COMMISSION REGULATION (EC) No 510/2003

of 20 March 2003

imposing provisional anti-dumping duties on imports of paracresol 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 (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (basic Regulation), as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 27 June 2002, the Commission announced by a notice (Notice of Initiation) published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of paracresol originating in the People's Republic of China (PRC).

(2) The anti-dumping proceeding was initiated following a complaint lodged on 13 May 2002 by Degussa Knottingley Ltd, the sole producer in the Community representing therefore 100 % of the Community production of paracresol. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the exporting producers and importers/traders known to be concerned as well as their associations, the representatives of the exporting countries concerned, users, and the complainant Community producers of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(4) A number of parties made their views known in writing. All parties who so requested within the time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard orally.

(5) In view of the large number of Chinese exporting producers listed in the complaint, the Commission indicated that it might be necessary to apply sampling in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were requested to make themselves known to the Commission and to provide, as specified in the Notice of Initiation, basic information on their activities related to the product concerned during the investigation period (1 April 2001 to 31 March 2002).

(6) After examination of the information submitted by exporting producers and due to the low number of replies to the sampling questions, it was decided that sampling was not necessary.

(7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned. Claims for MET and IT were received from two exporting producers.

(8) The Commission sent questionnaires to parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the Notice of Initiation. Replies were received from the complaining Community producer, two exporting producers, one producer in the analogue country and seven users.

(9) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Exporting producers*

— Nanjing Jingmei Chemical Co, Ltd, People's Republic of China,

— Shandong Reipu Chemicals Co, Ltd, People's Republic of China;

(b) *Analogue country producer*

— Merisol USA LLC, United States of America;

(c) *Community producers*

— Degussa Knottingley Ltd, United Kingdom;

(d) *Users*

— BASF, Ludwigshafen, Germany.

(10) The investigation of dumping and injury covered the period from 1 April 2001 to 31 March 2002 (investigation period or IP). The examination of trends in the context of the injury analysis covered the period from 1 January 1998 to the end of the IP (period under consideration).

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 153, 27.6.2002, p. 7.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(11) The product concerned is paracresol with a minimum para-isomer purity of 97 %, calculated on a net dry basis, currently classifiable within the CN code ex 2907 12 00.

(12) Paracresol is a colourless to pale yellow toxic organic chemical used as an intermediary chemical in the production of anti-oxidants and fine chemicals such as anisic aldehyde, sun screens, UV stabilisers etc. The product concerned exists in different purities between 97 % and 99,9 % which all share the same basic physical and chemical characteristics and uses. They all share the same basic molecule (C_7H_8O) with the methyl function in the same position and the same impurities (such as orthocresol, metacresol etc.).

2. Like product

(13) One exporting producer and one user submitted that paracresol produced in the Community could not be considered comparable to that produced and exported to the Community from the PRC on the grounds of the difference in purity between these two products. The user claimed to have encountered problems due to the impurity profile of the paracresol produced by the Community industry. However, the investigation has shown that all paracresol is alike, as it has the same basic physical and chemical characteristics and essentially the same uses. This was confirmed both by the on-the-spot investigation of the Community producer and the majority of the users.

(14) It was found that the paracresol manufactured in the PRC and sold domestically, as well as that exported to the Community, the product sold on the domestic market of the analogue country (United States of America — USA) and manufactured and sold in the Community by the Community industry have basically the same physical and chemical characteristics and the same uses. Therefore these products are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Normal value

(a) Market economy treatment

(15) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 for those exporting producers which can show that they meet the criteria laid down in Article 2(7)(c) of that Regulation, i.e. that market economy conditions prevail in respect of the manufacture and sale of the product concerned.

(16) Claims for MET were received from two exporting producers:

— Nanjing Jingmei Chemical Co, Ltd, Nanjing, a Sino-Taiwanese joint venture,

— Shandong Reipu Chemicals Co, Ltd, Qihe County, a fully Chinese limited liability company.

(17) The claims were analysed on the basis of the five criteria required by Article 2(7)(c) of the basic Regulation. Both companies fulfilled the required criteria because business decisions are made in response to the market and without significant State interference. They have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes. The production costs and the financial situation are not subject to significant distortions carried over from the former non-market economy system. Legal certainty and stability of the operations are assured as both companies are subject to bankruptcy and property laws and exchange rate conversions are carried out at the market rate.

