

## COMMISSION REGULATION (EC) No 2352/95

of 6 October 1995

## imposing a provisional anti-dumping duty on imports of coumarin 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 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup>, as last amended by Regulation (EC) No 1251/95<sup>(2)</sup>, and in particular Article 23 thereof,Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community<sup>(3)</sup>, as last amended by Regulation (EC) No 522/94<sup>(4)</sup>, and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas :

## A. PROCEDURE

- (1) In February 1994, the Commission received a complaint lodged by the European Chemical Industry Council (CEFIC), on behalf of Rhône-Poulenc SA, the only Community producer of coumarin.

The complaint contained evidence of dumping of the said product originating in the People's Republic of China and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

- (2) The Commission accordingly announced by a notice published in the *Official Journal of the European Communities*<sup>(5)</sup>, the initiation of an anti-dumping proceeding concerning imports of coumarin originating in the People's Republic of China, falling within the CN code ex 2932 21 00 and it commenced an investigation.
- (3) The Commission officially notified the producers/exporters and importers known to be concerned, the representatives of the exporting country and the complainant of the initiation of the proceedings and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

- (4) Most known importers and some users made their views known in writing. They requested and were granted hearings.

- (5) The Commission sent a questionnaire to the parties known to be concerned and received detailed information from the complainant Community producer and most importers in the Community. out of the five producers/exporters contacted, only one, Tianjin No 1 Perfumery replied to the Commission's request for information; nevertheless its reply was largely incomplete and in many parts illegible.

- (6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following :

(a) Community producer :

— Rhône-Poulenc SA, Courbevoie, France ;

(b) Unrelated importers in the Community :

— Paul Kaders GmbH, Hamburg, Germany,

— Adrian SA, Marseille, France,

— Irish Flavours and Fragrances Ltd, Drogheda, Ireland,

— Moelhausen Trading srl, Milan, Italy,

— International Flavours and Fragrances IFF (Nederland) BV, Hilversum,

— The Netherlands,

— Impex Quimica SA, Barcelona, Spain,

— Amalgamated Metal Corporation Ltd, London, UK,

— Fuerst Day Lawson Ltd, London, UK.

- (7) As the United States of America has been used as an analogue country for the purpose of calculating normal value (see recital 15) the Commission conducted an investigation at the premises of Rhône-Poulenc Inc., the United States producer of coumarin.

- (8) The investigation of dumping covered the period from 1 April 1993 to 31 March 1994 (hereinafter referred to as 'the investigation period').

## B. PRODUCT UNDER INVESTIGATION AND LIKE PRODUCT

## 1. Description of the product concerned

- (9) The product concerned is coumarin, a whitish crystalline powder with the characteristic odour of newly mown hay. Its main uses are as an aroma

<sup>(1)</sup> OJ No L 349, 31. 12. 1994, p. 1.

<sup>(2)</sup> OJ No L 122, 2. 6. 1995, p. 1.

<sup>(3)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(4)</sup> OJ No L 66, 10. 3. 1994, p. 10.

<sup>(5)</sup> OJ No C 138, 20. 5. 1994, p. 9.

chemical and as a fixative in the preparation of fragrance compounds, such compounds being used in the production of detergents, cosmetics and fine fragrances.

- (10) Coumarin, which was originally a natural product obtained from tonka beans, is now produced synthetically. It can be obtained by a synthesis process starting from phenol to obtain salicylaldehyde, (Perkin reaction) or by a synthesis from orthocresol (Raschig reaction). The main chemical physical specification of coumarin is its purity, of which the melting point is the indicator. The standard quality coumarin marketed in Europe has a melting point varying between 68 °C and 70 °C which corresponds to 99 % purity.

