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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 600/96

of 25 March 1996

imposing a definitive anti-dumping duty on imports of coumarin 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 (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (1), and in particular Article 23 thereof,

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 (2), and in particular Article 12 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 2352/95 (3), hereinafter referred to as 'the provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of coumarin falling within CN code ex 2932 21 00 and originating in the People's Republic of China.

By Regulation (EC) No 212/96 (4), the Council extended the validity of these duties for a period of two months expiring on 9 April 1996.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the imposition of the provisional anti-dumping duty the following interested parties submitted their comments in writing:

- Cefic on behalf of the Community industry,
- Tianjin No 1 Perfumery Factory, an exporter/producer from the People's Republic of China,
- British Essential Oil Association and the importers united therein (BEOA), on behalf of the major part of users and importers in the Community,
- Vereinigung der am Drogen- und Chemikalien-Gross- und Aussenhandel beteiligten Firmen (VDC), on behalf of Paul Kaders GmbH, Hamburg, Germany, importer.

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

C. PRODUCT UNDER INVESTIGATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

(4) VDC has reiterated its claim that Chinese coumarin and coumarin produced by Rhône Poulenc cannot be considered as like products. It claimed in particular that the Chinese product and the Community product were produced from different raw materials, used different production processes, and that the Chinese product was of a lower quality and could not be used for as many purposes as the Community product.

However, it had provisionally been established that the two products appeared almost entirely interchangeable and that differences in quality had no effect on the definition of the 'like product'. This matter has been explicitly dealt with in recitals 11 and 12 of the provisional duty Regulation. Since VDC only reiterated the arguments submitted before the imposition of the provisional duty and did not provide new evidence, the findings for the provisional determinations are confirmed.

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) 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).
(3) OJ No L 239, 7. 10. 1995, p. 4.
(4) OJ No L 28, 6. 2. 1996, p. 1.

(5) As no new arguments have been presented regarding the product under investigation, the like product and the Community industry, the findings set out in recitals 9 to 13 of the provisional duty Regulation are confirmed.

D. DUMPING

1. Normal value

(6) For the provisional determination, the normal value was established on the basis of the average ex-factory price of coumarin sold on the United States market, which was selected as an analogous country.

(7) VDC argued that the Commission's efforts to obtain information from India could not be considered sufficient and that other potential sources of information should have been tapped. The Council would point out that all four Indian companies known to be coumarin producers were contacted by the Commission services. However, from the information received, it was found that only one of them actually produced coumarin during the investigation period. This one, at the request of the Commission services, supplied some general information about the Indian market, but refused subsequently to fill in the questionnaire. Furthermore, on the basis of the information available, the domestic sales prices of the Indian producer in question were substantially higher than those of Rhône Poulenc Inc., as a result of very high tariff protection of the Indian coumarin market. It has been found that this would still be the case even if an adjustment for duty draw-back were applied on the raw materials used for the production of coumarin. Therefore the choice of India as analogous country would have led, on the basis of the information available, to the establishment of a normal value higher than that found by using the United States of America as analogous country. Hence, the conclusions of recital 14 of the provisional duty Regulation are confirmed.

(8) As regards the choice of the USA as analogous country, VDC reiterated the claim that the United States was unsuitable as analogous country owing to the monopoly position that the US manufacturer allegedly enjoyed in that market, allowing him to dictate the prices; as evidence, VDC referred to a price increase imposed by the producer in question in November 1991.

The Council would point out that the US producer cannot by any means be regarded as being in a monopolistic situation, since, as explained in recital 15 of the provisional duty Regulation, during the investigation period China held a very substantial share of that market. As far as the abovementioned price increase is concerned, it should be noted that it was completely nullified by the middle of 1993 under the pressure exerted on the US market by low priced imports from the People's Republic of China.

(9) In objecting to the choice of the USA as analogous country, VDC reiterated that a reference country should be comparable in terms of production conditions, methods and standards. The Council observes that the differences in production process between Rhône Poulenc Inc. and the Chinese producers were already examined at the stage of the provisional determinations. In this respect no adjustment appeared then to be justified, as stated in recital 15 of the provisional duty Regulation, first and second paragraphs.