(18) The Community industry was given the opportunity to comment and particularly questioned whether the raw material prices were market prices. The subsequent investigation showed that prices for the main raw materials of the two Chinese exporters were in line with world market prices and also with the purchase prices of the Community industry. The Advisory Committee was consulted and did not object to the Commission's conclusions.

(b) Analogue country

(19) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers which are not granted market economy treatment has to be established on the basis of the prices or constructed value of the analogue country for the products comparable to those sold by the Chinese exporting producers.

(20) In the Notice of Initiation of this proceeding, the Commission proposed Japan as an appropriate market economy third country for the purpose of establishing normal value for the PRC.

(21) One exporting producer opposed this proposal and proposed India as an analogue country with the main argument that the cost structure of the Indian producer was similar to the cost structure of the Chinese producers. The Community industry objected to India as an analogue country on the basis that domestic sales to unrelated customers made by Indian producers were allegedly not representative.

(22) The Commission contacted all known producers of paracresol outside the European Community and the PRC (one producer each in India, Japan and the USA). The producers in Japan and India refused to cooperate in the proceeding. In addition, the vast majority of the production in India was for captive use. The USA producer's sales were representative as domestic sales accounted for more than 5 % of the exports of the product concerned originating in the PRC to the Community and there are no substantial import restrictions. Consequently, the Commission decided to use the USA as an appropriate analogue country.

(c) Determination of normal value for cooperating exporting producers granted MET

(23) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of paracresol were representative, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume to the Community. The investigation showed that domestic sales were representative.

(24) The Commission subsequently examined whether the domestic sales of the company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers not sold at a loss on the domestic market during the IP.

(25) As less than 10 % of the domestic sales of the like product during the IP of both Chinese exporting producers concerned were profitable, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed on the basis of each exporting producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative (SG&A) costs and for profit. Its own SG&A costs could be used because the domestic sales of the like product made by the exporting producer were representative as defined in Article 2(2) of the basic Regulation, i.e. the domestic sales of each company accounted for more than 5 % of the exports of the product concerned by the respective company. For the profit margin, in accordance with Article 2(6)(b) of the basic Regulation, the profit margin of the same general category of products in the domestic market was used. This profit margin could be used as a number of products sold fall into the same general category of products because they are basic organic chemicals (such as sodium sulphite etc.).

(d) Determination of normal value in the analogue country

(26) In order to establish whether sales in the USA market of the products comparable to those sold by the Chinese exporting producers to the Community were made in the ordinary course of trade, the domestic selling price was compared to the full cost of production (i.e. the cost of manufacturing plus SG&A expenses). Since less than 20 % of the sales volume of the type sold on the domestic market was sold at a loss and since the weighted average cost of production was lower than the weighted average selling price, normal value was established as the weighted average price of all transactions.

(27) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in the USA.

2. **Export price**

(28) The export prices for the cooperating exporting producers were established on the basis of the prices paid or payable for the product concerned when sold to the first independent customer in the Community in accordance with Article 2(8) of the basic Regulation.

(29) Due to a lack of cooperation, the export prices for the remaining exporting producers were established in accordance with Article 18 of the basic Regulation. Export prices were calculated based on the average weighted export price of the cooperating producers for the product type sold by the producer in the analogue country as no other sources were available. Eurostat figures could not be used because the product concerned is only part of a CN code which also covers other products with a different price structure.

3. **Comparison**

(30) As far as the cooperating exporting producers are concerned, for the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made in respect of transport, insurance and handling, packing, credit costs and commissions where applicable and justified.

(31) The comparison for non-cooperating producers was based on a comparison of the average export price of the cooperating producers as defined in recital 29 with the normal value in the analogue country as defined in recital 27.

4. **Dumping margin**

(32) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. The provisional dumping margin was expressed as a percentage of the cif Community frontier price, duty unpaid.

(33) The margins are:

— Nanjing Jingmei Chemical Co, Ltd, Nanjing:	23,8 %;
— Shandong Reipu Chemicals Co, Ltd, Qihe County:	9,4 %;
— Country-wide dumping margin:	40,7 %.

D. **INJURY**

1. **Definition of the Community industry**

(34) The sole cooperating Community producer accounted for 100 % of the Community production of paracresol during the IP.