## 2. Like product

- (11) The Commission found that coumarin produced by the Community industry and the United States producer, which were related companies, was comparable in its essential physical and chemical characteristics, application and use to that produced in the People's Republic of China and exported to the Community. In particular, the Community industry and the United States producer, which used the same raw material and production process, produced a coumarin whose specifications in terms of melting point closely resembled the Chinese one. In fact sales invoices of Chinese coumarin report a minimum melting point of 69 °C, while Rhône Poulenc's product has a melting point of between 68 °C and 70 °C. Therefore, as melting point is an indicator of purity, it can be assumed that the Chinese coumarin purity was of the same level as that of Rhône Poulenc's product. Furthermore, Chinese coumarin was used for the same purposes as Rhône Poulenc's, namely in the preparation of fragrance compounds.
- (12) Importers and users of coumarin argued that Chinese coumarin and Rhône Poulenc's could not be considered like products. In particular, they pointed out that the Chinese coumarin was produced from a different raw material — orthocresol, instead of phenol — and using a different production process — Raschig reaction instead of Perkin reaction. As a result, the Chinese coumarin was alleged to be of a lower quality than Rhône Poulenc's product and could not be used for as many purposes as that of Rhône Poulenc. Furthermore, due to poor quality control in China, the odour, which is the main characteristic for the use of this product, would be sometimes inconsistent even between batches of the same producer, or different when compared to the sample. It was claimed that these differences would in certain cases make the product unsuitable for the purpose for which it had been bought.

The Commission has established that the two products could be used and were used indiscriminately in most applications, the only exception

being formulae for fine fragrances, for which most users demanded Rhône Poulenc's coumarin. However, this last use accounted for only a very minor part of total consumption of coumarin. The two products appeared therefore almost entirely interchangeable; this fact was further substantiated by the systematic replacement of Rhône Poulenc's coumarin by Chinese coumarin in the Community perfume compound production (see recitals 27 and 35). Differences in quality had no effect on the definition of 'like product', as no clear distinction could be made between the two products in relation to the use and to the perception by the users with the sole exception of formulae for fine fragrances. The Commission therefore considered that the coumarin produced and sold by the Community industry was a like product relative to that produced in and imported from the People's Republic of China, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, (hereinafter referred to as 'the Basic Regulation').

## C. COMMUNITY INDUSTRY

- (13) The complainant company was the only producer of coumarin in the Community during the investigation period. Therefore, as it represented the totality of Community production, it is considered to be the 'Community industry' for the purposes of Article 4 (5) of the Basic Regulation.

## D. DUMPING

### 1. Normal value

- (14) In order to establish the normal value of coumarin produced in the People's Republic of China, the Commission took account of the fact that the People's Republic of China is a non-market economy country. Therefore, in accordance with Article 2 (5) of the Basic Regulation, the determination of normal value had to be based on a market economy country (analogue country). The complainant suggested that the United States of America could be used as an analogue country for the determination of normal value. For their part, the importers concerned considered that the United States was inappropriate because there was only one producer of coumarin in the United States and this producer was a related company of Rhône Poulenc SA. They requested therefore that India should be selected as an analogue country, given the fact that India's production technology and product standards would be similar to those of the People's Republic of China and there would also be sufficient internal competition.

India, the United States of America and Japan were, according to the information supplied during

the investigation, the only market-economy countries where coumarin was manufactured outside the Community. The Commission requested the only known Indian producer of coumarin to cooperate in the present anti-dumping proceeding and a questionnaire was forwarded to it. However, it refused to provide the required information. The only known Japanese producer was also approached, but no reaction was obtained. Consequently, the United States was the only remaining option as a market economy that could be considered an analogue country.

- (15) The United States producer, Rhône-Poulenc Inc., used the same production process as Rhône-Poulenc SA, employing phenol as the raw material to obtain salicylaldehyde and subsequently coumarin. Rhône-Poulenc SA switched from the Raschig process, still used by the Chinese, to the Perkin process about 40 years ago, because of the improved cost efficiency of the latter. In fact a smaller quantity of phenol, rather than orthocresol, is needed in order to obtain a unit of coumarin; moreover, it was found that the price of phenol was generally lower than that of orthocresol during the period under examination.

