According to the information available to the Commission, the product exported from China is made principally from rice husks or maize loaf and can be used for both the abovementioned applications.

2. Like product

(11) The Commission found that the furfuraldehyde produced by the Community producer, by the Argentinian producers and in the People's Republic of China have the same specifications. In spite of being made from different kinds of agricultural waste, they have been found to be interchangeable as far as their application is concerned. The Commission considered therefore that the furfuraldehyde imported from People's Republic of China is alike to the product made and sold by both the Community and the Argentina producers, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the Basic Regulation').

C. COMMUNITY INDUSTRY

(12) The complainant company was the only producer of furfuraldehyde in the Community during the investigation period. Therefore, as it represents the totality of Community production, it is considered to be the 'Community industry' for the purposes of Article 4 (5) of the Basic Regulation.

D. DUMPING

1. Normal value

(13) In order to establish normal value of furfuraldehyde produced in People's Republic of China, the Commission took account of the fact that the People's Republic of China is a non-market economy country. Therefore, in accordance with Article 2 (5) of the Basic Regulation, the determination of normal value was based on a market-economy country (analogue country). The complainant suggested Argentina, while the Chinese exporter considered Argentina inappropriate and submitted that South Africa or the Dominican Republic should be selected as the analogue country. As these three countries are the major producers of furfuraldehyde throughout the world, the Commission contacted the known producers in all of them in order to assess which was the most reasonable and appropriate to serve as an analogue country.

The Dominican Republic producer did not reply to the request for information made by the Commission.

From the information supplied by the South African producer which was contacted, it appears that this is the only producer in that country and the only supplier of its domestic market. However, while the production volume of the South African producer is relatively high, most is made for captive use and less than 3 % of total production is sold on the domestic market. In spite of the fact that no import duties are in force for this product, no imports of furfuraldehyde are recorded in South Africa. The absence of imports can be explained both by the embargo which affected South Africa until the end of 1992 and by the limited dimension of the domestic market. The Commission concluded therefore, that the South African market was not sufficiently competitive to meet the requirements of an analogue market. Finally, given the indications that the South African industry is largely subsidized, there was also the risk that domestic prices of furfuraldehyde were influenced by the subsidy policy.

(14) As far as the Argentinian market is concerned, it was found that duties of 10 % and 17,5 % were imposed on imports respectively from Aladi (Latin American Integration Association) countries and from the rest of the world and that no imports of the product concerned had been recorded during the investigation period in that country. There were two Argentinian producers whose size appeared similar to that of the Chinese producers and whose domestic prices were in reasonable proportion to production costs. Their domestic sales can be considered representative, as their volume corresponds to more than 10 % of the Chinese exports to the Community. Furthermore, the access to raw materials in Argentina is favourable since the industrial plants of those producers are situated in a tropical forest area from which is taken the variety of wood used for the production of furfuraldehyde. The Commission, after considering all these aspects, finally selected Argentina as the most appropriate and reasonable analogue country.

Sinochem argued that the production process in Argentina was entirely different from that in China, because in Argentina furfuraldehyde was a 'by-product of the production of tannin extract', while in China furfuraldehyde was produced as a by-product of agricultural waste. This statement

concerning the Argentinian production process proved incorrect. In fact, in Argentina furfuraldehyde is obtained from the agricultural waste left after the extraction of tanning from wood. This is a process similar to the one used in China, as well as in South Africa, were other kinds of agricultural waste are used, namely bagasse, maize loaf or rice husks.

Furthermore, Sinochem argued that the Argentinian production process would be highly inefficient since it used the machinery of an Italian producer which had stopped its production in the Community in 1990 as a result of high costs which had made it uncompetitive. However, according to the information supplied to the Commission, the production cost of the producer in question became uncompetitive because of the cost of compliance with increasingly strict standards of environmental protection laid down by national laws.

Normal value calculations have therefore been based on the information provided by the two Argentinian producers, whose submissions have been verified by means of an on-the-spot investigation. The domestic sales of those two companies represent the totality of the sales of furfuraldehyde on the Argentinian market.

(15) In accordance with Article 2 (5) (a) (i) of the Basic Regulation, normal value was established on the basis of the average ex-factory price of furfuraldehyde sold on the Argentinian market during the investigation period.

2. Export price

(16) The export price was determined on the basis of the price actually paid for the product sold for export to the Community. Export sales taken into consideration were all made to unrelated importers and represented more than 80 % of total exports from China.

(17) Sinochem, which represented 100 % of exports from China into the Community until 1 January 1993, cooperated in this proceeding.