As no new argument has been put forward in this respect, the Council maintains that the choice of USA as analogous country has been made in an appropriate and reasonable way. Therefore, recital 15 of the provisional duty Regulation is confirmed.

(10) Tianjin No 1 Perfumery Factory argued that, following innovations brought about in its production process, its plants now have a higher yield than the other companies in China and than Rhône Poulenc and therefore its production costs would be comparatively lower. It must be underlined that this statement has not been substantiated at all. However, the Council points out that costs and prices in China — a non-market economy — do not result from the free action of market forces, but are the subject of State intervention. Since Tianjin No 1 Perfumery Factory is owned by the State, which, as a consequence, has a determining influence on its business, it is not possible to establish reliable costs and prices in order to assess the comparative advantage that the producer in question claims to enjoy in respect of the other Chinese producers of coumarin, as well as in respect of Rhône Poulenc. It follows that the establishment of individual normal values and hence individual anti-dumping duties is not possible in the present case.

(11) Consequently, the Council confirms, for the purpose of the definitive findings, the single normal value for all Chinese producers established on the basis of domestic sales prices found in a market economy country, i.e. the USA, according to the rules set out in Article 2 (5) of Regulation (EEC) No 2423/88, as indicated in recitals (16) and (17) of the provisional duty Regulation.

2. **Export prices**

(12) No new arguments were presented in relation to the findings set out in the provisional duty Regulation concerning the determination of export prices. Recitals (18) and (19) are therefore confirmed.

3. **Comparison**

(13) BEOA pointed out that transport costs in the USA have not been deducted from the normal value for the purpose of the comparison of the latter with the export prices, as provided for by Article 2 (10) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation'). The Council notes that for the purpose of ensuring a fair comparison, the normal value and the Chinese export prices were established at fob level, US and Chinese border respectively. As regards the adjustment of US normal value, requested by BEOA, transport costs should have been added to the ex-factory level and not deducted, in order to establish a fob, US border, normal value level. However, it has been found that the transport cost of coumarin between the Rhône Poulenc Inc. production plants and the closest shipping harbour is lower than 0,5 % of normal value. Therefore, in conformity with Article 2 (10) (e) of the basic Regulation, this adjustment was considered insignificant and hence disregarded. In this respect, the determination laid down in recital (21) of the provisional duty Regulation is confirmed.

(14) With relation to the allowance for physical differences in the form of a downward adjustment of normal value, Cefic argued that no real quality difference existed between the Chinese coumarin and that of Rhône Poulenc. In Cefic's view, any difference is simply a matter of perception on the part of certain users only, notably those using coumarin for fine fragrance production, who are of the opinion that Rhône Poulenc's coumarin is more suitable for their applications.

The Commission, in its investigation, has found that the Chinese product did not have a stable quality and needed to be submitted systematically to quality control tests by the traders; moreover, in certain cases the shipped batches differed sufficiently from the accepted sample to make them unsuitable for the use for which they were originally bought. Furthermore, as Cefic itself admits in its submission, most fine fragrance makers have a clear preference for the Rhône Poulenc product; consequently the Chinese coumarin is excluded from several applications in the specific field of fine fragrances. In view of this, the Council considers that the supplementary costs for quality control and rejected batches, as well as the slightly more limited scope of application of Chinese coumarin, justify an allowance for difference in quality.

(15) Cefic contested also the methodology used by the Commission for establishing the allowance for quality differences as described in recital 22 of the provisional duty Regulation. In particular, Cefic alleged that the sales price difference in 1988 between Rhône Poulenc SA coumarin and Chinese coumarin was based on a sales price of Rhône Poulenc SA yielding a profit margin on turnover higher than the 5 % used by the Commission services to calculate the underselling during the investigation period. In substance, Cefic argued that the Commission's approach linked the value of the quality difference to the level of profit achieved; hence Cefic suggested adjusting Rhône Poulenc SA sales price in 1988 by applying the profit margin of 5 % used for establishing, during the investigation period, the injury elimination level through the underselling methodology.

