COMMISSION DECISION

of 6 June 1994

terminating the anti-dumping proceeding regarding imports of refined antimony trioxide originating in the People's Republic of China

(94/389/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 [1], as last amended by Regulation (EC) No 522/94 [2], and in particular Article 9 (1) thereof,

After conclusion within the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In March 1992 the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports into the Community of refined antimony trioxide (hereinafter referred to as 'RAT') falling within CN Code 2825 80 00 in the People's Republic of China, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Chemical Industry (Cefic) on behalf of producers whose collective output was alleged to represent all Community production of the product concerned.

The complaint contained evidence of dumping and material injury resulting therefrom which was considered sufficient to justify opening a proceeding.

(3) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the complainants. It requested the parties concerned to reply to the questionnaires which had been sent to them and gave them the opportunity to make their views known in writing and to request a hearing.

(4) Five of the six Community producers representing approximately 90 % of Community production of RAT replied to the questionnaire (see recital 6).

(5) Two Chinese trading organizations, China National Non-ferrous Metals Import and Export Corporation (CNIEC) and China Metals and Minerals Import and Export Corporation (Minmetals), hereinafter referred to as 'the cooperating Chinese exporters', replied to the questionnaires, sought and were granted a hearing by the Commission and made their views known in writing.

After a comparison of Eurostat official statistics with the replies of the cooperating Chinese exporters, it emerged that their exports accounted for less than 14,5 % of total Chinese exports of RAT to the Community during the reference period. No information, apart from Eurostat data, was available regarding exports by other Chinese exporters.

(6) The Commission sent questionnaires to all the importers listed in the complaint. Two of these

— GMS (Chemiehandelsgesellschaft GmbH), Hamburg,

and

— Non-ferrous Metals GmbH, Düsseldorf, which is a related selling company of CNIEC,

provided replies. On the basis of Eurostat data these two importers accounted for 20 % of total Community imports of RAT from China during the investigation period.

(7) The Commission verified all the information made available and considered necessary for the purposes of a preliminary determination of dumping and resultant injury. To this end, it carried out investigations at the premises of the following companies.

(a) Community producers :

— Belgium :
Campine, Brussels,

— France :
Mines de la Lucette, Paris,
SICA, Chauny,

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 66, 10. 3. 1994, p. 10.
[3] OJ No C 72, 21. 3. 1992, p. 6.

— Italy:
Nuova Solmine, Massa Marittima,

— United Kingdom:
Cookson Minerals, Tyne & Wear.

(b) Importers into the Community:

GMS (Chemiehandelsgesellschaft GmbH), Hamburg
and
Non-ferrous Metals GmbH, Düsseldorf

(c) Information was also sought from producers in the United States which was selected as reference country for the establishment of normal value (see recitals 15 and 16).

For this purpose, questionnaires were sent to several United States producers and a verification was carried out at the premises of one of these producers, namely Anzon Incorporated of Philadelphia.

(8) The investigation covered the period from 1 March 1991 to 29 February 1992. It exceeded the time limit provided for pursuant to Article 7 (9) (a) of Regulation (EEC) No 2423/88 (hereinafter to as 'the Basic Regulation') because of difficulties in finding a cooperating producer in an analogue market and the complexity of the injury examination.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product for which the proceeding was opened is RAT powder, chemical formula Sb_2O_3, falling within CN Code 2825 80 00. Its principal application is as a polymerization catalyst in polyester fibres and polyethylene production, as a smelting agent in glass and an opacifer in ceramics.

The preliminary investigation revealed that RAT is sold in forms other than powder. This development stems from health and environmental concerns regarding the possible carcinogenic effects of inhaling RAT dust. To prevent dispersion of the RAT powder it is increasingly mixed with water or oil-based substances and sold in damped, wetted or paste form. The mixture of the powder with these substances changes neither its basic, chemical or physical characteristics, nor end use.

(10) Presented in damped, wetted or paste form RAT is interchangeable with RAT powder particularly in those flame-retarding applications requiring high volumes of RAT, where factors such as particle size, or impurity levels are not critical.

RAT is also sold in masterbatch form. In this form the RAT powder of a guaranteed purity level and consistent particle size is mixed with products such as plastic to produce components which are principally used in high technology applications. After the compounding process the RAT takes on the essential characteristics of the compound with which it is mixed and can no longer be regarded as RAT. Accordingly, the Commission has excluded it from the investigation.

