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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2735/90

of 24 September 1990

imposing a definitive anti-dumping duty on imports of tungsten ores and concentrates originating in the People's Republic of China and definitively collecting the provisional anti-dumping duty

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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), and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for under that Regulation,

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EEC) No 761/90 (2), imposed a provisional anti-dumping duty on imports of tungsten ores and concentrates originating in the People's Republic of China. This duty was extended for a maximum period of two months by Regulation (EEC) No 2128/90 (3).

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, on behalf of two Chinese exporters — the China National Non-Ferrous Metals Imports and Export Corporation (CNIEC) and the China National Metals and Minerals Import and Export Corporation (Minmetals), requested and was granted a hearing.

(3) The Commission informed the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters of the essential facts and considerations on the basis of which it intended to recommend the importation of definitive duties and the definitive collection of amounts secured by way of the provisional duties. The Chinese exporters were also granted a period by the Commission within which they could make further representations.

(4) The investigation has not been concluded within the time limit set by Article 7 (9) (a) of Regulation (EEC) No 2423/88 because of the time spent in consultation within the Advisory Committee prior to the imposition of provisional measures.

C. Products covered by the investigation and definition of like product

(5) The Chinese exporters have alleged that their exports of tungsten ores and concentrates are not like products to those produced in the Community. They claimed that they have only exported wolframite concentrate with a 55 % to 56 % tungsten oxide content whereas the Community produces both wolframite and scheelite at a much higher percentage tungsten oxide content.

The Commission in its investigation has found that the imports of these products from the two Chinese exporters concerned during the investigation period consisted of wolframite with a tungsten oxide content of between 72 % and 74 %. The Community producer is also only producing wolframite concentrates, and not scheelite, with a 75 % to 76 % tungsten oxide content. Furthermore, the Commission has found that both the Chinese imports and the Community produced products have the same end uses and the same markets in the Community.

(6) In these circumstances the Commission has concluded that the products under consideration have sufficiently close physical and technical characteristics, and the same end uses and markets to be considered as like products. The Council

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 83, 30. 3. 1990, p. 23.
(3) OJ No L 195, 26. 7. 1990, p. 3.

therefore confirms the conclusion that tungsten ores and concentrates produced in the Community are like products to all Chinese imports of tungsten ores and concentrates, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

D. Dumping

(7) In establishing the normal value, the Commission had to take account of the fact that the People's Republic of China does not have a market economy and that, therefore, in accordance with Regulation (EEC) No 2423/88, normal value should be determined with reference to prices or costs of a producer or producers in a market economy country. In this connection the Commission based its calculation of normal value on the constructed value of the like product in Australia and set out its reasons for so doing in recitals 11, 12 and 13 of Regulation (EEC) No 761/90.

(8) The Chinese exporters repeated the objections concerning the use of a scheelite mine in Australia for determining normal value which had been presented by an importer to the Commission prior to the determination of provisional findings (recital 12 of Regulation (EEC) No 761/90).

The Commission has already given careful consideration to these arguments and notes that the Chinese exporters produced no evidence to support their claims nor did they suggest an alternative basis for determining normal value. The Council therefore confirms the Commission's provisional findings concerning the basis for determining the normal value.

(9) No further observations concerning the establishment of dumping were submitted to the Commission. Consequently the findings on dumping, as set out in recitals 16 and 17 of Regulation (EEC) No 761/90, are confirmed by the Council.

E. Injury

(10) As regards the injury caused by the dumped imports, the Chinese exporters advanced two main arguments to contest the Commission's preliminary conclusions as set out in Regulation (EEC) No 761/90.

(11) The Chinese exporters have claimed firstly that a fall in demand has had a more significant impact on prices and on sales volumes in the Community than the Chinese imports. Secondly, they have alleged that the prices of Chinese exporters to the Community have been undercut by other third country exports into the Community.

