COUNCIL REGULATION (EC) No 95/95

of 16 January 1995

imposing a definitive anti-dumping duty on imports of furfuraldehyde 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 (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised 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 consultations within the Advisory Committee,

Whereas :

A. Provisional measures

(1) By Regulation (EC) No 1783/94 [2], hereinafter referred to as 'the provisional Regulation', the Commission imposed a provisional anti-dumping duty on imports of furfuraldehyde falling within the CN code 2932 12 00 and originating in the People's Republic of China.

By Regulation (EC) No 2818/94 [3], the Council extended the validity of these duties for a period not exceeding two months.

B. Subsequent procedure

(2) Subsequent to the imposition of the provisional anti-dumping duty, Sinochem, the main Chinese exporter submitted comments in writing and requested and was granted a hearing.

One importer made its views known to the Commission in writing.

In addition, an importer and processor of furfuraldehyde, which had not been taken into consideration for the imposition of the provisional duty because it started operating only at the beginning of 1994, submitted its written comments. Furthermore it requested and was granted the opportunity to be heard orally.

(3) The oral and written comments submitted by the interested parties were considered by the Commission services and taken into account where appropriate.

C. Product under consideration, like product and Community industry

(4) 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 9 to 12 of the provisional Regulation are confirmed.

D. Dumping

1. *Normal value*

(5) As the People's Republic of China is a non-market economy country, the Commission based the determination of normal value on domestic sales prices of two furfuraldehyde producers in a market economy country, in this case Argentina, pursuant to Article 2 (5) (a) (i) of Regulation (EEC) No 2423/88, hereinafter referred to as the basic Regulation.

(6) One importer argued that Argentina is inappropriate as an analogue country because the volume of the Argentinian production of furfuraldehyde would be too small compared with the estimated world production and with Chinese production.

By applying Article 2 (5) (a) of the basic Regulation and, in particular, by evaluating the representativeness of the sales on which normal value is to be based, it is the practice of the Commission to compare the volumes exported to the Community by the country under investigation with the volume of sales on which normal value is based. In applying this principle, it has been found that Argentinian domestic sales represented more than 10 % of the Chinese exports to the Community, which can be regarded as sufficiently representative. The ratio between the production in the analogue country and the world production or the production in the country under investigation is not relevant in regard to the choice of the analogue country.

(7) The same importer argued that the production costs of furfuraldehyde in Argentina are higher than in other countries. This could be proved by the fact that Argentinian furfuraldehyde could only be exported to other South American countries, whose markets are protected by high duties, but which grant preferential treatment to Aladi (Latin American Integration Association) countries. It was

[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 186, 21. 7. 1994, p. 11.
[3] OJ No L 298, 19. 11. 1994, p. 31.

found that this statement by the importer in question is incorrect, as during the investigation period about one third of Argentinian production of furfuraldehyde was exported to the Community.

(8) Sinochem also reiterated its arguments with regard to the choice of Argentina as an analogue country. The Commission has already given adequate reasons for this choice in recitals 13 and 14 of the provisional Regulation.

(9) Therefore, the Council maintains that the choice of Argentina as an analogue country has been made in an appropriate and not unreasonable manner. Recitals 13 and 14 of the provisional Regulation are confirmed.

(10) Consequently, for the purpose of definitive findings, the Council confirms the normal value established on the basis of Argentinian domestic prices, as indicated in recital 15 of the provisional Regulation.

2. *Export price*

(11) No new arguments were presented regarding the establishment of the export price. The findings set out in recitals 16 to 19 are therefore confirmed.

3. *Comparison*

(12) 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 20 of the provisional Regulation is, therefore, confirmed.

4. *Dumping margin*

(13) No further arguments were submitted on the dumping margin determination by the Commission in the provisional Regulation, which consisted of a single dumping margin corresponding to the weighted average dumping margins of both cooperating and non-cooperating exporters. The dumping margin of 62,6 % as indicated in recital 21 of the provisional Regulation is, therefore, confirmed.