(18) After 1 January 1993, the sales of Sinochem on the Community market dropped to less than 50 % of total Chinese exports to the Community, since other Chinese exporters had begun to operate in this field at that time.

(19) None of the companies which started exporting furfuraldehyde into the Community after 1 January 1993 cooperated in this proceeding. The Commission considered, therefore, that in accordance with Article 7 (7) of the Basic Regulation, it was reasonable to determine their export prices on the basis of the most reasonable facts available for the period from 1 January to 30 June 1993, which corresponds to the part of the investigation period during which they carried out their furfuraldehyde operations. It was found that Sinochem's export prices went down considerably once those other exporters had begun selling to the Community. This indicates that this price reduction was due to the pricing policy of these non-cooperators. It was therefore considered appropriate to base the export prices of those exporters on those applied by Sinochem during the period 1 January to 30 June 1993. This approach is also supported by the statistical information available to the Commission, which shows that Sinochem's average price was in line with the average import price of the product concerned originating in the People's Republic of China during the same period.

3. Comparison

(20) Normal value has been compared to the net Chinese border prices FOB for furfuraldehyde imported during the investigation period. For the purpose of ensuring a fair comparison, normal value and export price have been adjusted with respect to selling expenses according to Article 2 (9) and (10) of the Basic Regulation. In particular, normal value was reduced to take account of indirect taxes, transport, insurance and credit costs, whilst from the export price, ocean freight, insurance, packing, handling, salesmen's salaries, and where appropriate commission costs have been deducted.

The comparison of normal value and export prices, after all adjustments, was made at the same level of trade.

4. Dumping margin

(21) As the People's Republic of China is a non-market economy, the application to exporters of individual measures would be inappropriate given that exports could be channelled through exporters with low or no duty. Thus, a single dumping margin of 62,6 %, corresponding to the weighted average of the dumping margins of both cooperating and non-cooperating exporters has been determined.

E. INJURY

1. Preliminary remarks

(22) Statistical information relating to imports of furfuraldehyde into Belgium are covered by confidentiality. The Commission had access to this information subject to the proviso that import figures and origin were to be treated in confidence.

(23) A major portion of these imports are effected by a single user company through a US company, which belongs to the same group as the user. The US company buys from the producer on the basis of a long-term contract. The sales transactions between the US company and the Community user company have to be considered as occuring in a captive market, as they take place between companies of the same group at transfer prices which have remained constant since at least 1988.

(24) The Commission has therefore examined whether the findings could be limited to the free market, on the basis of the criteria laid down by the Court of Justice in its judgment of 27 November 1981 in Case C-315/90. The Court [1] had held that only the free market should be considered for the purpose of establishing the injury if the sales on the captive market do not enter into direct competition with the sales on the free market and cannot therefore be affected by the dumping. Given the conditions established in the long-term contract mentioned in recital 23, import volumes and prices from the third country in question are independent of normal market conditions for furfuraldehyde in the Community, and there is no competition between the sales made on each of the two markets. The Commission has therefore based its assessment of injury only on the free market.

2. Volume and market share of the dumped imports

(25) The apparent consumption of furfuraldehyde in the Community determined on the basis of the criteria mentioned in recital (24) declined by 37,4 % between 1988 and the investigation period. The decrease of consumption took place almost entirely between 1988 and 1991, and the consumption has since stabilized.

(26) The volume of imports from China, adjusted to take account of re-exports, went down by 35,6 % between 1988 and the investigation period; these imports fell therefore at a slightly lower rate than consumption.

(27) As a consequence, the movement in the market share of Chinese imports shows an increase from 44,2 % in 1988 to 45,8 % in the investigation period. However, this market share has fluctuated over the years : in particular, it declined to 41,4 % in 1991, before reaching the abovementioned level in the investigation period.

3. Price of dumped imports

(28) It was found that during the investigation period the furfuraldehyde from China was imported at prices which undercut those of the Community producer by 24,4 %. This price undercutting has been calculated as a percentage difference between the average cif import price of the Chinese product and the average ex-factory price of the Community producer. It must be noted that the undercutting margin would be much higher if the import prices of the second half of the investigation period were taken separately. In fact, the import price of furfuraldehyde from China dropped by more than 30 % during the investigation period alone.

4. Situation of Community industry

Total production

(29) The production of furfuraldehyde by Furfural Español S.A. dropped by 17,7 % between 1989 and the investigation period.

Production capacity and its utilization

(30) Production capacity remained stable over the period under consideration, with the exception of 1991, due to the relocation of one plant. However, the utilization of production capacity dropped considerably, from 85 % to 70 %.

