Council Regulation (EC) No 639/2005 of 25 April 2005 imposing a definitive anti-dumping duty on imports of furfuraldehyde originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 639/2005

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imposing a definitive anti-dumping duty on imports of furfuraldehyde originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

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)] ('the basic Regulation'), and in particular Article 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In January 1995, the Council, by Regulation (EC) No 95/95[(2)], imposed definitive anti dumping measures in the form of a specific duty on imports of furfuraldehyde originating in the People's Republic of China ('PRC'). The specific duty rate amounts to EUR 352 per tonne. Following an interim review initiated in May 1997 upon request of a Chinese exporter, the measures were maintained by Regulation (EC) No 2722/1999[(3)] for a further period of four years.

2. Initiation of expiry review investigation

(2) Following the publication, in March 2003, of a notice of impending expiry of the anti dumping measures applicable to imports of furfuraldehyde originating in the PRC[(4)], the Commission received on 19 September 2003 a request for a review pursuant to Article 11(2) of the basic Regulation.

(3) The request was lodged by Furfural Español SA ('the applicant') representing a major proportion, in this case more than 25 %, of the total Community production of furfuraldehyde. The other Community producer, Lenzing AG, supported the request. The two producers represent 100 % of the Community production of furfuraldehyde. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 639/2005. (See end of Document for details)*

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission published a notice of initiation of this review in the *Official Journal of the European Union*[(5)].

3. Parties concerned by the investigation

(5) The Commission officially advised the authorities of the PRC, the exporting producers in the PRC, the producers in the suggested analogue country, Argentina, the producers, importers/traders and industrial users in the Community known to be concerned, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(6) Questionnaires were sent to all the parties that were officially advised of the initiation of the review and to those who requested a questionnaire within the time limit set out in the notice of initiation.

(7) Replies to the questionnaire were received from the two Community producers, one importer/trader, one industrial user and one producer in the analogue country, Argentina.

(8) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Producer in the analogue country*

— Indunor SA, Buenos Aires, Argentina

(b) *Community producer*

— Furfural Espanol SA, Alcantarilla, Spain

(c) *Unrelated importer*

— International Furan Chemicals B.V., Rotterdam, Netherlands

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(9) The investigation regarding the continuation or recurrence of dumping and injury covered the period from 1 October 2002 to 30 September 2003 (‘IP’). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2000 up to the end of the IP (‘period considered’).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. The product concerned

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(10) The product concerned is the same as in the original investigation, i.e. furfuraldehyde originating in the PRC, falling within CN code 2932 12 00. Furfuraldehyde is also known as 2-furaldehyde or furfural.

(11) Furfuraldehyde is a light yellow liquid with a characteristic pungent odour, which is obtained by processing different types of agricultural waste. Furfuraldehyde has two main applications: as a selective solvent in petroleum refining for the production of lubricating oils and as raw material for processing into furfuryl alcohol, which is used to make synthetic resin for foundry moulds.

2. Like product

(12) As in the previous investigations, this investigation has shown that the furfuraldehyde produced in the PRC and exported to the Community, the furfuraldehyde produced and sold on the domestic market of the analogue country Argentina and the furfuraldehyde manufactured and sold in the Community by the Community producers have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OF DUMPING

(13) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and, if so, whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

1. Preliminary remarks

(14) Of the 24 Chinese exporting producers named in the complaint, none cooperated with the investigation and no information was submitted by any of these companies. In view of this non-cooperation by the Chinese exporting producers, the findings on dumping set out below had to be based on facts available, in particular Eurostat data and information submitted in the review request. In this respect, it is noted that Eurostat shows only imports for inward processing during the IP.

2. Analogue country

(15) Since the PRC is an economy in transition, normal value had to be based on information obtained in an appropriate market economy third country in accordance with Article 2(7)(a) of the basic Regulation.

(16) As in the original investigation, in the notice of initiation Argentina was proposed as analogue country for the purposes of establishing normal value. Following the publication of the notice of initiation, no comments concerning the proposed analogue country were received.

