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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1905/2003

of 27 October 2003

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of furfuryl alcohol 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 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 9 thereof,

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) The Commission, pursuant to Regulation (EC) No 781/2003 [2] (the provisional Regulation) imposed provisional anti-dumping duties on imports of furfuryl alcohol (FA) originating in the People's Republic of China (China), expressed as a specific duty amount ranging between EUR 21 and 181 per tonne, corresponding to the injury margins.

2. Subsequent procedure

(2) Following the imposition of provisional anti-dumping duties, parties received a disclosure of the facts and considerations on which the provisional Regulation was based. Some parties submitted comments in writing. All interested parties who so requested were granted an opportunity to be heard by the Commission. All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(3) The oral and written comments submitted by the interested parties were considered and, where appropriate, taken into account for the definitive findings.

(4) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings. In addition to the verification visits undertaken at the premises of the companies mentioned in recitals 10 and 11 of the provisional Regulation, it should be noted that after the imposition of provisional measures, an on-the-spot visit was carried out at the premises of the following Community user:

— Bakelite AG, Iserlohn-Lethmate, Germany.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(5) Since no comments were received regarding the product under consideration and like product, the contents and provisional conclusions of recitals 12 to 17 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Market economy treatment (MET)

(6) No further evidence was provided regarding the decision not to grant MET to the four cooperating Chinese exporters. The findings set out in recital 20 of the provisional Regulation are, therefore, confirmed.

2. Individual treatment (IT)

(7) In the provisional Regulation, IT was granted to three cooperating producers and refused to one. The reasons for granting or not granting IT reflected the conditions set out in Article 9(5) of the basic Regulation. It was questioned by the Community industry (CI) whether the Commission could rely on this Article as it came into force only after the initiation of the current proceeding.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 114, 8.5.2003, p. 16.

(8) The determination on the question of IT was based upon the criteria applying when the current proceeding was initiated. These criteria are identical to those set out in Article 9(5) of the basic Regulation, and have been used over a number of years. Therefore, the provisional Regulation referred to Article 9(5) of the basic Regulation substantiating a long-standing practice.

(9) In its provisional determination, the Commission refused IT to one cooperating Chinese exporting producer, Henan Huilong Chemical Industry Co. Ltd (Huilong), which acted both as a producer and as a trader of FA, on the basis that it was not possible to determine the level of State interference in the business activities performed by Huilong. Nevertheless, recital 29 of the provisional Regulation provides for this issue to be further considered at the definitive stage.

(10) The exporter concerned contends that the provisional determination was incorrect and that it should indeed be granted IT. In support of its argument, the company points out that there was no evidence found of any direct State interference in the company itself, and that the traded volume of FA represented less than 5 % of its production during the investigation period (IP). Moreover, some of this traded product was purchased from another cooperating exporter to which IT has already been granted.

(11) Following the imposition of provisional measures, no further information has been found that would point to State interference in the business activities carried out by Huilong. Huilong has agreed to cease its trading activity in FA were it to be granted IT.

(12) Accordingly, it is now concluded that the level of State interference in the business dealings of Huilong, if any, cannot be significant and would in any case not be such as to permit circumvention of the measures. On this basis, it was decided to revise the provisional determination, and to grant IT to Huilong.

3. **Analogue country**

(13) The exporting producers have objected to the choice of the United States of America as the analogue country and repeated their assertion that Thailand would represent a better alternative. This claim is based on the arguments that (i) the production costs are lower in Thailand; (ii) Thailand is the principal source of FA imported into the EU; and (iii) the complainants accept that there is no evidence that imports from Thailand are being made at dumped prices.

(14) As outlined in recital 33 of the provisional Regulation, only one producer, in the United States of America, was prepared to cooperate in the investigation. Furthermore, it was provisionally established that the United States of America fulfilled the necessary criteria to constitute an appropriate analogue country.

(15) There are no indications that Thailand, nor indeed South Africa, would constitute a better alternative as analogue country. No evidence was submitted by the exporting producers as to the production costs of the FA producers in Thailand or South Africa, other than by making an extrapolation from the export prices reported in the complaint and on Eurostat. Moreover, the Thai producer refused to cooperate in the proceedings. Therefore, it was considered that these countries could not reasonably be used to construct a normal value due to the lack of any reliable and verifiable evidence upon which to base any findings.

(16) Accordingly, and in the absence of any new evidence to the contrary, the provisional conclusion reached in recital 33 of the provisional Regulation is confirmed.