The Council points out that there is no link between the calculation method of the quality difference as perceived by the consumer and the determination of the profit required to reach the injury elimination level. On the one hand, the sales price difference in 1988 appears to represent the quality difference as perceived by the operators in a coumarin Community market not yet depressed by the Chinese low price policy, at a time when Chinese exporters held a significant market share of 21,3 %, reflecting the existence of a certain degree of competition on the market. On the other hand, users and other operators purchase coumarin at a price level which corresponds to their perception of the quality of the product, independently of the production cost of the said product, which is unknown to them.

(16) As no further arguments were submitted concerning the comparison between normal value and export price, the Council confirms the conclusions set out in recitals (20) to (22) of the provisional duty Regulation.

4. **Dumping margin**

(17) The dumping margin, which was higher than 50 %, as indicated in recital (23) of the provisional duty Regulation, is therefore confirmed.

E. INJURY

(18) It was provisionally determined that the prices of coumarin originating in the People's Republic of China have consistently undercut the prices of the Community product since 1990. During the investigation period the undercutting practised by the Chinese exporters has been found to be as high as 28,7 % on the price of Community industry coumarin. VDC argued that falling prices of imports of coumarin from China between 1990 and the investigation period cannot be considered as undercutting the Community producer prices within the meaning of Article 4 (2) (b) of the basic Regulation, insofar as they simply passed on to the consumer the effects of the declining prices of the raw materials, in particular orthocresol, which is used only by Chinese producers for producing coumarin.

It has been observed that Chinese prices, which in 1988 and 1989 were practically at the same level of the Community product, have been undercutting Rhône Poulenc SA prices throughout the period 1990 to 1994, regardless of the evolution of the prices of the raw materials, in particular orthocresol, whose prices, in fact, during the period under examination (1990 to 1994), though declining, were substantially higher than in the years prior to 1990, when no undercutting was recorded. Therefore, it is maintained that significant price undercutting has been observed between 1990 and the investigation period within the meaning of Article 4 (2) (b) of the basic Regulation. The findings of recital (29) of the provisional duty Regulation are therefore confirmed.

(19) No other argument concerning the injury suffered by the Community industry has been submitted. The injury findings and the conclusion that the Community producer has suffered material injury within the meaning of Article 4 (1) of the basic Regulation, as stated in recitals (24) to (38) of the provisional duty Regulation, are therefore confirmed in view, in particular, of the dramatic erosion of market shares and of the heavy financial losses suffered by the Community industry during the period under examination.

F. CAUSATION OF INJURY

(20) With regard to the effect of dumped imports, VDC maintained that no clear link existed between the imports from China and any injury to the Community producer. To support this statement, VDC pointed out that imports from China decreased by 33 tonnes between 1991 and 1992, while those from the USA increased by the same volume during the same period.

This argument, however, is unconvincing. Indeed, VDC omitted to consider that the two quoted developments are simply episodic and limited fluctuations which contrast with the overall growing trend of imports from China in the five year reference period and the mainly stable imports from the USA. In absolute terms, the increase of 132 tonnes in imports from China between 1990 and the investigation period (1 April 1993 to 31 March 1994) at low undercutting prices has clearly had a negative impact on the Community industry. The development of imports from China has to be seen in the context of the Community market, which amounts to a few hundred tonnes a year and in which the Community industry saw its sales decreasing by 58,5 %. Consequently, the findings of recital (39) of the provisional duty Regulation are confirmed.

(21) With regard to the effect of other factors, VDC claimed that imports from third countries were a major factor in the Community industry's loss of market share. In this respect, VDC pointed out that imports from third countries climbed from 38 tonnes in 1990 to 71 tonnes in the investigation period.