Phenol and orthocresol are both raw materials which can be easily found on the world market, so that access to raw materials can be considered comparable in the analogue country and in China.

Furthermore, the fact that Rhône-Poulenc Inc. was a company related to the complainant did not affect the determination of normal value because this was based on the prices at which coumarin was sold by Rhône-Poulenc on the United States market. It was found that in spite of the existence of a single producer of coumarin in the United States the competition was particularly fierce, as the high volume of imported products showed; in particular during the investigation period, China, the major exporter of coumarin to the United States, held a substantial share of the United States market and an anti-dumping proceeding in respect of these imports was being conducted by the United States authorities.

Finally the production and domestic sales volumes of the United States producer were found to be largely representative, because they were of a comparable size to the Chinese exports to the Community. The Commission therefore selected the United States as an analogue country and based the normal value calculation on the information provided by the United States producer and verified by an on-spot investigation.

- (16) In relation to the question of determining the normal value in an appropriate and not unreasonable way in the chosen analogue country, a group

of importers concerned pointed out that the Rhône-Poulenc plant in the United States was designed for the production of a wide range of chemicals, but that during the investigation period only coumarin was produced. Consequently the incidence of fixed costs per unit on production cost would be abnormally increased. The verification has shown that the Rhône-Poulenc plant was not designed for the production of a wide range of products as alleged; moreover, this allegation is not relevant when normal value is based on sales prices.

However, it was found that production costs per unit had increased considerably since 1992, following the fall in the capacity utilization rate to an exceptionally low level both for coumarin and salicylaldehyde facilities. Irrespective of the cause of this fall, the Commission, in order to establish normal value, decided to calculate the production cost per unit on the basis of a production level corresponding to that used internally by the company for establishing its standard cost. Under these conditions sales prices on the domestic market allowed for the recovery of all costs reasonably allocated and, consequently, domestic sales prices were considered as occurring in the ordinary course of trade.

- (17) Therefore, in accordance with Article 2 (5) (a) (i) of the Basic Regulation normal value was established on the basis of the average ex-factory price of coumarin sold on the United States market during the investigation period.

## 2. Export prices

- (18) The export price was determined on the basis of the price actually paid for the product sold for export from the People's Republic of China to the Community.
- (19) As no Chinese exporters of coumarin cooperated, the export price was based on the information supplied by the importers of Chinese coumarin which cooperated. For the purposes of the preliminary determination, the exports of coumarin originating in China, but sold via traders based in Hong Kong, have not been taken into consideration due to the fact that the mark-up applied by these traders is not known by the Commission and therefore a reconstruction of the fob export price in China necessary for comparison purposes was not possible. Therefore, for the preliminary determination, the export price has been based only on the prices of coumarin exported direct from China to the Community, which represented more than 60 % of the total exports from China to the Community during the investigation period.

### 3. Comparison

- (20) Normal value was compared with export prices on a transaction-by-transaction basis at the fob level and the same level of trade. For the purpose of ensuring a fair comparison of normal value and export prices, the Commission took account, in accordance with Article 2 (9) and (10) of the Basic Regulation of differences affecting price comparability.
- (21) As the Chinese exports were mainly sold to importers acting as traders, and in order to make the comparison at the same level of trade, normal value was based on the selling prices at distributor level in the United States by Rhône-Poulenc Inc.

Adjustments for selling expenses have been made to export prices. Ocean freight and, where appropriate, insurance costs for transport were deducted from export prices, to arrive at the Chinese border fob prices.

In the case of normal value, adjustments were made to take account of differences in physical characteristics (see recital 22 below) and credit costs. No adjustment for inland transport and loading costs was made, so as to bring the normal value at ex-factory level to fob level in view of the negligible costs involved.

- (22) Importers and users claimed that adjustments for physical differences should be made to take into consideration quality control costs carried out by traders and end users and costs linked to rejected material not conforming to the sample, which the Chinese producers did not take back. For the provisional determination, the Commission did not accept the amount of adjustment claimed for physical differences, either because almost all the evidence provided could not be related with complete certainty to the quality control costs, or because no evidence was provided at all.