(35) One user and one exporting producer claimed that paracresol was also being manufactured by one of the users for captive consumption. However, the investigation showed that this user did not produce paracresol, but a mixture of isomers. This mixture of isomers is further processed without separation of the paracresol. This mixture does not fall under the definition of the product as set out above in recital 11. Therefore, for the purpose of the investigation, the user concerned is not considered to be a producer of the product concerned.

(36) The sole Community producer is therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(37) As the Community industry is thus constituted of only one producer, all figures relating to the latter had to be indexed for reasons of confidentiality.

2. **Determination of the relevant Community market**

(38) For the purpose of establishing whether or not the Community industry suffered injury and of determining consumption and the various economic indicators related to the situation of the Community industry, it was examined whether and to what extent the subsequent use of the Community industry's production of the product concerned had to be taken into account in the analysis.

(39) Paracresol is used as an intermediate material for other chemical products (mainly anti-oxidants and fine chemicals such as sunscreens) within the same group of companies, or is sold as such to a third party, related or not. The former possibility is referred to as captive use.

(40) For the purposes of the investigation, captive use was defined as occurring when production was delivered within the same group of companies for further downstream processing. In situations of captive use, sales were made at transfer prices not set according to market conditions or were made to a company which did not have a free choice of supplier. Consequently, captive use had to be analysed at the level of produced quantities and the proportion of total sales it represented. All other situations were considered as free market sales.

(41) In order to provide as complete a picture as possible of the situation of the Community industry, data have been obtained and analysed for all paracresol activity and it was determined whether paracresol was destined for captive use or destined for the free market. Paracresol destined for captive use was found not to be directly affected by imports. By contrast, production destined for free market sales was found to be in direct competition with imports, because these sales were made under normal market conditions, implying free choice of supplier. For this reason, attention was focused on the free market. While, where justified, data on free market sales and captive use were combined, the analysis was split between free market and captive deliveries so far as possible.

(42) On the basis of the investigation, it was found that certain economic indicators related to the Community industry could reasonably be examined by referring to the whole activity. Indeed, production (for both captive use and free market sales), capacity utilisation, investments, stocks, employment and productivity depend upon the whole activity, whether the product is transferred downstream within a group of companies for further processing or whether it is sold on the free market.

(43) The other economic indicators related to the Community industry were analysed and evaluated referring to the situation prevailing on the free market, in particular where measurable market conditions exist and where transactions are made under normal market conditions implying free choice of supplier: sales volume and sales prices on the Community market, export volume and prices. To this effect, consumption and market shares were determined on the basis of the volume of free market sales and imports.

3. **Community consumption**

(44) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, excluding captive use, and import figures concerning the volume of imports from both the country concerned and other third countries.

(45) As mentioned above, it was found that not only paracresol, but also other products are imported into the Community under CN code ex 2907 12 00. In addition, no other public statistics or studies are available on the consumption of paracresol. Therefore, estimates of the imports had to be based on the replies to the questionnaire by the cooperating users, which were found to import almost all of the paracresol, and on the verified information provided by the Chinese exporting producers.

(46) On this basis, Community consumption increased by around 45 % between 1998 and the IP from 8 780 tonnes to 12 770 tonnes. Between 1998 and 2000 consumption rose by 62 %, followed by a drop of 11 % between 2000 and the IP. A steep increase occurred in particular from 1999 to 2000.

4. **Imports from the country concerned**

(a) Volume and market share

(47) During the period under consideration, the import volume of paracresol originating in the country concerned increased from 40 tonnes in 1998 to 240 tonnes in 2000 and subsequently to 4 035 tonnes during the IP.

(48) The market share of the imports originating in the country concerned increased from less than 1 % in 1998 to more than 30 % in the IP.

(b) Prices of the dumped imports

(49) The Commission has examined whether the exporting producers in the country concerned undercut the prices of the Community industry during the IP. In order to bring prices on to a comparable basis, the exporting producers' prices have been duly adjusted to a cif level, whereas the Community producer's prices have been adjusted to an ex-works level.

(50) The undercutting margins found on this basis, expressed as a percentage of the Community producers' prices, are as follows:

Country: PRC	Price U/C
Average undercutting margin	31 %
Undercutting margins of cooperating exporting producers only	Between 29 % and 33 %

(51) These undercutting margins did not show the full effect of the imports on prices in the Community market as prices were depressed, which is demonstrated by the lack of profitability of the Community industry, which became loss-making from the year 2001.