It is observed that only imports from Russia and Japan, which were also made at low prices comparable to those of the imports from China, could have contributed to the injury suffered by the Community industry. However, given their low volume, representing less than 7 % of the Chinese imports, it must be concluded that the sharp decline in sales and market share of the Community industry is principally attributable to the massive dumped imports from China which increased their market share by 32 percentage points between 1990 and the period of investigation, compared to an increase of 1,8 percentage points from Russia and 3,7 percentage points from Japan over the same period. Consequently, the Council maintains that a possible contribution to the injury by low priced imports from other third countries can only be considered as marginal, given their much smaller volume compared to that of the Chinese. The conclusions of recital (43) of the provisional duty Regulation are therefore confirmed.

(22) As no further aspects concerning other possible injury factors have been found and no further arguments have been submitted, it is maintained that the low priced imports of coumarin from the People's Republic of China, taken in isolation, caused material injury to the Community industry through their continuous erosion of the Community industry's market share and the depressing effect on its prices. The provisional findings on the causation of injury as expressed in recitals (40) to (42) and (44) to (46) of the provisional duty Regulation are therefore confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

(23) According to a submission by VDC, the extent to which an anti-dumping measure is in the Community interest has to be judged in the light of the overall economic situation of the Community industry, the consolidated profit of which increased considerably in the first half of 1995 compared to the same period of 1994.

While it may be correct that the overall situation of Rhône Poulenc SA has improved after the investigation period, no indication has been given that the profitability of the coumarin business by Rhône Poulenc SA has improved. Moreover, it should be recalled that, following a long-standing practice of the Community institutions, all aspects of a given case are examined only in relation to the product in question, i.e. in this case coumarin. For these reasons, the argument of VDC cannot be accepted.

(24) VDC further argued that the imposition of an anti-dumping duty would have repercussions on the Community's exports of orthocresol to China, as 80 % of this raw material for Chinese coumarin originates in the Community. This statement has not been substantiated; however, it should be noted that any increase in Community orthocresol exports to China by Community producers of that product may be attributed to an increase of Chinese exports of coumarin to the Community as a result of unfair Chinese trading practices. In addition, it has to be observed that any decrease of Community exports of orthocresol to China due to lower coumarin imports from China would be compensated by a higher production volume of phenol in the Community to feed the anticipated increase in production of coumarin by the Community industry.

2. Interest of users

(25) Moreover, VDC and some users raised the argument that the decline in imports of coumarin from China following the imposition of an anti-dumping duty would cause difficulties to users of Chinese coumarin which will have to bear considerable costs in changing their formulae as a result of switching from Chinese coumarin to that made by the Community industry; in addition, importers would allegedly encounter problems in satisfying customer demand for Chinese quality coumarin.

The Council notes that neither VDC nor the users have given any information concerning the incidence of these costs for changing formulae on the production costs of perfume compounds; in any case it must be stressed that Chinese coumarin would still be available on the Community market if an anti-dumping duty were imposed, but at a non-injuriously dumped price. Therefore 'switching' costs would not necessarily have to be incurred.

(26) VDC expressed the concern that, in the long run, the imposition of a definitive anti-dumping duty would place in a monopolistic position the sole producer of coumarin in the Community, a producer whose subsidiary in the USA allegedly controls the US market.

It is recalled that the aim of the anti-dumping duty is not to eliminate from the Community market the imports originating in a given third country, but to remove trade-distorting effects of injurious dumping and to restore effective competition. In this respect it should be observed that the duty has been fixed at a level which should not prevent the Chinese coumarin from remaining competitive on the Community market (see recital (55) of the provisional duty Regulation).