(12) In recital 22 of Regulation (EEC) No 761/90, the Commission had examined the impact of both the above two factors on the Community market. The reduction in consumption in the Community of tungsten ores and concentrates resulted in a fall in sales of the Community producer from 1984 to 1988. The Community producer implemented restructuring measures by reducing the level of employment and significantly reducing its unit costs of production (see recital 20 of Regulation (EEC) No 761/90). Due to these actions, the Community producer succeeded in maintaining its market share, which in 1988 was virtually identical to that in 1984, but its financial losses were substantial as it had been forced to match the selling prices of the Chinese imports. In fact, as set out in recital 19 of Regulation (EEC) No 761/90, the Chinese exporters maintained their prices during this period at levels which jeopardized all efforts of the Community producer to adapt to the reduction in demand for this product in the Community. It is clear therefore that the reduction in consumption has not had the same effect on the Community industry as on the dumped Chinese imports, which increased their share of the Community market from 37 % to 47 % from 1984 to 1988.

(13) In the case of other third country imports, the Commission had found that these prices did not undercut those of the Chinese imports during the reference period and that the market share of other third country imports has fallen from 1984 to 1988 whillst the market share held by Chinese imports has increased.

(14) While factors of falling demand and other third country imports may have contributed in part to the material injury found, the Commission has concluded that the injury to the Community industry caused by dumped imports originating in the People's Republic of China is, taken in isolation, material. Moreover, Article 4 of Regulation (EEC) No 2423/88 does not confine findings of injury to cases where dumping is the principal cause (see the Judgment of the Court of 5 October 1988 in Joined Cases 277 and 300/85, Canon v. Council, [1988] ECR, p. 5731, Ground 62).

(15) Consequently the Council confirms the conclusions as regards the injury to the Community industry which the Commission reached in its preliminary conclusions (recitals 18 to 23 of Regulation (EEC) No 761/90).

F. Community interest

(16) No new information concerning Community interest has been received since the imposition of provisional measures and the Council has therefore confirmed the Commission's conclusions in Regulation (EEC) No 761/90 and has thus concluded that it is in the Community's interest that action be taken.

G. Definitive duty

(17) The Council confirms that it is considered necessary to apply an *ad valorem* duty which, while remaining substantially lower than the dumping margin, corresponds to the minimum price required to ensure that the Community producer receives an adequate return on his sales.

(18) Since the Commission's conclusions concerning the form and rate of the provisional anti-dumping duty set out in Regulation (EEC) No 761/90 remain unchanged, the amount of the definitive anti-dumping duty should be equal to that of the provisional anti-dumping duty.

H. Undertaking

(19) Two Chinese exporters, CNIEC and Minmetals, have offered price untertakings which are considered to be acceptable. The effect of these undertakings will be to increase the prices of the products concerned to remove the injury caused to the Community industry. After consultation, these undertakings were accepted by Commission Decision 90/478/EEC (4).

I. Collection of provisional duty

(20) In view of the size of the dumping margins established and the seriousness of the injury caused to the Community industry, the Council considers it necessary that the amounts secured by way of provisional anti-dumping duty should be definitively collected to the extent of the amount of the duty definitively imposed. In respect of the exporters whose undertakings have been accepted the provisional duty should be collected at the levels of the dumping margins definitively established,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tungsten ores and concentrates falling within CN code 2611 00 00 and originating in the People's Republic of China.

2. The rate of duty shall be 42,4 % of the net, free-at-Community-frontier price, before duty (Taric additional code : 8433).

3. The duty specified in paragraph 2 shall not apply to tungsten ores and concentrates exported to the Community by :

— China National Non-Ferrous Metals Import and Export Corporation (CNIEC), (Taric additional code : 8432)

— China National Metals and Minerals Import and Export Corporation (Minmetals), (Taric additional code : 8432)

Article 2

The amounts secured by way of provisional anti-dumping duties, under Regulation (EEC) No 761/90, shall be collected up to 42,4 % except for China National Non-Ferrous Metals Import and Export Corporation (CNIEC) for which a rate of 37,0 % shall apply.

Amounts secured which are not covered by the above rates of duty shall be released.

Article 3

This Regulation shall enter into force on the day following that of 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, 24 September 1990.

For the Council

The President

V. SACCOMANDI

(4) See page 55 of this Official Journal.