5. **Situation of the Community industry**

5.1. *Analysis of the factors pertinent to the entire activity, including captive sales*

(a) Production

(52) The Community industry's production increased by 1 % between 1998 and the IP. There was an increase until 2000 of 28 % followed by a decrease until the end of the period under consideration of 21 %.

(b) Capacity and capacity utilisation rates

(53) The total production capacity of the Community industry also increased between 1998 and the IP, by 17 %. This was related to the modernisation of the production facilities. The capacity utilisation decreased by 14 % during the same period and reached its lowest point in the IP, after peaking in 2000.

(c) Investment

(54) The Community industry continued to make considerable investments in its production facilities throughout the period under consideration and even significantly increased its yearly spending on new investments between 1998 and the IP by around 80 %. This development relates mainly to investments in environmental protection and to investments in new machinery and equipment, carried out in order to increase capacity (both in 1998 and the IP) and to improve efficiency and productivity.

(d) Inventories

(55) Stocks of finished product decreased by 60 % between 1998 and the IP and remained low throughout the IP. During the IP these stocks represented less than 1 % of all sales. However, it should be noted that during the IP the amount of unfinished products increased considerably and was unusually high.

(e) Employment, productivity and wages

(56) Employment in the Community industry decreased by 6 % between 1998 and the IP. Wages increased from 1998 to the IP by around 18 %. Average productivity on the basis of tonnes produced per employee increased slightly over the period under consideration.

5.2. *Analysis of the factors pertinent for the free-market activity*

(a) Sales

(57) Between 1998 and the IP the sales volume on the Community market of the product concerned produced in the Community increased by 23 %. Once more, there was an increase up to 2000 (of 52 %), followed by a decrease between 2000 and the IP (of 19 %).

(b) Market share

(58) Between 1998 and the IP, the Community industry lost about 9 percentage points of its market share on the Community market (it was about 51 % during the IP), while in the same period overall consumption rose by around 45 % and the market share of the imports originating in the country concerned increased from less than 1 % to more than 30 %.

(c) Growth

(59) As mentioned above, while Community consumption increased by around 45 % between 1998 and the investigation period, the sales volume of the Community industry increased by 23 % and the volume of imports concerned went up by a factor of 100. Thus, the growing trend of the market was not followed by a corresponding increase in the Community industry's sales. On the contrary, its market share decreased by about 9 percentage points between 1998 and the investigation period, whereas the market share of imports concerned increased from less than 1 % to more than 30 % during the same period.

(d) Prices

(60) The Community producers' average net sales price of the product concerned produced and sold in the Community increased by 10 % between 1998 and the IP. The increase took place almost entirely in 2001. In this respect, it should be pointed out that in the year 2001 the price of one of the main raw materials, caustic soda, more than doubled.

(e) Profitability, return on investment, cash flow and ability to raise capital

(61) The weighted average profitability, expressed as profits/losses in relation to the net sales value of the products produced and sold in the Community, deteriorated between 1998 and the IP. Profitability was highest in 1999 (more than 10 %) and started to decrease sharply in 2000 to drop below zero in 2001 and the IP, when it was between minus 5 % and minus 10 %. It was found that one US competitor carried out an aggressive pricing campaign during the year 2000, which eventually led to its own disappearance from the market. As a consequence, an increase in the price of raw materials in that year could only be passed on to the customers to a limited extent. In this context, it should be pointed out that the price of the main raw materials, toluene and caustic soda, increased by more than 50 % during the period under consideration. In 2001, imports from the country concerned started to enter the Community in large volumes and at low prices, leading to further and an even greater reduction of the profitability of the Community industry.

(62) A similar deterioration occurred in the return on investment, expressed as profits/losses in relation to the net book value of investments.

(63) The cash flow generated by the product produced and sold in the Community decreased sharply between 1998 and the IP. After peaking in 1999, it became negative during the IP.

(64) The Community industry was not found to be experiencing difficulties in raising capital by means of bank loans and financing from the parent company.

(f) Magnitude of dumping margin

(65) Given the volume and the prices of the dumped imports from the country concerned, the impact of the actual margins of dumping cannot be considered negligible.

6. **Conclusion on injury**

(66) Community consumption expanded by around 45 % from 1998 to the IP. However, the Community industry could not benefit fully from this development since its sales only increased by half the proportion of the increase in Community consumption while, in particular from 2000, imports originating in the country concerned increased dramatically.