The Commission, however, considered well-founded the claim for adjustment for physical differences by reason of the slightly more limited scope of application of Chinese coumarin compared with that manufactured by Rhône-Poulenc SA and by Rhône-Poulenc Inc., (see recital 12). In the absence of any other reasonable basis, the adjustment in question for the preliminary determination has been based on the difference between the domestic sales price of Rhône-Poulenc SA in the Community and the cif import price in the Community, duty paid, from China in 1988. The year 1988 was considered appropriate because the evidence available to the Commission suggested that the Chinese exporters had not, at that time, begun the pricing behaviour which led to the present investigation. This occurred in 1990 when the market share of Chinese coumarin recorded a substantial jump from its 21,3 % share in 1988. In fact, between

1988 and 1990 the import price of Chinese coumarin dropped by 20 % and remained virtually constant until 1992. Between 1990 and 1992, the Chinese market share underwent significant further yearly increases. Consequently the price difference in 1988 was found to be a reasonable measure of the difference in market value between Rhône-Poulenc SA and Chinese coumarin. As the coumarin produced by Rhône-Poulenc Inc. is identical to that of Rhône-Poulenc SA, this market value difference applies in respect of the United States product as well. In this context it should be noted, however, that it is generally admitted that the quality of Chinese coumarin has significantly improved during the last few years, but since the quality is still perceived to be lower than that of Rhône Poulenc an allowance was nevertheless granted. Therefore, for the preliminary determination normal value has been adjusted downwards by the amount corresponding to the abovementioned price difference.

### 4. Dumping margin

- (23) Normal value, determined as described above, was compared with the export prices, on a transaction-by-transaction basis after all adjustments. The preliminary examination of the facts shows that imports of coumarin originating in the People's Republic of China have been dumped. A single dumping margin higher than 50 % of the cif Community import price, duty unpaid, has been determined for the Chinese exporters as a whole.

## E. INJURY

### 1. Preliminary remarks

- (24) In establishing the import volume of coumarin from China and consequently the Community consumption and the market shares, some importers argued that the heading CN ex 2932 21 00, within which the product under investigation falls, comprises not only coumarin, but also methyl coumarin and ethyl coumarin, which have properties and chemical formulae different from those of coumarin and are not interchangeable with it. Therefore they alleged that the Eurostat import data, corresponding to the above heading under which 331 tonnes of imports from China into the Community are recorded for the investigation period, would include imports of methyl coumarin and ethyl coumarin and consequently that the import volume and market share of coumarin originating from the People's Republic of China has been overestimated. Invoices provided by the importers which cooperated account for the import of 307 tonnes of coumarin originating in the

People's Republic of China into the Community during the investigation period. This figure represents 92,7 % of the imports recorded by Eurostat under the heading CN ex 2932 21 00. As not all importers of coumarin cooperated, it can be assumed that the actual imports are very close to the figure of 331 tonnes. Consequently the imports of methyl coumarin and ethyl coumarin must have been marginal, if any, during the investigation period. A similar conclusion can be drawn for the years 1992 and 1993. At the beginning of the period under examination that is, in 1990, the imports of coumarin established on the basis of information supplied by the cooperating importers were 135 tonnes. Compared to the Eurostat figure of 199 tonnes for the same year the discrepancy is much bigger. This can be explained by the fact that some importers which did not cooperate were particularly active in 1990. Consequently, in the absence of any evidence of imports of methyl coumarin and ethyl coumarin during the years under examination, the Commission, for the purposes of the preliminary determination, has decided to consider Eurostat figures recorded under the heading CN code ex 2932 21 00 as concerning exclusively coumarin, in establishing the development of Chinese imports and consequently consumption and market share. This choice leads to a more conservative estimate of the rate of increase of the indicators in question, compared to an approach based exclusively on the invoices of cooperating importers.

