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(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.

4. Imports from the country concerned

- (22) In the absence of any comments under these headings, the provisional findings as described in recitals 47 to 51 of the provisional Regulation are confirmed.

5. Situation of the Community industry

- (23) One exporting producer, as well as a user, questioned the fact that the cost of raw materials, in particular of caustic soda, had increased in 2001. This element was checked by the Commission and it was confirmed by different sources of information that the cost of caustic soda had indeed increased considerably from the year 2000 to the year 2001. Most of this increase took place in the fourth quarter of 2000 and in the first half of 2001. The findings stated in recitals 60 and 61 of the provisional Regulation can therefore be confirmed.
- (24) In the absence of any other comments, the facts and figures as set out in recitals 52 to 65 of the provisional Regulation are confirmed. Since there was no indication of past dumping, this was not considered a relevant factor in the analysis.

6. Conclusion on injury

- (25) A deterioration in the situation of the Community industry during the period 2001 and the IP has been found, in particular in terms of reduced production, capacity utilisation, sales, market share, profitability, return on investment and cash flow. In addition, significant price undercutting as well as a serious deterioration in profitability and return on investment occurred.
- (26) In the absence of any comments on the findings, the conclusions reached as set out in recitals 66 to 70 of the provisional Regulation are confirmed.

F. CAUSATION

- (27) One exporting producer submitted that the Community industry's activities could have been negatively affected by the considerable investments, in particular those made to comply with environmental obligations. However, it was found that this argument could not call into question the causal link as established in the provisional Regulation for the following reason. While it is correct that significant investments took place during the period under consideration to comply with new safety, health and environment legislation requirements, the major investments in the environment took place in the first part of the period under consideration, when the Community industry was still profitable, and even then made up only a minor part of the total investments in the production line for the product concerned. It should also be kept in mind that such investments are depreciated over a number of years and that the allocation of investment costs remained stable over the period

under consideration. These investments can therefore only have had a minor impact and cannot have broken the causal link between the dumping and the material injury suffered by the Community industry.

- (28) The same exporting producer submitted that the decrease of captive sales might have contributed to the injury suffered by the Community industry since the sales prices to captive users had increased at a higher degree than those for sales on the free market. This issue has been further investigated. As already indicated in the provisional Regulation, sales had been made at roughly the same prices to captive users as those charged on the free market and this has been confirmed by further analysis. Therefore, only the negative development of the volume of captive sales could have contributed to the material injury suffered by the Community industry. Indeed, the volume of captive sales went down by around 10 % during the period under consideration. However, in view of the relatively small amount of production destined for captive sales, it was considered that the development of captive use did not in any significant way contribute to the material injury suffered by the Community industry. The conclusion in the provisional Regulation can therefore be maintained.

- (29) In the absence of any other comments on causation, the findings and the conclusion reached as set out in recitals 71 to 85 of the provisional Regulation are confirmed.

G. COMMUNITY INTEREST

- (30) One important user claimed that a shortage of supply of para-cresol has become apparent in the market since the imposition of the provisional anti-dumping measure and that deliveries by the Community industry have become irregular. This issue was investigated by the Commission. It was confirmed that the Community industry had recently encountered some difficulties to satisfy all demand for the product concerned. However, it should be recalled that in recent years the market had been supplied by the Community producer, as well as imports from China, Japan and the United States of America. The imposition of a provisional anti-dumping duty could have made Chinese imports more expensive, but should not have excluded them from the market in view of the fact that the individual duties were well below the level of undercutting found. It was therefore concluded, supported by evidence to this effect, that the shortage of supply has most likely been due to temporary circumstances, such as technical and management problems, both in the Community and in China, and that there is no reason to conclude that this shortage has been caused by the anti-dumping duties or that this shortage is likely to persist. This conclusion is supported by the fact that the Community industry increased its production capacity in the year 2002 and should now be able to meet almost the entire demand in the Community by itself.

- (31) In the absence of any other new information submitted on the Community interest, the findings and the conclusion reached as set out in recitals 86 to 102 of the provisional Regulation are confirmed.

H. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (32) Based on the methodology explained in recitals 103 to 107 of the provisional Regulation, an injury elimination level has been calculated for the purposes of establishing the level of measures to be definitively imposed.
- (33) In the absence of any comments, the methodology used for establishing the injury elimination level as described in recitals 103 to 107 of the provisional Regulation is confirmed.

2. Form and level of the duties

- (34) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed in respect of the People's Republic of China. This duty should be imposed at the level of the dumping margins found, since the injury margin was found to be higher than the dumping margin.

- (35) On the basis of the above, the definitive duties are as follows:

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

- (36) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (37) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and

export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

3. Collection of provisional duties

- (38) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 510/2003, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

- (39) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of para-cresol with a minimum para-isomer purity of 97 %, calculated on a net dry basis, falling within CN code ex 2907 12 00 (TARIC code 2907 12 00 91), originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for the products manufactured by:

Manufacturer	Rate of duty	TARIC additional code
Nanjing Jingmei Chemical Co., Ltd, Jingqiao Town, Lishui County, Nanjing 211224, People's Republic of China	10,8 %	A434
Shandong Reipu Chemicals Co., Ltd, Chenming West Road, Qihe County, Shandong, People's Republic of China	12,3 %	A435
All other companies	40,7 %	A999

⁽¹⁾ European Commission, Directorate-General for Trade, Direction B, J-79 5/16, B-1049 Brussels.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 510/2003 on imports of paracresol falling within CN code ex 2907 12 00 (TARIC code 2907 12 00 91), originating in the People's Republic of China

shall be definitively collected. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

Article 3

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

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

Done at Brussels, 11 September 2003.

For the Council

The President

F. FRATTINI