(67) In terms of price development, the Community industry was able to increase its sales prices moderately between 1998 and the IP. However, that price increase was not even sufficient to cover the price increases of the main raw materials. During the same period, the prices of Chinese imports decreased by 30 %. In addition, during the IP, the imports concerned were made at prices clearly undercutting those of the Community industry which was operating at a loss-making level from 2001 onwards.

(68) A deterioration has been found in the situation of the Community industry during the period covering 2001 and the IP, in particular in terms of reduced production, capacity utilization, sales, market share, profitability, return on investment and cash flow. In addition, significant price undercutting as well as a serious deterioration in profitability and return on investment occurred.

(69) One exporting producer suggested that the Community industry did not suffer injury. This argument was based on the increase in production, capacity, sales, sales prices and the decreasing stocks experienced by the Community industry. As far as this point is concerned, following the sharp increase in demand for the product concerned between 1998 and 2000, the Community industry was indeed able to increase its production, sales and sales prices. However, although sales have risen, they did not increase to the extent that could have been expected given the growth in the market. Moreover, the rise in sales prices was clearly insufficient since, *inter alia*, the raw material prices increased even more and the Community industry was loss-making in the IP (and as well in 2001).

(70) The situation of the Community industry is thus found to have deteriorated to such an extent that it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(6) of the basic Regulation.

E. **CAUSATION**

1. **Introduction**

(71) According to Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of paracresol originating in the country concerned have caused injury to the Community industry to a such degree that it may be classified as material. Known factors, other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(72) Over the period under consideration, dumped imports from the country concerned increased significantly in terms of volume (from 40 tonnes to 4 035 tonnes) and market share (from less than 1 % to more than 30 %). The dramatic increase in the imports from the PRC happened during the IP (from 240 tonnes in 2000 to 4 035 tonnes in the IP), while its import prices already decreased substantially from 2000 until the IP, by 46 %.

(73) This coincided with a loss of market share of the Community industry of 9 percentage points and, even more importantly, with an insufficient increase in the prices of the Community industry. Indeed, the prices of the Community industry (which were depressed because it was loss-making) were significantly undercut during the IP by those of the dumped imports. At the same time, the cost of the main raw materials, especially caustic soda, increased considerably.

(74) The above should be seen in the light of the fact that price is one of the main criteria for customers when purchasing paracresol. Moreover, it should be noted that from 1998 to 2000, i.e. when the dumped imports were not yet penetrating the Community market at significant levels, the Community industry was still profitable.

3. **Effect of other factors**

(a) Imports from other third countries

(75) The investigation showed that Japan and the USA were the only other third countries from which the product concerned was imported into the Community at a level exceeding *de minimis*. During the period under consideration, the import volume of paracresol from these third countries decreased substantially, by 35 %, together with their market share, which went down by around 22 percentage points, to around 17 % in the IP. From 2000 to 2001, imports from these countries decreased by more than 50 %, from 5 953 tonnes to 2 566 tonnes. Thus, their decrease was almost simultaneous with the increase in Chinese imports.

(76) It should be noted that during the period under consideration, a major US competitor disappeared from the market. This company carried out an aggressive pricing policy during the year 2000, which prevented the Community industry from benefiting from the increase in sales and raising its profit margin. This company was subsequently forced to close down its plant in 2001.

(77) In view of the above, it was provisionally concluded that these imports did not break the causal link between the dumping and the material injury caused by the Chinese imports. On the contrary, their position on the Community market also developed negatively, as that of the Community industry did. Moreover, the investigation has clearly shown that the dumped imports originating in China did not merely take over the market shares lost by Japan and the USA, but far exceeded the market share lost by these countries.

(b) Further factors

(78) The Commission also examined whether any other factors might have contributed to the injury suffered by the Community industry, having regard, in particular, to a possible contraction in demand, developments in technology and productivity of the Community industry, its export performance and its captive sales of the product concerned.

(79) As to the development of demand, given that the apparent consumption of paracresol increased considerably during the period under consideration, the material injury suffered by the Community industry cannot be attributed to a contraction in demand on the Community market.

(80) In relation to the developments in technology and the productivity of the Community industry, the Community industry has maintained and even increased sales levels between 1998 and the IP. It also carried out considerable investments and modernised its production facilities, thereby increasing its productivity in order to limit its competitive losses. It was therefore provisionally concluded that these developments did not represent a cause of the material injury.