- (25) Owing to the fact that the Community industry consists of a single company, for reasons of confidentiality no absolute figure concerning the Community industry, nor other figures which would enable the calculation of confidential figures are given in this Regulation.

## 2. Apparent consumption in the Community market

- (26) Apparent consumption of coumarin in the Community has been based on domestic sales of the Community industry to which imports net of re-exports have been added. On this basis, the apparent consumption of coumarin fell slightly, declining by less than 10 % between 1990 and the investigation period. During the period under examination the apparent consumption fluctuated, with a significant increase from 1990 to 1991 and a strong fall between 1991 and 1992. An upward trend between 1992 and the investigation period can be observed.

## 3. Volume and market share of imports originating in the People's Republic of China

- (27) Dumped imports originating in China rose steadily from 199 tonnes in 1990 to 331 tonnes during the investigation period, representing an increase of 66 % over the period.
- (28) As a result of the shrinking of the Community market during the period under examination and at the same time the steadily increasing volume of Chinese imports, the market share of Chinese coumarin rose even more dramatically than the import volume. In fact, it went up steadily and more than doubled between 1990 and the investigation period.

## 4. Price of dumped imports

- (29) On the basis of information supplied in Rhône-Poulenc SA's response to the questionnaire and provided by importers, it was found that prices of coumarin originating in the People's Republic of China have consistently undercut the Community producer's coumarin prices since 1990, that is from the beginning of the period under examination. For the investigation period, price undercutting has been calculated as the difference between the selling prices of coumarin imported from China, transaction-by-transaction, and the weighted average sales price of the Community producer at the same level of trade, i.e. users of coumarin. This difference has been expressed as a percentage of the Community producer's price and has resulted in a figure of 28,7 % for the investigation period.

## 5. Situation of the Community industry

### (a) Total production

- (30) The production of coumarin by the Community producer fell by 56,3 % between 1990 and the investigation period. A first significant fall occurred between 1990 and 1992 when the production level was more than halved. Production increased slightly in 1993, but a further fall of 10 % was recorded between 1993 and the investigation period.

### (b) Production capacity and its utilization

- (31) Production capacity was based on the highest monthly production of the last 10 years, multiplied by 11 working months. On this basis production capacity remained constant over the period under examination. However, the utilization of production capacity went down by 56 % between 1990 and the investigation period.

**(c) Volume of sales**

- (32) Sales on the Community market by the Community industry were more than halved between 1990 and the investigation period.

**(d) Employment**

- (33) The number of employees involved in the production of coumarin decreased by more than 50 % during the period under consideration, in line with the diminishing production volume.

**(e) Stocks**

- (34) During the period under examination stocks decreased in volume so that a relatively stable ratio with the total sales volume was maintained.

**(f) Market share held by the Community industry**

- (35) The market share of the Community industry dropped by more than half between 1990 and the investigation period.

**(g) Evolution of net sales prices of Community industry**

- (36) Sales prices charged by the Community producer in the Community market underwent a slight increase of about 9 % between 1990 and 1992, and then declined gradually to fall back to the price level of 1990 during the investigation period.

**(h) Profitability**

- (37) The sharp drop in production by the Community producer resulting from the decline of sales in the Community had a negative impact on the profitability of the coumarin business. The Community producer tried to maintain its prices at the level of 1990, while its unit costs increased by about 20 % mainly because of the decline of the capacity/use ratio. Consequently, although the coumarin business was still profitable until 1991, increasing losses were recorded from 1992 until the investigation period, when they reached a level between 5 and 10 % of turnover.

**6. Conclusion on injury**

- (38) In an already shrinking market, the Community producer suffered a dramatic erosion of its market share. It tried to face this situation by a limited reduction of its sales price down to a level still sufficient at least to cover its operational costs. However, the sharp decline in sales volume heavily affected the level of capacity use and caused a significant growth in unit production costs. Conse-

quently, the Community producer started to record losses as from 1992.

