I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2674/94

of 31 October 1994

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

THE COUNCIL OF THE EUROPEAN UNION,

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 12 thereof,

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

Whereas :

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1648/94 (2), hereafter referred to as the 'provisional Regulation', imposed a provisional anti-dumping duty on imports into the Community of furazolidone originating in the People's Republic of China and falling within CN Code 2934 90 40.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

(5) As no further arguments have been presented regarding the product under consideration, the like product and the Community industry, the findings set out in recitals 7 to 10 of the provisional Regulation are confirmed.

D. DUMPING

I. Analogue country

(6) Following publication of the provisional Regulation, the Chinese exporters claimed that the selection of India as an analogue country was inappropriate for the following reasons :

— the high customs duty payable in India on imports of both the product concerned and on raw materials used in its manufacture, constitute an insurmountable barrier to the existence of normal competition in India for furazolidone ;

— there was no reasonable competition on the market in India as it was highly protected and monopolized by one Indian producer ;

— the sole producer in India on which the normal value was based was inefficient and has, since the investigation period, ceased production of the product concerned. To furthermore use a profit of 9 % in constructing normal value for such a company was inappropriate.

(1) OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
(2) OJ No L 174, 8. 7. 1994, p. 4.

It was suggested that the most appropriate analogue market in this case, given that no other third country can be used, would be the Community market.

(7) Having examined these claims, it was considered that the existence of high customs duties on imports of the product concerned and its raw materials has not detracted from the competitive nature of the market in India. Indeed, the Chinese exporters themselves were very much present on the market and indications were that, despite the high customs duty, they were able to actively compete on the Indian market. Furthermore, the Commission, when constructing normal value for the product concerned, made appropriate adjustments for the high level of customs duty paid on imported raw materials in order not to artificially inflate the normal value.

In addition, while noting that the Indian producer, on whose costs normal value was based, has since ceased production of the product concerned, it was considered that the volume of the product on which normal value was based, was, during the investigation period, sufficiently representative when compared to the volume exported to the Community from China.

While no facts were provided by the Chinese exporters in support of this claim, it is considered that, in any event, the alleged inefficiency of the Indian producer concerned is not a relevant factor in establishing the normal value on the market. In the absence of profitable sales of the product concerned by this producer during the investigation period, normal value was constructed on the basis of the cost of manufacture of the producer concerned plus an amount for selling general and administrative expenses and a reasonable margin of profit. The profit margin used (9 %) was, as stated in recital 13 of the provisional Regulation, that regarded as reasonable by the producer concerned, and furthermore, falls within the range of the profit considered reasonable for sales of the product concerned in the Community.

In any event, to use the Community as an alternative analogue market would have no impact on the measures to be imposed, since it would be equivalent to having the dumping margin based on the injury elimination margin which is the basis on which the provisional duty was actually imposed.

(8) The claim that India was an inappropriate analogue country and that the Community market should be used was, therefore, rejected.

II. Normal value

(9) For the purose of the definitive findings, normal value was established on the basis of the same methods as those used in the provisional determination of dumping. No objections with regard to these methods were raised by any interested party. The findings set out in recital 13 of the provisional Regulation are, therefore, confirmed.

III. Export price

(10) No new arguments were presented regarding the establishment of export prices. The findings set out in recital 14 of the provisional Regulation are, therefore, confirmed.

IV. Comparison

(11) No new arguments were presented concerning the method followed by the Commission in the comparison between normal value and export price. The method set out in recital 15 of the provisional Regulation is, therefore, confirmed.

V. Dumping margin

(12) No further arguments were submitted on the methodology used by the Commission in its preliminary determination. Therefore, the weighted average dumping margin definitively established and expressed as a percentage of the free-at-Community-frontier price, is 93 %.

(13) In its provisional findings, the Commission considered that the request from one Chinese exporter that an individual dumping margin be established was not justified for the reasons given in recitals 17 to 20 of the provisional Regulation. Following the publication of that Regulation, the exporter concerned repeated the request for the establishment of an individual dumping margin. However, as no new facts or arguments have been provided, the findings in recitals 17 to 20 of the provisional Regulation are confirmed.

E. INJURY

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

(14) The Chinese exporters claimed that the injury determination in the provisional Regulation was based on an incorrect assessment of the facts. In particular, they claimed that the Commission should have used Eurostat statistics relating to imports of the product concerned during the investigation period, rather than the import volumes of

the product concerned reported in the questionnaire responses by the Chinese exporters themselves. It was argued that some transactions reported by the Chinese exporters as being export sales to the Community were, in fact, not destined for the Community market but were transhipped outside the Community.

This claim could not be accepted. It was found that, while on the one hand, no evidence was provided in support of this claim, the use in the injury assessment of Eurostat statistics for the investigation period would still show a substantial increase in the imports concerned since 1990, together with a sizeable increase in market share held by these imports, and that the trend so established would not differ from that determined by the Commission in its provisional findings.

The claim for the injury assessment to be made on the basis of Eurostat statistics is, therefore, rejected.

II. Prices of the dumped imports

(15) In the absence of comment, the findings in recital 22 of the provisional Regulation are confirmed.

III. Situation of the Community industry

(16) As the claim in recital 14 above has been rejected, and as no other comments have been received on the situation of the Community industry, the findings in recitals 23 to 28 of the provisional Regulation are confirmed.

F. CAUSATION

(17) In its provisional Regulation, the Commission examined a claim by the Chinese exporters that the cause of price decreases of the product concerned on the Community market was the threatened prohibition of the product concerned in the Community, due to the uncertainty about its future applications. This claim was rejected by the Commission for the reasons given in recitals 33 and 34 of the provisional Regulation.

Following the publication of the provisional Regulation, the Chinese exporters repeated this claim, but since new arguments have not been submitted on this issue, the findings of the provisional Regulation are confirmed.

G. COMMUNITY INTEREST

(18) As no new arguments have been received in respect of the Community interest, the findings at recitals 36 to 39 of the provisional Regulation are confirmed.

H. DUTY

(19) No comments were received on the methodology adopted by the Commission for the establishment of the duty rates to be applied, as set out in recitals 40 to 43 of the provisional Regulation. These are therefore confirmed.

Since the margin of dumping found was greater than the corresponding increase in export prices necessary to remove the injury suffered by the Community industry, the definitive duty to be imposed should, therefore, correspond to the injury margin established i.e. 70,6 %.

I. RETROACTIVE DUTIES

(20) The Community producer requested the imposition of retroactive duties on the grounds that importers were aware that the exporters were practising dumping and that there would be material injury caused by sporadic dumping in the form of massive imports of furazolidone in a relatively short period prior to the imposition of the provisional anti-dumping duty.

(21) The Commission examined this claim, but found that it was not substantiated by any evidence showing the awareness of dumping practices on the part of the importers or any indications of the existence of sporadic dumping. In these circumstances, there were not grounds to impose retroactive anti-dumping duties in this case. The Council consequently decided not to impose retroactive anti-dumping duties on furazolidone originating in the People's Republic of China.

J. COLLECTION OF THE PROVISIONAL DUTIES

(22) In view of the dumping margin established and the injury caused to the Community industry, it is considered necessary that amounts secured by way of provisional anti-dumping duty for all companies should be collected definitively,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 duty applicable to the net, free-at-Community-frontier price, before duty shall be 70,6 %.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Regulation (EC) No 1648/94 concerning the imports from the People's Republic of China shall be collected definitively.

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 Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL