COMMISSION REGULATION (EC) No 781/2003

of 7 May 2003

imposing a provisional anti-dumping duty on imports of furfuryl alcohol 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] (the 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. Complaint

(1) A complaint concerning imports of furfuryl alcohol originating in the People's Republic of China (PRC) was lodged on 25 June 2002 by the International Furan Chemicals BV, the Netherlands (IFC) on behalf of its related company Transfurans Chemicals BVBA (TFC), Belgium, the sole producer in the Community representing 100 % of the Community production of furfuryl alcohol.

(2) This complaint contained evidence of dumping of the product concerned, and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

2. Notice of initiation

(3) On 9 August 2002, the proceeding was opened by the publication of a notice of initiation [3] (Notice of Initiation).

3. Investigation period

(4) The investigation of dumping and injury covered the period from 1 July 2001 to 30 June 2002 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 1998 to 30 June 2002 (period considered). The period used for the findings on undercutting, underselling and injury elimination is the aforementioned IP.

4. Parties concerned by the proceeding

(5) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users known to be concerned, as well as associations known to be concerned and representatives of the Peoples Republic of China (PRC), of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) The complainant, the exporting producers, importers, suppliers and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 189, 9.8.2002, p. 30.

(7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment, if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Four companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET.

(8) In the Notice of Initiation, the Commission indicated that sampling may be applied in this investigation. However, given the relatively small number of exporting producers in the PRC which indicated their willingness to cooperate, it was decided that sampling was not necessary for assessing the cooperating exporters.

(9) The Commission sent questionnaires to all 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, four exporting producers, three unrelated importers and 11 unrelated users in the Community.

(10) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping and resulting injury and carried out verifications at the premises of the following companies:

(a) *Community producer and related companies*

— TransFurans Chemicals BVBA, Geel, Belgium, (TFC),

— International Furan Chemicals BV, Rotterdam, The Netherlands, (IFC),

— Central Romana Corporation, Ltd, La Romana, Dominican Republic, (CRC);

(b) *Exporting producers in the PRC*

— Gaoping Chemical Industry Co. Ltd,

— Zhucheng Huaxiang Chemical Co. Ltd,

— Linzi Organic Chemical Inc.,

— Henan Huilong Chemical Industry Co. Ltd.

(11) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value took place at the premises of the following company:

(c) *Producer in the United States of America.*

— Penn Speciality Chemicals Inc.

5. **Product concerned and like product**

5.1. Product concerned

(12) The product concerned is furfuryl alcohol (FA) originating in the PRC currently classifiable within CN code ex 2932 13 00.

(13) FA is a chemical product. It is a member of the family of heterocyclic compounds, which are characterised by an unsaturated nucleus consisting of four carbon atoms and one oxygen atom. It is a mobile, colourless to pale yellow liquid that is soluble in many common organic solvents. The raw material for the production of FA, furfural (FF) is obtained from agricultural waste such as from corncobs, sugar cane or rice hulls.

(14) FA is a commodity product. The principal use of FA is in the production of foundry resins, which are used to make metal castings for industrial purposes. Furthermore, it is also used for the production of, *inter alia*, corrosion-resistant mortar, laminating resins, and fibreglass-reinforcement equipment.

(15) The investigation has shown, that there are two types of FA, one of more than 98 % purity as well as a high purity FA of more than 99 % purity, known as tetra hydro furfuryl alcohol (THFA). It was found that THFA represents less than 1 % of Community consumption. THFA is a speciality product used for specific applications. It was also found that FA and THFA do not share the same basic physical and technical characteristics. Accordingly, the higher quality THFA was not considered to constitute a single product together with FA for the purpose of this investigation.

5.2. Like product

(16) The investigation showed that the basic physical and technical characteristics of FA produced and sold by the Community industry in the Community, FA produced and sold on the domestic Chinese market, FA imported into the Community from the PRC as well as FA produced and sold in the United States of America are the same and that they have the same use.

(17) It was therefore provisionally concluded that all these products constitute one like product within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

1. **Market Economy Treatment (MET)**

(18) Four exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers.

(19) In order to be granted MET, companies must demonstrate that they meet all five criteria set out in Article 2(7)(c) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions;
2. accounting records independently audited and applied for all purposes;
3. no significant distortions in 'carry over' from former non-market economy system;
4. legal environment and stability provided by bankruptcy and property laws;
5. currency exchanges carried out at the market rate.

(20) However, none of the four Chinese exporting producers fulfilled all of these conditions for granting MET, and therefore, all claims for MET had to be rejected. The following table summarises the determination for each company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

TABLE 1

Summary determination against the five criteria as set out in Article 2(7)(c) of the basic Regulation

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
1	Not met	Not met	Met	Met	Met
2	Not met	Not met	Met	Met	Met

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
3	Met	Not met	Not met	Met	Met
4	Met	Not met	Possibly met	Met	Met

Source: verified questionnaire replies of cooperating Chinese exporters.