The product under consideration is therefore : RAT originating in the People's Republic of China and presented in powder, damped, wetted or paste form and falling within CN code 2825 80 00.

The product thus defined is RAT.

2. Like product

(11) As regards the definition of like product within the meaning of Article 2 (2) of the Basic Regulation, the Commission has examined whether RAT of Community or United States' origin can be regarded as similar to the product under consideration.

(12) In this respect the Commission has established that while the antimony content of the base materials used in the production of RAT may vary from country to country, this does not have a significant impact on the end product in terms of chemical and physical characteristics, interchangeability or end use. The Commission therefore concludes that all qualities of RAT produced in the Community, the United States and the People's Republic of China have to be considered to be one single like product.

C. COMMUNITY INDUSTRY

(13) Two of the complaining Community producers, whose production was estimated to represent approximately 10 % of production of the like product in the Community, did not cooperate fully with the Commission investigation. The remaining cooperating producers account for *circa* 90 % of Community production of the like product and therefore constitute a major proportion of total Community production.

This assessment relates to RAT in powder, paste and wetted forms and is based on information supplied by, and verified at, the cooperating Community producers.

D. INDIVIDUAL TREATMENT FOR CHINESE EXPORTERS

(14) The two cooperating Chinese exporters sought individual treatment on the grounds that they act independently of the State as separate profit centres and must assume full responsibility for the revenues and expenses related to their business activities.

Individual treatment for exporters in non-market economy countries gives rise to a number of issues (see Council Regulation (EEC) No 2474/93 of 8 September 1993 [1], relating to bicycles originating in the People's Republic of China).

In any event, in the present case it is noted that one exporter is wholly-owned by the State and the other is a trading subsidiary of a State company. Under these circumstances, the Commission is not satisfied that these exporters enjoy permanent independence from the State and accordingly takes the view that individual treatment should not be granted.

E. DUMPING

1. Reference country

(15) In order to establish whether imports of RAT originating in the People's Republic of China were being dumped, the Commission had to take into account the fact that it is not a market economy country and accordingly to base its calculation on the normal value of the products in question in a market economy country (reference country). To this end, the complainant has suggested the Republic of Korea. This proposal was criticized by the cooperating Chinese exporters which suggested Thailand as being a more appropriate choice.

(16) In any event, neither the Korean nor Thai producers cooperated with Commission's investigation. In the absence of any further suggestions from the Chinese exporters, producers in Bolivia, Brazil and the United States were contacted. One company, Anzon Incorporated of Philadelphia, agreed to cooperate with the Commission. This company, which is a wholly-owned subsidiary of Cookson UK, was visited in order to verify its reply and to obtain a better knowledge of the production process of RAT in the United States.

The United States was considered a reasonable choice of reference country because of the high volumes of RAT produced, and the open and highly competitive domestic market. In addition, the sales volume of the cooperating United States producer was found to be representative in terms of Chinese RAT exports to the Community.

The cooperating Chinese exporters stressed that the People's Republic of China has a special comparative advantage in terms of ease of access to high-quality raw materials and the production process employed in RAT manufacture.

The Commission has examined available information regarding the production of RAT worldwide and while it could be argued that the producer which supplies the cooperating Chinese exporter may have certain advantages in terms of ease of access to quality antimony ore, this would not preclude the choice of the United States as an analogue market since appropriate adjustments to normal value could be claimed to reflect such natural comparative advantages. However, no information was submitted to substantiate these alleged advantages in respect of the production process. In any event, as more than 85 % of Chinese RAT exports to the Community are made by companies which did not cooperate in the investigation, the Commission is not in a position to assess whether they enjoy these alleged comparative advantages.

2. Normal value

(17) In accordance with Article 2 (5) (a) of the Basic Regulation, the Commission considered whether normal value could be established on the basis of the prices at which the product concerned is sold for consumption on the United States market. In this context, it was noted that the United States domestic market for the product concerned is characterized by vigorous competition between several producers both domestic and foreign, and that sales prices are dictated by this competition and reflect an open and fully competitive market situation.

(18) Taking the above factors into account, normal value was established on the basis of the weighted average ex-works price of the cooperating producer's domestic sales to independent customers in the investigation period.

[1] OJ No L 228, 9. 9. 1993, p. 1.