E. Injury

1. *Preliminary remarks*

(14) In its provisional Regulation, the Commission based its calculation on injury on the price effect of the imports from China. In this regard, the Commission only considered the part of the market in which Community produced furfuraldehyde competed with the furfuraldehyde imported from China. The Commission excluded imports originating from a third country whose name cannot be disclosed for reasons of confidentiality. These imports are based on a long term exclusive supply contract between the producer in the third country and a company linked to the major Community importer, which covers more than 80 % of the furfuraldehyde purchased by this Community importer. The existence of this contract leaves the Community producer with only a very low potential volume of business with this importer. The imports from the third country in question were therefore considered to occur in a captive market.

(15) Sinochem argued that there is no captive market as the complainant sells its entire production on the open market and the importer in question is by far the largest potential purchaser of furfuraldehyde from the Community industry since it accounts for the bulk of furfuraldehyde consumption within the Community. Therefore, by excluding imports from the third country the evaluation of consumption and of the respective market shares would have differed.

(16) The Commission carried out a further injury in particular with regard to the specific contractual relationship between the producer in the third country and a company linked to the Community importer. This contractual relationship referred to in recital 14 has existed since the 1960s and constituted in the investigation period the basis of over 80 % of the furfuraldehyde purchased by the importer in question. The elements available at the provisional determination stage led the Commission to conclude that a captive market existed. Having now more information on this issue and after further analysis, there are doubts whether the situation described above could be qualified with certainty as a captive market. Under these circumstances, the Commission has decided to take into consideration the imports from this third country in its assessment of the injury caused to the Community producer.

2. *Market share of the Community production*

(17) Necessarily, compared with the provisional findings, when the imports from the third country are included, Community consumption increases and the market share of the dumped imports and of the Community producer's sales while showing an unchanged trend in their developments over the last years, decreases. In particular, the market share of the Community producer amounts to 6,3 % in the investigation period. This apparently low level is explained by the fact that the importer mentioned above (recitals 14 and 15) accounts for approximately 75 % of the Community consump-

tion of furfuraldehyde and as also explained above most of the furfuraldehyde from the third country is imported under special conditions, so that these imports constitute a market segment separate from that served by the Community producer.

3. *Market shares of the dumped imports*

(18) When furfuraldehyde imports from the third country are included, the dumped imports from China show, in volume terms between 1989 and the investigation period, a stronger decrease (31,7 %) than that of the total Community consumption (23,7 %). This situation reflects the fact that between 1989 and 1992 the market share of imports from the third country referred to in recital 14 increased; between 1992 and the investigation period this trend however, was reversed and the market share of the Chinese imports increased from 13,7 % to 15,2 %. Furthermore, it should be noted that the imports from China represent more than double of the sales volume of the Community producer and are by far the largest in volume after those from third country in question.

4. *Price of dumped imports*

(19) As explained in recital 28 of the provisional Regulation import prices of furfuraldehyde originating in China were found to undercut the prices of the Community producer by 24,4 % and to have dropped by more than 30 % during the investigation period. This calculation was based on the cif prices paid to Chinese exporters by the importers which cooperated. Sinochem, without contesting this calculation argued that the Commission has wrongly included in its injury calculation the resales of furfuraldehyde, allegedly made by the importer purchasing primarily in the third country. This argument is incorrect.

(20) As no other argument was brought forward concerning the prices of dumped imports, the findings in recital 28 of the provisional Regulation are confirmed.

5. *Situation of the Community industry*

(21) No further argument concerning injury, in particular on the situation of the Community industry, has been received. In particular the financial losses incurred by the Community producer have not been contested by the Chinese exporters. The findings of recitals 29, 30 and 32 to 35 are, therefore, confirmed.

6. *Conclusions on injury*

(22) In conclusion, the injury findings in recital 36 of the provisional Regulation are confirmed, in view, in particular, of the heavy financial losses suffered by the Community producer as a consequence of the strong decrease of furfuraldehyde prices on the Community market.

F. Causation

1. *Effect of the dumped imports*

(23) As no argument has been submitted, the provisional findings in recital 37, with regard to the effect of the dumped imports, are confirmed.

2. *Other factors*

(24) With regard to causation of injury, Sinochem argued that the Commission, by excluding imports originating in the third country in question, from the assessment of injury had ignored an important 'other factor' causing injury. It alleges that these imports, which would amount to more than four times the volume of imports from the People's Republic of China, were made available to the importer mentioned above (recitals 14 and 15) at a very low price.