(17) One producer of furfuraldehyde in Argentina cooperated with the investigation by replying to the questionnaire and accepting an on-spot verification of its reply. The investigation showed that Argentina has a competitive market for

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furfuraldehyde with around 72 % of the market supplied by local production and the rest by imports from third countries. The production volume in Argentina constitutes more than 60 % of the volume of Chinese exports of the product concerned to the Community for inward processing. The Argentinean market was therefore deemed sufficiently representative for the determination of normal value for the PRC.

(18) It is therefore concluded, as in the original investigation, that Argentina constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3. Normal value

(19) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of verified information received from the cooperating producer in the analogue country, i.e. on the basis of the price paid or payable on the domestic market of Argentina to unrelated customers, since these sales were found to be made in the ordinary course of trade.

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

4. Export price

(21) As none of the Chinese exporters to the Community cooperated with the investigation, export prices were established on the basis of the facts available. The most appropriate basis was found to be Eurostat data in relation to Community imports of the product concerned. Though these imports were made under inward processing arrangements (Chinese furfuraldehyde was further processed into furfuryl alcohol for export), there was no reason to believe that they were not a reasonable basis for establishing export prices. Furthermore, the verification visit at the cooperating importer confirmed that the Eurostat data were in line with the verified data. The export price was thus established on the basis of the Eurostat data on Chinese imports for inward processing.

5. Comparison

(22) For the purposes of ensuring a fair comparison between the normal value and the export price, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made with regard to certain differences in transport and insurance, which affected prices and price comparability.

6. Dumping margin

(23) In accordance with Article 2(11) 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 at the same level of trade. This comparison showed the existence of significant dumping. In fact, the dumping margin found for the IP is higher than the dumping margin of 62,6 % established in the original investigation and in the previous review.

7. Development of exports should measures be repealed

(a) Exports

(24) The investigation has shown that the quantities exported from the PRC to the Community for inward processing have increased significantly from 2000 to the IP (see recital (33) below). If the measures were repealed, it can be expected that exports from the PRC would increase significantly also outside inward processing arrangements, given the significant price difference between the Chinese and the EC producer's furfuraldehyde and the unused capacity explained in recital (26) below.

(b) Unused capacity in the PRC

(25) Since little public information is available about the Chinese industry of furfuraldehyde, the following conclusions rely mainly on the information contained in the review request.

(26) According to the request for the expiry review, the total Chinese production of furfuraldehyde is around 180 000 tonnes per year, which is more than four times higher than the total Community consumption of furfuraldehyde. The Chinese capacity utilisation rate is said to be around 70 % which means that there is idle capacity of around 50-60 000 tonnes per year in the PRC, i.e. more than total consumption in the Community. According to the Community producers, the Chinese production is constantly changing in accordance with need. In this regard, some plants are closed for temporary periods and then reopened when needed. More than 80 production plants of furfuraldehyde are said to operate currently, mainly in the North-East part of the PRC.

(27) Consequently, the large production capacity available in the PRC and the flexibility with regard to reopening plants demonstrate that producers are able to quickly increase production and direct it to any export market, including, if the measures were to be repealed, to the Community market.

(c) Exports for inward processing

(28) It is noted that all the exports from the PRC of the product concerned to the Community during the IP were made for inward processing. The Chinese furfuraldehyde was further processed into furfuryl alcohol which was then exported. It is reasonable to assume that a repeal of the measures would result in a resumption of exports from the PRC to the Community outside the inward processing arrangements. Such additional exports would in all likelihood also be significantly dumped. Indeed, the current export prices made under inward processing arrangements are not affected by anti-dumping duties as such exports obviously do not bear any duty. The Community producers and the Chinese exporters competed for these sales on the basis as if there was no duty. Thus, it can be reasonably assumed that such prices are also indicative as to future price levels should measures be repealed. Moreover, it is also noted that Chinese export prices under inward processing were undercutting the Community producers' prices by 44 % in the IP and that even if they did not undercut Community prices, they would still be dumped.