Moreover, it should be stressed that during the investigation period the Chinese producers held a very substantial share of the Community market which was consistently higher than that of the Community producer. Hence, the concrete risk exists that the Chinese producers themselves could acquire a monopolistic position should no measures be taken. The risk of the creation of such a monopoly would also not be in the Community interest. Furthermore, the world coumarin industry appears currently to be concentrated in two poles, one Community producer with its US subsidiary and the production in the People's Republic of China; however, there are indications that other coumarin production regions are emerging, e.g. in India. Consequently, it is very unlikely that the Community producer would find itself in a monopolistic situation as a consequence of the imposition of an anti-dumping duty. Finally, as far as the alleged dominant position of Rhône Poulenc Inc. in the US market is concerned, it is pointed out that during the investigation period the exporters from the People's Republic of China held a very substantial share of the US market. In this regard, it also has to be mentioned that Chinese exports of coumarin to the USA are now subject to anti-dumping measures, which could lead to a diversion of Chinese exports to the Community market.

(27) BEOA maintained its allegation concerning the threat of abuse of a dominant position by Rhône Poulenc SA in relation to its marketing policy, consisting allegedly of guaranteeing the delivery of a predetermined volume of coumarin only to users which agree to enter into a five-year purchase contract. This allegation, which was already rejected at the stage of the provisional determinations, has not been further substantiated. Moreover, no formal complaint has been lodged with the appropriate authorities and, according to the information gathered in the course of the investigation, it has been found that the marketing policy in question has not been implemented at all. The conclusions expressed in recital (51) of the provisional duty Regulation are therefore confirmed.

3. Conclusions

(28) No other arguments were made with respect to Community interest. After carefully examining all the arguments made, the Council is of the opinion that there are no compelling reasons not to take anti-dumping action in this case. It can therefore be considered that it is in the Community interest to impose an anti-dumping duty as set out in recitals (47) to (54) of the provisional duty Regulation.

However, in view of the fact that the world coumarin industry is currently concentrated in two poles, which share almost the totality of the Community market, it is advisable to examine the development of the market situation for the product in question following the imposition of the anti-dumping measure. It is therefore considered appropriate that the Commission undertake a review of this Regulation provided that market conditions in this sector require it.

H. DUTY

(29) BEOA argued that the Commission made a methodological error in calculating the underselling margin for the transactions occurring directly between the Chinese exporter and the user in the Community, since they did not add a distributor mark-up to the CIF import price. BEOA claimed that, in doing this, the trade level difference would not be removed for sales of this kind, because the injury elimination level established for Rhône Poulenc SA included sales, general and administrative expenses and profits of its distributors, while no mark-up was taken into account for the users purchasing directly from the Chinese exporters. In this respect, it should be observed that the Commission established the injury elimination level by including all the costs and profits of Rhône Poulenc SA distributors which themselves sell directly to users. Therefore no mark-up needs to be added to the cif import price of users because the transactions were taking place at the same level of trade. Furthermore, it has been found that the average cif import prices for all distributor-importers fall within a narrow scope, and on average, at a significantly lower level than that found for the users. In particular, this price difference is of a magnitude corresponding to the mark-up applied by distributor importers for their resales to the users.

This fact is clear evidence that the People's Republic of China producer/exporters differentiate their sales prices according to the level of trade at which their customer is situated. Consequently, the Council considers that the comparison has been made at the same level of trade and adding a mark-up to the cif import price of users would constitute double counting. The claim for adjustment for trade level difference is therefore rejected. The underselling determination as described in recitals (54) and (55) of the provisional duty Regulation is confirmed.

(30) Provisional measures consisted of an anti-dumping duty in the form of a specific amount per tonne. The duty was imposed at the injury elimination level since this was lower than the dumping margin and was established as set out in recitals (56) and (57) of the provisional duty Regulation. No further arguments were put forward to contradict this approach. The relevant findings as expressed in recitals (23) and (55) are therefore confirmed. Accordingly, the rate of the definitive duty should be at the same level as the provisional duty.

I. COLLECTION OF THE PROVISIONAL DUTY

(31) In view of the dumping margin established, and the seriousness of the injury caused to the Community industry, it is considered necessary that 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 coumarin falling within CN code ex 2932 21 00 (Taric code 2932 21 00 * 10) and originating in the People's Republic of China.

2. The rate of the duty applicable is ECU 3 479 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 2352/95 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, 25 March 1996.

For the Council

The President

S. AGNELLI