Sales and market share

(31) Sales of Furfural Español S.A. on the Community market a drop of 28,5 % from 1989 to the investigation period.

Besides the Spanish producer, two Italian companies produced furfuraldehyde in the Community until 1990. The total market share of all the Community producers, which was 40,2 % in 1989, decreased in 1991 by 50 %, due to the decision of the Italian producers to cease production because

[1] Gimelec and others v. Commission [1991] ECR I-5589.

of the rising costs of compliance with the standards of environmental protection. The complainant, which had a market share of 17,7 % in 1989 did not in practice gain from this situation, as, indeed, its market share reached 20,8 % in 1991 but fell to 17,8 % during the investigation period. This fall would have been even greater without adjustment by the producer of its prices, as is explained below.

Prices

(32) Sales prices of the Community producer increased by 23,7 % between 1989 and 1991, but decreased by 36,4 % between 1991 and the investigation period, this price drop being 22,4 % between 1992 and the investigation period. Furfuraldehyde is a product with homogeneous characteristics and, in a very competitive market, prices are the decisive factor as regards each operator's position.

Stock

(33) Stocks held by the Community producer of furfural increased both in volume by (31,6 %) and as a percentage of production volume (from 12 % to 20 %) during the period under consideration.

Investments

(34) Investments grew considerably as a consequence of the relocation of one plant in 1991 and of environmental legislation. During the investigation period the level of investment was more than double that of 1989.

Profitability

(35) The sharp drop in sales prices, together with the decline of sales volume, badly affected the profitability of the Community producer. Its financial results, which were still positive in 1991, became increasingly negative in the following years : losses had appeared by 1992 and during the investigation period the highest loss on turnover (between 10 and 20 %) was recorded.

Conclusion on injury

(36) On the basis of the abovementioned factors, particularly increasing losses resulting from significantly reduced sales, declining prices and increasing stocks in 1992 and during the investigation period, the Commission concluded, for the purpose of its preliminary findings, that the Community industry had suffered material injury within the meaning of Article 4 (1) of the Basic Regulation.

F. CAUSE OF INJURY

1. Effect of dumped imports

(37) In examining the volume and price trends of the dumped imports in relation to the evolution of the factors affecting the state of the Community industry, the Commission found that the deterioration of the economic situation of that industry from 1992 to the end of the investigation period had coincided with the significant decrease in the prices of Chinese imports described above in recital (28). In fact, between 1988 and 1991 the export prices of furfuraldehyde from China were consistently below those of the Community production and those of the imports from other third countries, but they remained relatively stable. During this period the level of prices on the Community market was such that the Community producer was able to sell furfuraldehyde at profitable prices. From 1992 to the end of the investigation period, the Chinese export prices dropped abruptly, especially during the second half of the investigation period. Obviously, under the pressure of the low-priced dumped imports, the average sales prices of the Community producer went down by 22,4 % during that period, with serious repercussions on the profitability of the company. Under these circumstances it must be concluded that its precarious financial situation was caused by the dumped Chinese imports.

2. Other factors

(38) The Commission also considered the effect of other factors on the situation of the Community industry. In this respect, the contraction of Community consumption by 37,4 % between 1988 and the investigation period has affected the industry negatively, especially as far as its volume of sales is concerned. However, the reduction of Community consumption took place almost entirely between 1988 and 1991, a period during which the Community producer did not suffer financial losses. From 1991 to the investigation period the Community market had virtually stabilized, but the situation of the Community producer deteriorated. There is therefore no apparent link between the decrease in Community consumption and the injury to the Community production.

(39) As far as imports from countries other than China are concerned, only those originating in Austria and South Africa show a significant volume. Imports from Austria increased until 1991 and since then have held a stable market share of about 15 %. Imports from South Africa seemed to have benefited most from the disappearance of Italian production, their market share having risen from 2,6 % in 1990 to 12,3 % in 1992, but this market share dropped abruptly to 4,5 % during the investigation period. Consequently, the Commission concludes that Austrian and South African imports of furfuraldehyde did not cause or contribute to the injury to the Community industry, which became a material injury especially during the investigation period.

(40) The market share of the other exporting countries taken as whole fluctuated considerably between 1988 and the investigation period. This erratic evolution was due both to the continuously changing composition of this group of countries and to the important fluctuations in the exports of the individual countries, which have, in some cases, actually ceased in certain years. In those circumstances, it was not possible to establish any trend to the exports from this group of countries. In addition, it should be noted that the prices of these exports are, on average, higher than those for the Chinese exports. Furthermore, the volume of exports per country was low, their market share seldom approaching 5 %.