It has therefore been provisionally concluded that the Community industry suffered 'material injury' within the meaning of Article 4 (1) of the Basic Regulation.

**F. CAUSATION OF INJURY****1. Effect of dumped imports**

- (39) A clear inverse correlation can be observed between the movement of the domestic sales of the Community producer and that of imports originating from China over the period under examination. While the Community producer's sales decreased by 58,5 % in the Community market, Chinese imports grew by 66 % between 1990 and the investigation period. Furthermore, the profitability of coumarin production, which in 1990 was still relatively satisfactory for the Community producer, deteriorated gradually until it became negative from 1992 onwards. This negative financial change coincided with a price undercutting policy which the Chinese exporters began to practice in 1990 and which intensified year by year until the investigation period, when the undercutting margin reached a level of 28,7 %. In particular, a heavy loss was recorded during the investigation period, when the dumped imports from China reached their highest level in terms of volume, market share and undercutting. The Community producer tried to maintain its prices as it had to cope with increasing unit costs because of higher norms of environmental protection which had to be observed, but above all owing to the fact that the fixed costs had to be distributed over an ever-decreasing production volume resulting from the impact of dumped imports on the Community market.

Consequently, as a result of the pressure of ever lower-priced imports, whose volume increased steadily and which were found to be heavily dumped during the investigation period, the break-even point for the Community producer was passed in 1992 when it started recording losses, which were aggravated during the investigation period. The Commission therefore considers that a clear causal link exists between the injurious situation suffered by the Community industry and the dumped imports originating in the People's Republic of China.

## 2. Other factors

- (40) The Commission also considered whether the injury suffered by the Community industry could have been caused by factors other than dumped imports. In particular, the trend in consumption in the Community, in exports to third countries and the impact of imports from third countries other than the People's Republic of China were examined.
- (41) Community consumption, as explained in recital 26, fluctuated during the period under examination, but went down by less than 10 % for the period as a whole. However, between 1992 and the investigation period when coumarin production entailed increasing losses, Community consumption recovered somewhat. Therefore, the globally negative development of demand contributed only very marginally to the injury suffered by the Community industry.
- (42) As far as exports of the Community industry to third countries are concerned, it has been observed that they declined between 1990 and 1992 by 40,1 %, much less than its domestic sales in percentage and above all in absolute terms. Exports did, however, increase by 6 % between 1993 and the investigation period, that is to say during the years when coumarin turned into an increasingly unprofitable business. Nevertheless, considering the whole period under investigation, exports declined by 38,7 % compared to the drop of more than 50 % in domestic sales as referred to in recital 32. Consequently, a decline in exports has also adversely affected the production level of the Community industry and therefore contributed to its negative financial situation.
- (43) The Commission also looked at the trend in imports originating in third countries other than the People's Republic of China. In this respect it was found that the market share of the imports from these countries taken together increased by 160 % between 1990 and the investigation period. When import volume from these countries, taken individually, was examined no clear trend could be detected. Russia and Japan were the main exporters after China, but in far less significant quantities than the latter.

Their exports to the Community represented less than 4 % of the market. In this respect, it has been observed that during the investigation period they exported coumarin at prices slightly lower than the People's Republic of China. However, even if those two countries contributed to the injury suffered by the Community industry, their contribution

remains only marginal, given the small volume of their exports compared to that of the Chinese.