(81) One exporting producer, as well as a user, submitted that part of the injury was caused by the Community industry's investment in production capacity and that this was also the cause of the reduction in capacity utilisation. In this respect it should be noted that the capacity utilisation in fact increased directly after the expansion of production capacity in 1998/1999. The latest increase in production capacity was only completed after the IP, which means that it did not have an impact on the capacity utilisation during the IP.

(82) The same exporting producer also referred to the decreasing exports by the complainant as an indication of its insufficient competitiveness. Concerning the export performance, the Community industry has been forced to decrease its sales in third country markets, where it was likewise in competition with the Chinese exporting producers, by 59 % between 1998 and the IP. However, export sales accounted for only between 5 % and 10 % of the total sales of the Community industry during the IP. The export activity cannot therefore be the explanation for the injury suffered by the Community industry.

(83) It was also investigated whether or not the Community industry undermined its free market sales by shifting its attention to deliveries for captive use. However, it was found that sales for captive use as a proportion of total sales decreased from 36 % to 29 % over the period considered. In addition, these sales were made at prices which were roughly in line with prices charged on the free market. It is therefore considered that the development of captive use did not in any significant way contribute to the material injury suffered by the Community industry.

4. **Conclusion on causation**

(84) The above analysis has demonstrated that there was a substantial increase in volume and market share of the imports originating in the country concerned, especially from the year 2001 onwards, together with a considerable decrease in their sales prices and a high level of price undercutting during the IP. This increase in market share of the low-priced Chinese imports coincided with a significant drop in market share of the Community industry, which, together with the downward pressure on prices, resulted, *inter alia*, in substantial losses to the Community industry during the IP. In addition, an examination of the other factors which could have injured the Community industry revealed that none of these could have had a significant negative impact on this industry.

(85) In view of the above, it is provisionally concluded that the dumped imports caused the material injury suffered by the Community industry.

F. **COMMUNITY INTEREST**

1. **Preliminary remark**

(86) In accordance with Article 21 of the basic Regulation, the Commission examined the issue of Community interest. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders and the users/consumers of the product concerned, to the extent that the relevant parties submitted the information requested in this respect.

(87) On this basis it was examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures in this particular case.

2. **Investigation**

(88) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the Community industry, two importers and 17 users. The Community producer and seven users replied.

(89) Questionnaire replies were received within the time limits from the following seven users of the product concerned:

— BASF AG, Ludwigshafen, Germany,

— Bayer AG, Leverkusen, Germany,

— Ciba Spezialitätenchemie Lampertheim GmbH, Lampertheim, Germany,

— Eliokem SAS, Courtaboeuf, France,

— Great Lakes Chemical (Europe) GmbH, Frauenfeld, Switzerland (with factories using paracresol in France and Germany),

— Raschig GmbH, Ludwigshafen, Germany,

— Rütgers Chemicals AG, Castrop-Rauxel, Germany.

(90) It should be mentioned that Raschig GmbH sold its business which incorporated paracresol to the complainant after the IP and is therefore no longer a user or an interested party.

3. **Community industry**

(91) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions of the market. It achieved healthy profit margins from 1998 to 2000, when the impact of dumped imports had not yet been felt on the market. It also made considerable investments and continued to export.

(92) It is considered that the imposition of measures will restore fair competition in the market. If measures are taken the Community industry will be able to regain at least part of its lost market share with a consequent positive impact on profitability.

(93) As mentioned above, the Community industry suffered material injury caused by dumped imports originating in the country concerned. If measures are not imposed, a further deterioration in the situation of the Community industry is probable. This would entail a further loss of employment. The deflationary effect of the dumped imports would continue to frustrate all efforts by the Community industry in particular to regain a profitable level. Not taking measures would jeopardise the long-term presence of the industry and the possibility cannot be excluded that the sole Community producer might have to shut down as a result of the competition from dumped imports if measures are not imposed.

4. **Importers/traders**

(94) No questionnaire replies were received from importers or traders. In this context, it should be noted that all the main users purchase paracresol directly from the producers.

(95) On the basis of the limited role of importers and their non-cooperation in the proceeding, it is provisionally concluded that anti-dumping measures will not have any significant negative impact on importers.

5. **Users/consumers**

(96) Seven questionnaire replies were received from users. One verification visit was carried out. The seven cooperating users represented 98 % of total imports of paracresol from the cooperating Chinese exporting producers during the IP. The number of effective staff in these companies directly related to the paracresol business was close to 200.