(41) That being so, it must be concluded that the imports from the People's Republic of China into a shrinking market have, through their low dumped price, resulted in price depression of furfuraldehyde which has led to a serious deterioration in the profitability of the Community producer and which are therefore, taken in isolation, to be considered to have caused the material injury suffered by the Community industry.

G. COMMUNITY INTEREST

1. General considerations

(42) The purpose of anti-dumping duties is to eliminate the dumping which is causing injury to the Community industry and thus to re-establish a situation of open and fair competition on the Community market which is fundamentally in the general Community interest. Against this background, the Commission has considered the effect of anti-dumping duties on furfuraldehyde imported from the People's Republic of China in relation to the specific interests of Community industry and of the users.

2. Interest of the Community industry

(43) The Community producer has made considerable investments in recent years to move one of its plants to a more isolated location in order to comply with the environmental protection laws. If this producer is forced out of the market, all these investments will be wasted. Chinese producers, not being bound by such strict anti-pollution obligations, which inevitably have a considerable impact on production costs, can further benefit from unfair competitive behaviour.

(44) Furthermore, as furfuraldehyde represents about 90 % of the turnover of the Community producer the company will have to shut down if no measure is taken, and at least 80 employees will become redundant in an area which already counts among those with the highest unemployment rate of the whole Community.

3. Interest of users

(45) The production capacity of the complainant company corresponds to one-third of the yearly consumption of the Community market. It cannot be expected, however, that there will be shortage of supply should anti-dumping measures be taken. First, the purpose of trade defence measures is not to exclude from the Community market, exporters found to have dumped injuriously, but simply to restore fair competitive conditions. Second, the high number of exporters from other third countries ensure that supply will be maintained at a level sufficient to meet the demand for furfuraldehyde in the Community in all circumstances. In this respect, however, it should be noted that the closure of the Community producer's plant, with the loss of one-third of the required supply in the Community, would cause considerable disruption of supply to Community users.

(46) The consequences of a possible price increase of furfuraldehyde following the imposition of anti-dumping measures are to be seen separately for the two main uses of furfuraldehyde, as namely selective solvent in oil refineries and as raw material for the production of synthetic resins.

(47) In the first case furfuraldehyde is used as a catalyst and as such its consumption in relation to the volume of lubricating oil is minimal. Its incidence on production costs are immaterial.

(48) As regards the use of furfuraldehyde in the production process of synthetic resin, the sole producer in the Community of the first intermediate product, furfural alcohol, obtains a considerable proportion of furfuraldehyde from a third country. In recitals (22) and (23) it was explained why these imports are a separate market and not influenced by the prices of furfuraldehyde on the Community's free market. As regards the free market, imports from the People's Republic of China correspond to only 10 % of the consumption of furfuraldehyde by the company in question. A price increase for those imports therefore cannot be expected to have a significant impact on the cost of production of furfural alcohol as a whole.

4. Conclusion

(49) In view of the heavy losses suffered by the sole producer of furfuraldehyde still operating in the Community, there is a material risk that in the absence of intervention this producer will shut down as all other Community producers have already done in recent years. In that event the Community market will become entirely dependent on imports. In view of the strategic importance of this product in the oil-refining sector, such a development would not be in the Community interest. In this context, it should be noted that the People's Republic of China, as a single supplier to the Community, already represents more than 60 % of the imported product.

The Commission therefore concludes that it is in the Community interest to eliminate the injurious effects of the dumping and to restore fair competitive conditions by the imposition of provisional anti-dumping measures.

H. PROVISIONAL DUTY

(50) The level of the injury has been calculated on the basis of the difference between the weighted average cif import price and the cost of production of the Community producer, plus a profit margin of 5 %. This rate seems justified in consideration of the facts available to the Commission concerning the market conditions and the investment requirement in the industry. On this basis, the average cif price of Chinese exports would have to be increased by about a half, in order to allow the Community producer to sell at profitable prices.

(51) As the dumping margin exceeds this injury threshold, the anti-dumping duty should be based on the lower figure in accordance with Article 13 (3) of the Basic Regulation.

(52) The exporters concerned sell furfuraldehyde besides a variety of other products to the importers in the Community. In order to minimize the risk of the duties being evaded by price manipulation it is considered appropriate to impose the duty in form of a specific amount of ECU per metric tonne. The calculation of the injury threshold related to cif import price results in a duty of ECU 352 per tonne.

(53) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing 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 purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty of ECU 352 per tonne is hereby imposed on imports of furfuraldehyde falling within CN code 2932 12 00, originating in the People's Republic of China.

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

3. 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 apply 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, 18 July 1994.

For the Commission

Leon BRITTAN

Member of the Commission