- (44) Some importers argued that Rhône-Poulenc SA's, own inefficiency was the cause of the injury it had suffered. They referred in particular to a consistent increase in production cost per unit of Rhône-Poulenc SA's coumarin during the period under examination, and in particular to the increase in the overhead costs per unit, which more than doubled between 1990 and the investigation period. The Commission has examined this argument and found that the rise in overheads per unit occurred owing to the fact that these types of costs, being by their very nature fixed costs, had to be spread over a smaller and smaller production volume, which fell by 56,3 % between 1990 and the investigation period, owing mainly to the Chinese dumped imports. However, Rhône-Poulenc SA made considerable efforts to limit the production costs per unit reducing direct manpower through a laying-off plan and by improving the yield of the plant which resulted in lower raw material costs. The argument of inefficiency of the Community industry has therefore to be rejected.
- (45) The importers further claimed that Rhône-Poulenc SA had inflicted injury upon itself by its pricing policy. They referred in particular to the sales price increase of 9,3 % that Rhône-Poulenc SA had applied between 1990 and 1992. In this respect, the Commission points out that it is normal commercial behaviour for a company to try to cover its production costs by the sales price and that this has been the policy of Rhône-Poulenc SA for its coumarin business, whose profitability nevertheless had deteriorated since 1990 until it became negative in 1992. Subsequently, Rhône-Poulenc SA reduced its sales prices during the following years by the same amount under pressure from dumped Chinese imports, whose prices fell by more than 10 % between 1992 and the investigation period.
- (46) The Commission considered that, notwithstanding the fact that other factors may have had a negative impact on the Community industry, dumped imports from the People's Republic of China, through their continuous erosion of market share and the depressing effect on prices have, taken in isolation, caused material injury to the Community industry.

## G. COMMUNITY INTEREST

### 1. General considerations

- (47) The purpose of anti-dumping measures is to eliminate the trade distorting effects of injurious dumping and to restore effective competition on the Community market which, as such, is in the

Community interest. Against this background, the Commission has considered the effect of anti-dumping measures on coumarin originating in the People's Republic of China in relation to the specific interests of the Community industry and of the users.

## 2. Interest of the Community industry

- (48) In view of the persistent and increasing financial losses in coumarin production incurred by the Community industry as a consequence of the dumped imports, there is a material risk that, in the absence of intervention, the plant for the production of coumarin, which is already running at a very low level, will be definitively dismantled. In this event, the loss of employment would not be limited to the people still directly involved in the production of coumarin, but would also include a larger number who are involved in the production of raw materials for coumarin and in other linked production processes. Such processes risk becoming uncompetitive if they have to bear all the fixed costs which formerly could be shared with coumarin.

## 3. Interest of users

- (49) The Commission has considered the possible consequences of a price increase of coumarin following the imposition of an anti-dumping duty on the price of fragrance compounds. In this respect, coumarin is only one of the many fragrances which makes up a compound. It has been found during the investigation that, for those importers who process coumarin themselves, the coumarin content in a compound is limited to a few percentage points and reaches or exceeds 10 % in only a very few cases. The cost incidence of coumarin in relation to the production cost of a fragrance compound consequently does not exceed a few percentage points at the most. Accordingly, the effect of an increase in the price of coumarin due to an anti-dumping duty on the production cost of most fragrance compounds would be minimal. *A fortiori*, the impact on the price of the end product, namely detergents, cosmetics and fine fragrances in which the fragrance compound is incorporated, would be entirely negligible.
- (50) Importers and fragrance compound producers argued that the imposition of an anti-dumping duty on coumarin from the People's Republic of China would secure a competitive cost advantage for producers based outside the Community, to whom the Chinese coumarin would be available without duty. In this respect, the Commission points out that in the present situation the price advantages enjoyed by the users in the Community are the result of the unfair trade practices, causing

injury to the Community industry. The coumarin user cannot therefore claim that such a situation should be maintained further. However, the Commission considers that, because of the insignificant cost incidence of coumarin on the sales price of most fragrance compounds, (as stated in recital (49) above), it is highly unlikely that a transfer of the production of certain compounds to companies located outside the Community would occur simply as a result of the imposition of anti-dumping measures.

- (51) Importers and coumarin users alleged that recent Rhône-Poulenc SA marketing policy constituted an abuse of dominant position, in the form of imposing five-year contracts on certain users in which a minimum quantity, the price for the first year and a price revision mechanism are predetermined. It was further alleged that, in the absence of such purchase commitment, Rhône-Poulenc SA would not be able to guarantee the delivery of the quantity needed. The Commission observes in this context that Rhône-Poulenc SA has a much lower market share than that of China. Furthermore, no evidence has been submitted showing that Rhône-Poulenc SA was refusing to deliver, or threatening not to deliver coumarin to the consumer companies.