The cooperating Chinese exporters questioned the appropriateness of using the domestic sales prices of a company which was related to one of the complainants for the purposes of establishing normal value. The Commission considered that, given the highly competitive nature of the United States market and the fact that normal value was based on arm's length sales prices, this relationship could not have a bearing on the normal value thus established.

3. Export price

(19) The export volumes of the cooperating Chinese exporters represented less than 14,5 % of total Chinese RAT imports into the Community during the reference period, while the cooperating independent importer accounted for less than 13 % of total Chinese RAT imports into the Community in the same period. These volumes were considered too small to be representative. In these circumstances export sales prices had to be based on the facts available in accordance with Article 7 (7) (b) of the Basic Regulation, in this case Eurostat data. Although providing only an average export price for all transactions, the Eurostat data were in line with the prices reported by the cooperating independent importer.

4. Comparison

(20) Normal value, based on the weighted average ex-works price of the cooperating United States producer for RAT powder was compared with the weighted average export price established on the basis of Eurostat data. This export price free at Community frontier was adjusted in accordance with Article 2 (10) of the Basic Regulation to take account of insurance and freight costs to bring it back to an ex-China border price.

No other adjustments were made or considered appropriate given the lack of cooperation by the Chinese exporters.

5. Dumping margin

(21) The preliminary examination of the facts shows the existence of dumping. The dumping margin being equal to the amount by which the normal value as established exceeds the price for export to the Community. Calculated as a percentage of the free-at-Community-frontier price of the imports concerned, the dumping margin found is 43,2 %.

F. INJURY

1. Preliminary consideration

(22) The analysis of injury excludes data in respect of the non-cooperating producers. The Commission has no reason to believe, nor was any evidence submitted to suggest, that the exclusion of these data would influence the trends established in its injury analysis.

2. Factors relating to the dumped imports

Apparent Community consumption

(23) The Commission calculated total consumption by adding the total sales of the cooperating Community producers to total imports into the Community. On this basis, Community consumption of RAT increased by 8 % between 1989 and the reference period, from 15 626 tonnes to 16 886 tonnes, having peaked at 18 320 tonnes in 1990.

Volume and market share of the dumped imports

(24) On the basis of Eurostat data, imports of RAT from China increased by 32 % between 1988, when they stood at 3 601 tonnes, to 4 766 tonnes during the reference period, having peaked at 4 979 tonnes in 1990. Over the same period, the market share held by the Chinese imports increased by 5,2 % from 23 % in 1988 to 28,2 % during the reference period.

Prices of the dumped imports

(25) Prices of RAT from China declined by 32 % since 1988, the most significant decrease (21 %) occurring in 1990, when Chinese exports to the Community peaked at 4 979 tonnes.

The level of price undercutting in the reference period was established by a comparison between the average price of the imports from China (customs cleared — Community border) and the selling price ex-works of the like product sold by the Community producers. For the purpose of this comparison and in the absence of information accounting for a representative proportion of total Chinese imports, the levels of trade were considered similar and accordingly no adjustments were made. The price undercutting thus established for the investigation period was 32,5 %.

3. Factors relating to the state of the Community industry

Production

(26) Production of the product concerned declined from 20 504 tonnes in 1988 to 19 657 tonnes in the reference period, having peaked at 22 379 tonnes in 1990.

Capacity utilization

(27) The overall capacity of the Community industry increased by 500 metric tonnes between 1988 and the investigation period, from 37 560 tonnes in 1988 to 38 160 tonnes during the investigation period. Capacity utilization declined from 54,6 % to 51,5 % over the same period.

Stocks

(28) Stock levels increased by 3 % between 1988 and the investigation period. It must be pointed out however that stock levels increased by 20 % in 1990 coicidental with the surge in Chinese imports.

Community industry sales and market share

(29) While Chinese exports to the Community increased by 32 % between 1988 and the investigation period, Community producers' sales increased by a mere 3 % despite a somewhat greater increase in consumption. Community producers' sales increased from 10 994 tonnes in 1988 to 12 441 tonnes in 1990 with a decline to 11 344 tonnes during the investigation period which coincided with the surge in Chinese imports. The market shares of the Community producers showed a similar trend peaking in 1989 at 73 % and declining between 1990 and the investigation period to 67,2 %.

Prices

(30) Unit prices declined by 26,2 % between 1988 and the reference period.

Profitability

(31) The price undercutting practised by the Chinese exporters forced the Community producers to decrease their prices which resulted in a 20 % decrease in the overall profitability of the Community producers between 1990 and the investigation period. Nevertheless, the rate of profit achieved during the investigation period was, although reduced, still considered sufficient.

