ORDER OF THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)
22 March 1999 *

In Case T-97/95 (92),

Sinochem National Chemicals Import & Export Corporation, a company incorporated under Chinese law, established in Beijing, represented by Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe,

applicant,

v

Council of the European Union, represented initially by Yves Cretien, Legal Adviser, and Antonio Tanca, of its Legal Service, acting as Agents, then solely by

* Language of the case: English.

Mr Tanca, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg, and members of the Brussels Bar, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Commission of the European Communities, represented by Nicholas Khan, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

and

Furfural Español SA, a company incorporated under Spanish law, established in Alcantarilla (Spain), represented by José Rivas de Andrés, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 12 Rue Marie Adélaïde,

interveners,

APPLICATION for taxation of the costs to be paid by the applicant to the intervener Furfural Español SA, following the judgment of the Court of First Instance of 29 January 1998 in Case T-97/95 *Sinochem* v *Council* [1998] ECR II-85,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fifth Chamber, Extended Composition),

composed of: J.D. Cooke, President, R. García-Valdecasas, P. Lindh, J. Pirrung and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

Order

Procedure

1 By application lodged at the Registry of the Court of First Instance on 6 April 1995, the applicant, Sinochem National Chemicals Import & Export Corporation (hereinafter 'Sinochem'), brought an action directed against Council Regulation (EC) No 95/95 of 16 January 1995 imposing a definitive anti-dumping duty on imports of furfuraldehyde originating in the People's Republic of China (OJ 1995 L 15, p. 11). By order of the President of the Fifth Chamber, Extended Composition, of the Court of First Instance of 18 December 1995, Furfural Español SA was granted leave to intervene in support of the form of order sought by the defendant.

2 By judgment of 29 January 1998, the Court of First Instance dismissed the application and ordered the applicant to bear its own costs and to pay the costs of the Council and of the intervener Furfural Español.

3 By letter of 28 August 1998, Furfural Español's lawyer requested Sinochem's lawyer's assistance in obtaining from Sinochem reimbursement, by way of recoverable costs, of a total amount of BEF 1 031 238, of which BEF 1 000 000 was for lawyers' fees and BEF 31 238 for other expenses (travel and subsistence).

4 In a letter of 18 September 1998, Sinochem's lawyer stated that that amount was exorbitant and proposed a total of BEF 100 000.

5 By application lodged at the Registry of the Court of First Instance on 20 October 1998, Furfural Español applied for taxation of costs, requesting the Court to fix, pursuant to Article 92(1) of the Rules of Procedure, the total amount of recoverable costs at BEF 1 000 000 for legal fees and BEF 31 238 for other expenses. It also asked the Court to order Sinochem to pay an additional amount of BEF 100 000 for the costs incurred in these proceedings.

6 On 9 November 1998, Sinochem lodged its observations in which it agrees to reimburse BEF 100 000 by way of recoverable costs and considers that the additional claim for BEF 100 000 in the application for taxation had no basis and is in any event manifestly excessive.

Substance

7 Furfural Español submits, first of all, that it had a substantial financial interest in the outcome of the dispute in the main proceedings since, as the sole European producer, it had had to suffer the impact of imports of furfuraldehyde from China to the point where even the costs of production could not be covered. It observes that it was because it was approaching a financial crisis, with the very real

possibility of having to close down its operation and dismiss its employees, that it made a complaint to the Commission in urgent terms. In those circumstances, it clearly had a substantial financial interest in the outcome of the proceedings.

8 Secondly, it maintains that the importance from the point of view of Community law and the difficulties of the case necessitated research into complex issues which were both economic and legal in nature. It points out that, given the two distinct end uses of furfuraldehyde, the dispute principally questioned the existence of either one or two markets for the product. This was a complex and detailed area of disagreement which was to affect the majority of arguments raised during the proceedings, including the question of injury and, most notably, that of its causation. In particular, Furfural Español states that it had to devote a large portion of its statement in intervention to a specific line of argument concerning the nature of a 'special agreement' between the world's largest producer of furfuraldehyde and the European Union's largest importer, which constituted a captive market, and that it had endeavoured to persuade the Court that it was necessary to exclude that captive market from its deliberations on the question of injury. According to Furfural Español, that argument not only required detailed analysis but was pivotal to the successful resolution of the proceedings in favour of Furfural Español.