(97) Users of the product concerned are companies active in the chemical industry. The main applications for paracresol are anti-oxidants, fine chemicals and intermediate products. In general, the user companies tend to look for a combination of reliable supply and the cheapest source available and they have therefore benefited from low prices for paracresol in recent years. All cooperating users except Raschig GmbH have therefore taken position against the imposition of anti-dumping duties, for fear of losing a cheap source of supply, which would harm their competitiveness in the downstream market, both vis-à-vis Asian competitors and the complainant.

(98) Producers of anti-oxidants are principally concerned about competition from the complainant, which is a major player in this market, and fear that the complainant could use the anti-dumping measures on paracresol to reinforce its position and possibly dominate supply and price developments in the anti-oxidants market. With respect to producers of fine chemicals, such as anisic aldehyde and sunscreens, the main concern is competition from producers in Asia, which would continue to benefit from access to cheap paracresol from the PRC.

(99) However, duties will not result in a significant reduction of competition or a shortage of supply. Instead, it is to be expected that imports from China will remain available at competitive prices, as the duties proposed for the cooperating Chinese exporting producers are below the levels of undercutting found. In addition, alternative sources of supply from other third countries with no duties are also available. For this reason, it is also expected that the Community industry will react to any anti-dumping measures by increasing its production and its sales (instead of increasing prices) in order to benefit from increased economies of scale which in turn would allow them to restore profitability. On the basis of all this, it is concluded that users will continue to be able to buy paracresol at competitive prices and it is expected that the impact on the competitiveness of the users vis-à-vis Asian competitors and the complainant will be limited.

(100) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a decisive impact on users.

6. **Competition and trade distorting effects**

(101) With respect to the effects of possible measures on competition in the Community, the cooperating exporting producers concerned, given their strong market positions, will probably continue to sell their products, albeit at non-dumped prices. Indeed, the relatively low duty rates for the two cooperating Chinese exporting producers should allow them to operate under fair market conditions in the Community. Thus, given the overall range of duties imposed, it is likely that there will still be a sufficient number of major competitors on the Community market, including the producers in the country concerned, Japan and the USA. Therefore, users and consumers will continue to have the choice of different suppliers of the product concerned. If, on the other hand, no measures were to be imposed, the future of the sole Community producer would be at stake. Its disappearance would effectively reduce competition on the Community market.

7. **Conclusion on Community interest**

(102) Given the above reasons, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping duties in the present case.

G. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

(103) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

(104) In establishing the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

(105) In order to establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of a comparison, at the same level of trade, of the weighted average export price with the corresponding non-injurious price of paracresol sold by the Community industry on the Community market.

(106) The non-injurious price has been obtained by calculating the full cost of production and by adding a profit margin that may reasonably be reached in the absence of injurious dumping. In view of the financial situation of the Community industry in previous years (1998-2000) and taking into account the need for long-term investments, a profit margin of 10 % has been considered appropriate.

(107) The difference resulting from the comparison between the weighted average export price, as established for the undercutting calculations, and the non-injurious price of the Community industry was then expressed as a percentage of the total cif import value.

2. Provisional measures

(108) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC at the level of the lowest margins, in accordance with the lesser duty rule. In this case, all duty rates should accordingly be set at the level of the dumping margins found.

(109) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(110) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

H. FINAL PROVISION

(111) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the Notice of Initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of paracresol with a minimum para-isomer purity of 97 %, calculated on a net dry basis, falling within CN code ex 2907 12 00 (TARIC code 2907 12 00 91), originating in the People's Republic of China.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following manufacturers shall be as follows:

Manufacturer	Rate of duty	TARIC additional code
Nanjing Jingmei Chemical Co, Ltd, Jingqiau Town, Lishui County, Nanjing 211224, People's Republic of China	23,8 %	A 434
Shandong Reipu Chemicals Co, Ltd, Chenming West Road, Qihe County, Shandong, People's Republic of China	9,4 %	A 435
All other companies	40,7 %	A 999

[1] European Commission
Directorate-General for Trade
Direction B
Office J-79 5/16
B-1049 Brussels.

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 provisions of a security, equivalent to the amount of the provisional duty.

Article 2

1. Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 20 March 2003.

For the Commission

Pascal LAMY

Member of the Commission