(25) As regards the imports from the third country, they have, over the last 30 years provided the major proportion of the furfuraldehyde consumed in the Community. These imports, however, benefited a single, albeit major importer, which, for the reason explained above (recitals 14 and 15) did almost no business with the Community producer. Despite that situation the Community producer was able to maintain its prices, its market share and remained largely profitable until 1991. It was only starting from 1992 when the price for furfuraldehyde imported from China dropped abruptly, that the Community producer was compelled to cut its domestic sales prices and follow this downward trend in order to preserve its market share. Under these conditions, it can be excluded that the imports from the third country in question are the cause of its precarious situation. Regarding resales of furfuraldehyde imported by that importer and the possible effect of such transactions on the price level in the Community, the Commission established that this importer, in addition to furfuraldehyde from the third country referred to in recital 9, also bought Chinese furfuraldehyde and that a certain quantity of the imported material was resold in the Community. The prices of these resales, however, were significantly and consistently higher than those of the Chinese exports and did not undercut those charged by the Community producer. The Council concludes therefore that these resales cannot be considered a factor which eliminates the injurious effect of the Chinese exports.

(26) As no other argument has been submitted on this issue and since the changes in the market share figures do not alter the trends in market developments, the conclusions in recitals 38 to 41 of the provisional Regulation are confirmed and it is therefore maintained that the low priced imports from the People's Republic of China which brought about a serious price depression starting in 1992, have, taken in isolation, caused the material injury suffered by the Community industry.

G. Community interest

(27) Some interested parties argue that the Community producer does not have the capacity to supply the Community market. Furthermore, an importer of furfuraldehyde which was set up at the beginning of 1994 with the aim of producing furfuril alcohol, argued that the anti-dumping duty on furfuraldehyde imports from China would make the production of furfuril alcohol unprofitable for itself as it cannot rely on an agreement of an exclusive and cheap supply of furfuraldehyde from the third country in question, as the other importer processor is able to do.

(28) The Council is aware that the Community is not self-sufficient in furfuraldehyde, but taking into account the number of suppliers from third countries, it can be expected that no supply shortage will occur and price competition will continue to be considerable. Furthermore, the Council points out that at the time when the new processing company was set up in January 1994 the present anti-dumping proceeding had already been initiated following the note published on 31 July 1993. This fact should have been known by the company in question, which should have taken into account the possibility that an anti-dumping duty might be levied on its principal raw material as a proceeding had already been initiated. In addition, the disadvantage for the importer/processor in question has to be viewed against the background of the threat of the disappearance of the sole producer of furfuraldehyde still operating in the Community. This Community producer is mainly oriented to the oil refining industry market for which a safe and timely supply of furfuraldehyde can be considered of strategic importance. Finally should this company be shut down, at least 80 employees will become redundant in an area with one of the highest unemployment rates in the Community.

No other arguments were made with respect to Community interest. It can therefore be considered as set out in recitals 42 to 49 of the provisional Regulation that it is in the Community interest to impose definitive anti-dumping measures to eliminate the injurious effects of dumped imports.

H. Undertaking

(29) Sinochem has proposed a price undertaking coupled with a commitment not to exceed a maximum quantity of export of furfuraldehyde. Accepting such an undertaking would imply granting individual treatment to Sinochem. However, Sinochem, as a State-owned company, does not meet the requirements to be granted individual treatment for a company in a non-market economy. Furthermore, a number of violations of undertakings by Chinese exporters have taken place in recent years. In particular, Sinochem itself has previously breached an undertaking. The offer of an undertaking is therefore rejected.

I. Duty

(30) Provisional measures consisted of an anti-dumping duty in the form of a specific amount per tonne. This was imposed at the injury elimination level determined, since this was lower than the dumping margin established, as set out in recital 51 of the provisional Regulation.

No new arguments were put forward to contradict this approach. The relevant findings as expressed in recitals 21 and 50 of the provisional Regulation are therefore confirmed. Accordingly the amount of the definitive anti-dumping duty should be the same as the amount of the provisional duty.

J. Collection of the provisional duty

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of furfuraldehyde falling within CN code 2932 12 00 and originating in the People's Republic of China.

2. The rate of the duty applicable is ECU 352 per tonne.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 1783/94 shall be definitively collected in full.

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, 16 January 1995.

For the Council

The President

E. ALPHANDÉRY