Employment

(32) Between 1988 and the investigation period employment fell by 9 %.

CONCLUSION

(33) In view of the above factors the Commission considers that the Community industry has suffered from falling production and capacity utilization and declining sales, prices, market share and employment. However, the relatively high profits achieved by the cooperating Community producers up to and including the investigation period, despite the presence on the Community market of the dumped Chinese imports, lead the Commission to conclude that the Community industry has not suffered material injury, within the meaning of Article 4 (1) of the Basic Regulation.

G. THREAT OF MATERIAL INJURY

(34) In the absence of material injury, the Commission examined if there exists a threat thereof from the dumped imports and whether actual material injury is clearly foreseeable and imminent in accordance with Article 4 (3) of the Basic Regulation. To this end, the following factors were considered:

— production and capacity levels in the exporting country,

— the rate of incease of the dumped exports to the Community, and

— the actual and potential negative effects on the development and production of the Community industry.

Notwithstanding the fact that the People's Republic of China has the largest reserves of antimony ore in the world, there is no substantive evidence to suggest that a significant increase in its production of refined antimony trioxide intended for export to the Community is likely in the near future. While dumped imports increased between 1988 and the end of the investigation period, the rate of increase was not so marked as to prevent the Community industry from maintaining its profitability at a level which can be considered sufficient. Furthermore, given the level of profit during the investigation period and taking into consideration the various indicators of the Community industry's performance (see recitals 26 to 32), the Commission considers that it is not clearly foreseeable that the present situation is likely to develop into imminent material injury. This conclusion is not contradicted by the most recent information available to the Commission. In consequence, the adoption of anti-dumping measures is deemed unjustified.

H. TERMINATION OF THE PROCEEDING

(35) Accordingly, the anti-dumping proceeding concerning imports of refined antimony trioxide originating in China should be terminated without protective measures being imposed.

(36) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended the proceeding. The complainant Community producers objected to the termination of the proceeding on the grounds that the dumped imports had either already caused material injury or that a threat of imminent material injury existed. Several of these producers argued that their profitability had declined rapidly from 1988 up to and including the investigation period and had deteriorated further thereafter. It was also argued that the Commission has underestimated the likelihood of a significant increase in the dumped imports and the potential negative effects of any such increase.

(37) With regard to the arguments outlined in recital 36, it should be pointed out that the Commission, in accordance with normal practice, assessed the situation of the Community industry globally on the basis of the facts established up to and including the investigation period, and based its determination thereon.

While it is accepted that the financial situation of individual companies varied in that period, the Commission's assessment of the state of the Community industry and notably its financial situation, was based on the performance of the Community industry as a whole. On that basis and taking into acount the level of profit still being achieved during the investigation period, the Commission considered that the Community industry did not suffer material injury.

With regard to the allegation that the likelihood of a significant increase in the dumped imports and their potential negative effects had been underestimated, as set out in recital 34, the complainant producers have not provided any new information which would warrant a change in the Commission's position.

One producer argued that unlike the large multinationals, the small size of the Community companies involved in the proceeding meant that they did not have the resources to sustain losses and given the time taken to complete an anti-dumping investigation it would be too late to act.

Whilke recognizing the differences between small companies and large multinationals with regard to their financial flexibility the Commission considers, however, that each case must be decided on its own merits on the basis of the facts established. Accordingly, the Commission considers on the basis of the facts of this case that a finding of material injury or a threat thereof is not warranted. However, should the Community RAT industry lodge a new complaint containing *prima facie* evidence of injurious dumping the Commission will conduct a new proceeding expeditiously.

(38) During the consultations within the Advisory Committee several Member States raised objections to the termination of the proceeding. Consequently, in accordance with Article 9 of the Basic Regulation, this Decision should take effect and be published only if the Council does not decide otherwise within one month,

HAS DECIDED AS FOLLOWS:

Article 1

The anti-dumping proceeding concerning imports of refined antimony trioxide falling within CN Code 2825 80 00, originating in the People's Republic of China, is hereby terminated.

Article 2

This Decision shall take effect and be published in the *Official Journal of the European Communities* if the Council does not decide otherwise within one month in accordance with Article 9 (1) of Regulation (EEC) No 2423/88.

Done at Brussels, 6 June 1994.

For the Commission

Leon BRITTAN

Member of the Commission