I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1656/2003

of 11 September 2003

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of para-cresol 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. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 510/2003 [2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of para-cresol falling within CN code ex 2907 12 00, originating in the People's Republic of China.

(2) It is recalled that 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 relevant for the injury analysis covered the period from 1 January 1998 to 31 March 2002 ('period under consideration').

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of a provisional anti-dumping duty on imports of para-cresol originating in the People's Republic of China, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) 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 they could make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the parties were considered, and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments, the product description and the definition of the like product as set out in recitals 11 to 14 of the provisional Regulation are confirmed.

D. DUMPING

1. Normal value

(8) In the absence of any comments, the provisional findings concerning the market economy treatment and the analogue country as described in recitals 15 to 22 of the provisional Regulation are confirmed.

(9) Further to the disclosure of provisional findings, one exporting producer, Nanjing Jingmei Chemical Co., Ltd, submitted that the cost of the raw material of the refined product concerned was counted twice in their response. This claim was considered justified and the cost of production was reduced accordingly.

(10) In addition, it was claimed that the allocation of the cost of production of an intermediate product should be altered, as a proportion of this product was not used to produce the product concerned. In fact, the costs reported were in accordance with the internal documents collected on the spot. However, there was no evidence which suggested that this intermediate product was used for the production of other products and therefore the whole cost of production of the intermediate product was attributed to the cost of production of the product concerned. Therefore, this claim had to be rejected.

[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 75, 21.3.2003, p. 12.

(11) Despite the reduction in the cost of production referred to in recital 9, less than 10 % of the domestic sales of the like product during the IP of this company were profitable, as already indicated in the provisional Regulation. Therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. The exporting producer considered that the profit margin established at the provisional stage was not appropriate because it included export sales to countries outside the Community. This argument was accepted as the profit margin used in a constructed normal value under the first sentence of Article 2(6) and Article 2(6)(a) and (b) of the basic Regulation, has to be calculated on the basis of domestic sales only. An adjustment has consequently been made to rectify this. A further review revealed that the general category of products was loss-making on the domestic market. In accordance with Article 2(6)(c), a reasonable profit margin was therefore established based on the weighted average profit margin of the producer in the analogue country and the other cooperating exporting producer. It has to be recalled that an exporting producer in the analogue country (in the United States of America) was investigated as the People's Republic of China is not considered a market-economy country.

(12) The other exporting producer, Shandong Reipu Chemicals Co., Ltd, claimed that the cost of production of two other products should be deducted from the total cost of production as they result from the same production process and are sold separately. The exporting producer could not substantiate this claim by documented evidence. Indeed the documents collected on the spot indicated that the direct costs were already allocated to the different products which were in line with the initial questionnaire response. Therefore, the claim had to be rejected.

(13) In the absence of any comments, the provisional findings concerning the determination of normal value in the analogue country as described in recitals 26 and 27 of the provisional Regulation are confirmed.

2. **Export price**

(14) In the absence of any comments, the provisional findings concerning the determination of the export price as described in recitals 28 and 29 of the provisional Regulation are confirmed.

3. **Comparison**

(15) 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. In addition to the adjustments already taken into account at provisional stage, following a further in-depth analysis, an adjustment for differences in indirect taxes not refunded in respect of exports was made in accordance with Article 2(10)(b) of the basic Regulation. Furthermore, some smaller adjustments were made with respect to payment terms and transport, insurance and handling costs.

4. **Dumping margins**

(16) In the absence of any comments concerning the residual dumping margin, the methodology described in recital 31 of the provisional Regulation is hereby confirmed.

(17) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

Nanjing Jingmei Chemical Co., Ltd, Nanjing:	10,8 %
Shandong Reipu Chemicals Co., Ltd, Qihe County:	12,3 %
Country-wide dumping margin:	40,7 %

E. **INJURY**

1. **Community industry**

(18) In the absence of any comments, the provisional findings concerning the determination of the Community industry as described in recitals 34 to 37 of the provisional Regulation are confirmed.

2. **Community market**

(19) One exporting producer stated that in the provisional Regulation there were no separate data nor any analysis for captive sales, only for the free market activities and for the entire activity including captive sales.

(20) However, this issue was dealt with in recitals 40 to 43 of the provisional Regulation, where it was explained that para-cresol destined for captive use was found not to be directly affected by imports and that for this reason attention was focused on the free market. Some economic indicators related to the Community industry were indeed analysed and evaluated referring to the situation prevailing on the free market, while others could reasonably be examined by referring to the whole activity. In the absence of any new information, the provisional findings concerning the relevant Community market as described in recitals 38 to 43 of the provisional Regulation are therefore confirmed.

3. **Community consumption**

(21) In the absence of any comments, the provisional findings concerning the Community consumption as described in recitals 44 to 46 of the provisional Regulation are confirmed.