(21) In respect of indent 3 for Company 4, it was not possible to conclude that State-owned shares had been sold freely and at a market price during the transfer of the company into private ownership. As the company failed to establish that it met one of the other criteria, and as the burden of proof to show that all conditions are met rests with the exporter, it was decided that no decision was necessary for this criterion given that the second criterion had already not been met by that company.

(22) The companies concerned and the complainant were given an opportunity to comment on the above findings. Two companies submitted that the determination was wrong and that MET should be granted to them.

(23) One company claimed that their accounts were fully in line with international standards, and that there was no significant distortion carried over from the non-market economy system with regard to the valuation of the company. However, it was found that the auditor of the company had identified errors in the accounts which were not in compliance even with applicable accounting regulations in the PRC. Moreover, it was also established that certain errors, identified in the accounts, were in fact repeated in subsequent years, and that the company had made no correction of the errors. On the basis of these errors the auditor considered that profit figures were unreliable and that there was over-distribution of profits. It is therefore determined that the company does not have 'basic accounting records (….) in line with international accounting standards' as required by Article 2(7)(c) of the basic Regulation. The exporter's claim is accordingly rejected.

(24) In light of this conclusion, and in the absence of any new evidence, the conclusion to reject MET for this company is provisionally confirmed.

(25) A second company claimed that it met all five criteria required by the basic Regulation. In particular, it was claimed that business decisions and costs were made in response to market conditions and that their accounts were fully in line with international standards. On the first point, the company was unable to demonstrate its normal stock valuation method of its main raw material, furfural. Nor could the company explain the reasons for certain adjustments made even to this unverifiable valuation. Therefore, the company could not establish that 'costs of major inputs substantially reflect market values' as required by Article 2(7)(c) of the basic Regulation.

(26) On the second point, it was found that the company had used a higher profit figure for distributing dividends, whilst using a different lower profit figure for other purposes. The company could not satisfactorily explain how these two profit figures could be reconciled. In these circumstances it could not be concluded that the company had 'one clear set of basic accounting records (….) applied for all purposes' which is also required by Article 2(7)(c) of the basic Regulation. The company's claim is accordingly rejected.

2. **Individual treatment**

(27) Further to article 2(7)(a), a country-wide duty, if any, is established for countries falling under Article 2(7), except in those cases where companies are able to demonstrate, in accordance with Article 9(5), that their export prices and quantities as well as the conditions and terms of the sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

(28) The four exporting producers, as well as requesting MET, also claimed individual treatment in the event they were not granted MET. On the basis of information available it was found that for all four companies, the export prices, export quantities, conditions and terms of sale were freely determined, and that the exchange rate conversions were carried out at the market rate.

(29) For one Chinese producer it was found that, during the IP, the company had in addition to its own-produced FA, also bought and then sold a substantial quantity of the product under investigation from at least two other competing Chinese producers, none of which cooperated in the investigation. Thus, it was found that this company acted both as a producer and as a trader of FA. Considering that it is not possible to distinguish the source of production when the product is ultimately exported to the Community and the lack of cooperation by the competing producers in question and hence the lack of any information on their relationship with the Chinese producer, it is considered, in the absence of any further information, that there is a serious risk of circumvention if this Chinese producer is granted individual treatment. On the issue of State interference the company provided no explanation or evidence to substantiate its claim, except for a mere statement that there was no State interference. The Commission has thus, also considering the circumstances described above, not been provided with sufficient information to grant the request for individual examination, but it will continue to investigate this matter during the remainder of the investigation. Therefore, it is considered that the company has failed to establish that it meets the criteria set out in Article 9(5) of the basic Regulation and therefore provisionally concluded that no individual duty can be specified for this exporter.

(30) It was therefore concluded that individual treatment should only be granted to three exporting producers in the PRC, i.e. Gaoping Chemical Industry Co. Ltd, Zhucheng Huaxiang Chemical Co. Ltd, and Linzi Organic Chemical Inc.

3. **Analogue country**

(31) According to Article 2(7) of the basic Regulation, for exporting producers others than those to which MET could be granted, normal value is established on the basis of the price or constructed value in an analogue country.

(32) In the Notice of Initiation, either the United States of America or South Africa was envisaged as the analogue country for the purpose of establishing normal value for the PRC, and invited interested parties to comment on this intention.

(33) The Chinese exporters and other interested parties suggested that South Africa or even Thailand would be the most appropriate choice, mainly because competition and market conditions in these countries were more comparable to the situation in the PRC than was the United States of America. The Chinese exporters also pointed to commercial links existing between the Community producer and the sole producer in the United States of America. The Commission contacted all known exporters of FA in the countries concerned, but only one producer, in the United States of America, was prepared to cooperate with the investigation. The investigation also revealed that the American market was substantial and sufficiently representative in comparison to the volume of Chinese exports of the product concerned to the EU. In addition it was determined that there was a significant volume of imports as well as the presence of various customers on the American market. As regards the alleged commercial links between the Community producer and the American producer, it was found that any such links did not have a distorting impact on the prices, costs and profitability for the American producer used to determine the normal value. Accordingly, it is provisionally concluded that the United States of America constitutes an appropriate analogue country.