Even if Rhône-Poulenc was not running at full capacity, substantial production increases need to be planned in advance and take a certain period of time to be realized. It appears therefore that Rhône-Poulenc SA's policy, which consisted in giving priority to supplying the customers with which it already had a contractual commitment corresponds to normal commercial practice.

- (52) The Commission considers that, should Rhône-Poulenc SA fail to make coumarin production profitable by selling at prices which merely cover its production costs, there is a serious risk that the coumarin plant will be shut down. If such an event should occur, the Community market would become entirely dependent on imports of which more than 80 % originate from a single country, namely the People's Republic of China. This could lead to the Community coumarin market being dominated by the People's Republic of China, a fact which itself would put at risk fair price competition.

## 4. Conclusion

- (53) Having considered the various arguments put forward by importers and users, the Commission concludes that it is in the Community interest to impose provisional anti-dumping measures on imports of coumarin of Chinese origin in order to prevent further injury during the remainder of the investigation.

## H. PROVISIONAL DUTY

- (54) In the light of the foregoing, measures should take the form of a provisional anti-dumping duty. For the purpose of establishing the level of this duty, the Commission calculated the amount of duty necessary to eliminate the injury caused by dumped imports to the Community industry in order to determine whether a duty lower than that based on the dumping margin should be imposed pursuant to with Article 13 (3) of the Basic Regulation.
- (55) Since the injury resulted mostly from the continuous reduction in Chinese export prices leading to market share losses and financial losses for the Community industry, the elimination of such injury requires that these export prices be increased to a level which will enable the Community producer to price at a level corresponding to its production costs plus a reasonable profit margin. A profit margin of 5 % appeared to be reasonable in order to allow an adequate return on investment.

From the analysis of the production costs of the Community industry, the Commission has observed that the overhead costs per unit were exceptionally high as a result of the significant decline in production volume, which fell to an exceptionally low use of production capacity. Furthermore, the Commission has established that this fall in production was not due exclusively to the dumped imports from the People's Republic of China but also to other factors and in particular to the decrease of Community exports to third countries. Given these particular circumstances, it appeared reasonable to reduce the overhead cost per unit to reflect the impact of the Chinese exports on Rhône-Poulenc SA's production volume. For this purpose a ratio, based on the increase in the import volume from China over Rhône-Poulenc SA's decrease in production volume, has been applied to the increase in Rhône-Poulenc SA's overhead costs during the period under examination.

The production cost so calculated and increased by a 5 % profit margin on turnover has been adjusted to take into account the difference in physical characteristics, determined as explained in recital 22 in order to establish the price level required for the elimination of the injury.

The Commission compared this price level with the Community-frontier import price, adjusted to the users' level of trade, and expressed the difference as a percentage of the import price, duty unpaid. On this basis the average free-at-Community-frontier price of Chinese exports would have to be increased by 42,9 % to eliminate

the injury caused by the dumped imports originating in the People's Republic of China.

- (56) In accordance with Article 13 (3) of the Basic Regulation the anti-dumping duty should be based on this level since it is lower than the dumping margin as provisionally established.
- (57) In order to minimize the risk of the duties being evaded by price manipulation, it is considered appropriate to impose the duty in the form of a specific amount of ecus per tonne. The rate of duty expressed on this basis equals ECU 3 479 per tonne.

## I. FINAL PROVISION

- (58) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

### Article 1

1. A provisional anti-dumping duty of ECU 3 479 per tonne is hereby imposed on imports of coumarin falling with CN code ex 2932 21 00 (Taric code 2932 21 00\* 10), originating in the People's Republic of China.
2. Unless otherwise specified, the provisions in force concerning customs duties shall apply.
3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

### Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

### Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 October 1995.

*For the Commission*

Leon BRITTAN

*Vice-President*

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