4. **Dumping**

4.1. Normal value

(17) The exporting producers asserted that the constructed normal value is too high to be considered reasonable. In support of this claim they point to the lower prices of FA from Thailand, which are not alleged to be dumped, as well as to the lower normal value presented by the complainants prior to initiation of the proceeding.

(18) In this respect it should be noted that the normal value was established in accordance with Article 2(7)(a) of the basic Regulation, namely on the basis of the information obtained in the analogue country, i.e. the United States of America. It is furthermore confirmed that the constructed normal value was calculated on the basis of actual prices and costs duly verified during an on-the-spot investigation at the premises of the cooperating FA producer in the United States of America.

(19) Therefore, it is considered that, in the absence of verified information in respect of either South Africa or Thailand, the data available from the FA producer in the United States of America represent the best information available for the construction of the normal value. The findings of recital 34 of the provisional Regulation are thus confirmed.

4.2. Export price

(20) The export prices have been adjusted slightly, following comments, duly supported by evidence, on the freight charges used.

(21) The exporting producers also objected to the methodology used to calculate the export price for non-cooperating companies as outlined in recital 36 of the provisional Regulation.

(22) In this regard, it should be recalled that the level of cooperation in this case was low, and that the export prices therefore had to be based on facts available in accordance with Article 18(1) of the basic Regulation. For the provisional Regulation, prices and volumes of the cooperating producer to which IT was not granted, i.e. Huilong, were used.

(23) This producer has now been granted IT and has had its own dumping margin calculated on the basis of its own sales to the EU during the IP. In view of this, the value of the exports for non-cooperating companies had to be recalculated. This new calculation is based on a representative volume of the EU sales of the four cooperating exporters. In order to ensure that the transactions used could be considered reliable, a sample of 25 % by volume was used. This sample comprised those invoices of the four cooperating producers with the lowest average transaction prices. It was considered appropriate to use the lowest transaction prices, as there was no reason to believe that the sales made by non-cooperating companies would have been at prices higher than those made by the cooperating producers. The average price so calculated was then used to determine the residual dumping and injury margins.

4.3. Comparison

(24) In the absence of any comments, the provisional conclusion of recital 37 of the provisional Regulation is confirmed.

4.4. Dumping margin

(25) The dumping margins, which were reviewed in the light of the issues outlined above, are now as follows (expressed as a percentage on the cif import price at the Community border):

Company	*Margin*
Gaoping	93 %
Huilong	90 %
Linzi	78 %
Zhucheng	80 %
All others	112 %

D. **COMMUNITY INDUSTRY**

(26) The four cooperating exporters claimed that Transfurans Chemicals BVBA (TFC), Belgium and International Furan Chemicals BV, the Netherlands (IFC) do not constitute the 'Community industry' within the meaning of Articles 5(4) and 4(1) of the basic Regulation, because these companies are very small in view of the number of employees and are owned by a privately held company in the Dominican Republic, Central Romana Corporation (CRC).

(27) These arguments could not be accepted. First, small and medium-sized companies are clearly entitled to lodge a complaint and can constitute the CI within the meaning of Articles 5(4) and 4(1) of the basic Regulation.

(28) Second, the investigation has shown, as referred to in recital 43 of the provisional Regulation, that FA produced by TFC is of Community origin and that the manufacturing operations, the technological and capital investment for the manufacturing operations and the sales operations take place in the Community. Furthermore, the fact that TFC, IFC and CRC are related through common ownership, as established under recital 42 of the provisional Regulation, does not exclude the application of Articles 5(4) and 4(1) of the basic Regulation.

(29) Therefore, the arguments raised by the Chinese exporting producers were rejected and the findings set out in recital 44 of the provisional Regulation are confirmed.

E. **INJURY**

1. **Consumption of FA in the Community**

(30) In the absence of any new information on consumption, the provisional findings as described in recitals 46 to 48 of the provisional Regulation are confirmed.

2. **Imports of FA into the Community**

(31) In the absence of any new information on imports of FA into the Community, the provisional findings as described in recitals 49 to 63 of the provisional Regulation are confirmed.

3. **Economic situation of the Community industry**

(32) The four Chinese exporting producers claimed that the CI did not suffer injury, as most of the injury indicators (in particular sales volume, sales prices, stocks, profitability, cash flow and investments) established by the Commission could not be reconciled with the published audited accounts of IFC and/or TFC. They argued that some indicators, such as profitability, stocks and cash flow, contained in the audited accounts of IFC and/or TFC showed either increasing or stable trends.