9 Sinochem submits that the lawyer's fees and expenses which have been computed in the present case by Furfural Español are manifestly excessive and observes that the Court of Justice has held on numerous occasions that the fees and expenses billed by a lawyer to his client do not constitute a basis for assessing the recoverable costs.

10 In support of that contention, it observes that examination of the breakdown of fees presented by the intervener in its letter of 28 August 1998 reveals that, in the preparation of the case, its lawyer was assisted by an English solicitor whose fees were not included in the claim for recoverable costs. In Sinochem's view, the fact that the aforementioned solicitor also spent time on the case makes it implausible that the intervener's lawyer spent a total of 87.5 hours to be reimbursed at the very high hourly rate of BEF 12 000. It argues that the amount of fees claimed cannot be justified by combining an onerous hourly rate, corresponding to a high

level of experience and efficiency, with the high number of hours that a much less experienced lawyer might have needed to spend on the case.

11 Furthermore, Sinochem points to the fact that the amount claimed by the intervener is as high as that claimed by the Council in the present case (which claimed DM 51 177 or BEF 1 055 000) and states that the recoverable costs which an intervener may claim cannot be as high as those payable to the main party.

12 Article 92(1) of the Rules of Procedure provides: 'If there is a dispute concerning the costs to be recovered, the Court of First Instance hearing the case shall, on application by the party concerned and after hearing the opposite party, make an order, from which no appeal shall lie.'

13 The Court would observe that, under Article 91 of the Rules of Procedure, only 'expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers' are regarded as 'recoverable expenses'.

14 According to settled case-law, the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but may determine the amount of those fees which may be recovered from the party ordered to pay the costs (order of the Court of Justice in Case 318/82 *Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 3727, paragraph 2, and orders of the Court of First Instance in Joined Cases T-18/89 and T-24/89 *Tagaras* v *Court of Justice* [1992] ECR II-153, paragraph 13, and Case T-78/89 DEP *PPG Industries Glass* v *Commission* [1993] ECR II-573, paragraph 36).

15 Since Community law does not contain any provisions laying down a scale of fees, the Community judicature must consider all the facts of the case, taking into

account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial interest which the parties had in the proceedings; in so doing, it is not obliged to take account of any national scales of lawyers' fees or any agreement in relation to fees concluded between the party concerned and his agents or advisers (order in *Leeuwarder Papierwarenfabriek*, cited above, paragraph 3, and orders of the Court of First Instance in *Tagaras* v *Court of Justice*, cited above, paragraph 13, and in Case T-2/93 (92) *Air France* v *Commission* [1995] ECR II-533, paragraph 16).

16 In the present case, it must be borne in mind that the dispute was of unquestionable significance from the point of view of Community law and that the matter at issue required analysis of both economic and legal issues, as well as examination of complex facts which were studied and interpreted by the intervener Furfural Español. Moreover, Furfural Español did not merely reproduce the arguments of the defendant but added new arguments and clarified a number of facts which were relevant in settling the dispute. Accordingly, both the nature of the dispute and the financial interests which the parties had in the proceedings justify high fees.

17 However, account must be taken of the fact that this application concerns the costs of the intervener, whose procedural task, as is the general rule, was greatly facilitated by the work of the main party in support of which it has intervened (order of the Court of Justice of 4 February 1993 in Case C-191/86 DEP *TEC* v *Council*, not published in the European Court Reports). Since an intervention is, by definition, subordinate to the main action, only in exceptional cases will it present the same difficulties.

18 However, the lawyer's fees which the intervener in the present case considers to be recoverable costs are as high as those claimed by the Council, the main party. They must therefore be reduced.

19 In view of the foregoing, the Court of First Instance considers that fixing the total recoverable costs at BEF 331 238, to include the disbursements incurred by Furfural Español's lawyer, will represent a fair assessment.

20 Since that amount takes account of all the circumstances of the case up to the date of this order, there is no need to give a separate ruling on the costs incurred by the parties in relation to these proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)

hereby orders:

The total amount of costs to be reimbursed by the applicant to the intervener Furfural Español SA is fixed at BEF 331 238.

Luxembourg, 22 March 1999.

H. Jung — Registrar

J.D. Cooke — President