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.