COMMISSION REGULATION (EEC) No 2463/93

of 1 September 1993

imposing a provisional anti-dumping duty on imports of fluorspar originating in the People's Republic of China

THE COMMISSION 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 11 thereof,

After consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROCEDURE

(1) In April 1992 the Commission announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of fluorspar, falling within CN codes 2529 22 00 and ex 2529 21 00, originating in the People's Republic of China.

(2) This notice followed the receipt of a complaint lodged by the Association of European Metal Industries (Eurométaux) which represented a major part of Comunity production. The complaint contained evidence of dumping of the said product originating in the People's Republic of China and of material injury resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

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 known their views in writing and to request a hearing.

(3) All the complainant Community producers, represented by Eurométaux, replied to the questionnaires.

Also a Community producer originally not included in the list of producers supporting the complaint made itself known to the Commission and replied to the questionnaire. The cooperating Community producers all together represent around 90 % of Community production of fluorspar.

Eurométaux made its views known in writing and requested a hearing, which the Commission granted.

(4) Two Chinese trading organizations (Shanghai Metals and Minerals Import and Export Corporation and Citic Trading Inc.), hereafter referred to as 'the Chinese exporters', replied to the questionnaires.

(5) Only two importers, which were not related to the Chinese exporters, submitted a full and satisfactory reply to the questionnaire.

(6) The Commission investigated and verified all information considered necessary for the purposes of the proceeding. To this end it carried out an investigation at the premises of the following companies.

(a) *Community producers :*

- Sogerem, Paris La Défense, France,
- Secme, Paris La Défense, France,
- Laporte Minerals, Derbysire, United Kingdom,
- Weardale Fluorspar Ltd, Bishop Auckland, United Kingdom,
- Minerales y Productos Derivados SA, Bilbao, Spain,
- Mineraria Silius SpA, Cagliari, Italy.

(b) *Importers into the Community :*

- Elf Atochem SA, Lyon, France,
- Aussimont SpA, Milano, Italy.

The Commission also sought information from producers in the Republic of South Africa which was selected as reference country for the establishment of normal value (see recitals 13 and 14).

To this end a questionnaire was sent to several South African producers and a verification was carried out at the premises of one company.

(7) The investigation of dumping covered the period from 1 January 1991 to 31 March 1992 (the investigation period).

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 105, 25. 4. 1992, p. 23.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) The proceeding was opened in respect of 'fluorspar of both the acid grade and ceramic grade containing more than 97 % calcium fluoride (CaF_2) or containing less than 97 % calcium fluoride (CaF_2) when presented in filter cake form'.

Fluorspar is used mainly for the manufacture of hydrofluoric acid.

This product is largely employed in the sectors of electronic silicon cleaning and glass engraving.

In addition hydrofluoric acid can be used as a raw material for the manufacture of CFC, the basic acid product for aerosols and refrigeration, HCFC, the basis acid product for plastic foam, HFA, the basic acid product for rigid sponge and solvents.

(9) The preliminary investigation showed that fluorspar can have three different sub-denominations :

— acid grade which has a content of more than 97 % of CaF_2 and is presented in filter cake or powder form,

— ceramic grade which has a content normally below 97 % of CaF_2 and is presented not only in filter cake or powder form but also in lump form,

— metallurgical grade whose acid content is normally below the levels indicated above and which is always in lump form.

When the ceramic grade fluorspar is presented in filter cake or powder form, it is perfectly interchangeable with the acid grade fluorspar, for the manufacture of the hydrofluoric acid.

By contrast ceramic grade fluorspar presented in lump form and metallurgical grade fluorspar, which is also always presented in lump form, are not used for the manufacture of hydrofluoric acid and cannot therefore be considered to be sufficiently similar to the acid grade fluorspar or to the other forms of ceramic grade fluorspar, to fall within the product under consideration in this proceeding.

The preliminary investigation has also shown that fluorspar can be presented for the same uses in filter cake form (as indicated in the Notice of Initiation) or in powder form. The only difference between the two forms is the moisture content which for reasons of transport is not fully eliminated in the filter cake form.

For these reasons, a notice extending the scope of the present proceeding has been published in the *Official Journal of the European Communities*(1).

2. Like product

(10) As regards the definition of like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereafter referred to as the 'Basic Regulation'), the Commission has examined whether fluorspar of Community or South African origin can be regarded as similar to the product under consideration.

(11) In this respect the Commission has established that Community and South African fluorspar are produced from mineral deposits which are similar in terms of the raw fluorspar characteristics and the existence of impurities to those in China. The mineral is extracted and processed in similar ways and is used to make the same range of products. While the methods of extraction, the fluorspar content of the deposit, the level of impurities and the production process, may vary from mine to mine, these differences do not have a significant impact on the end product which always has the same physical and chemical characteristics, and the same applications, and is fully interchangeable, irrespective of origin.

The forms in which fluorspar is presented on the South African market and on the Community market by the Community industry are the filter cake and the powder forms.

Therefore the Commission concludes that all qualities of the product concerned by the investigation, as defined in recital 9, produced in the Community, South Africa and China have to be considered one single product and are alike to each other, within the meaning of Article 2 (12) of the Basic Regulation.

C. DUMPING

1. General

(12) In order to establish whether imports of fluorspar originating in the People's Republic of China were being dumped, the Commission had to take into account the fact that the People's Republic of China is not a market economy country and accordingly, to base its calculations on the normal value of the product in question in a market economy (reference country). To that end, the complainant had proposed Morocco. Contact was made with a producer in Morocco. This producer however did not fully cooperate with the Commission.

(1) OJ No C 210, 4. 8. 1993, p. 6.

(13) In these circumstances the Commission had to look for another reference country. It was found South Africa was one of the largest producers in the world with many active producing companies.

Therefore the Commission contacted several South African producers. One of these companies accepted to cooperate with the Commission. South Africa was considered a reasonable choice of reference country because of the high volume of fluorspar produced and of the considerable sales of the product concerned on the domestic market. This domestic market was considered to be highly competitive given the number of domestic producers and the lack of any restriction on imports.

All this results in the South African fluorspar industry having efficient production and fully competitive prices.

For these reasons the Commission considered that, for the purpose of provisional findings, South Africa was an appropriate reference country.

Access to raw materials is more difficult in South Africa than in China and because of this, certain costs are incurred in South Africa but not in China. The Commission has taken into account this natural advantage of China so that a downward adjustment of the South African selling prices is considered to be necessary for the establishment of normal value in a reasonable and appropriate manner, in accordance with Article 2 (5) of the Basic Regulation.

2. Normal value

(14) The Commission examined whether sales prices on the South African market were appropriate for the determination of the normal value. The producer which cooperated with the Commission in the investigation sells the product concerned in the domestic market to unrelated companies to which deliveries are made on a regular basis in bulk quantities as in the case of the Chinese export sales.

(15) For all these reasons and in accordance with Article 2 (5) (a) of the Basic Regulation, normal value was established on the basis of the net selling price of all fluorspar transactions of the South African producer in the ordinary course of trade for consumption in the South African market.

3. Export price

(16) The export volume of the cooperating Chinese exporters represented only 21 % of total Chinese fluorspar imports into the Community during the investigation period. This percentage was considered too small to be representative. In these circumstances the export prices of the Chinese export sales had to be based on the most reasonable information available (Article 7 (7) (b) of the Basic Regulation).

(17) The product concerned is imported under CN codes 2529 22 00 and 2529 21 00. The latter includes imports of metallurgical grade fluorspar and ceramic grade fluorspar in lump form, not concerned by the present proceeding. As the Commission, in view of the limited cooperation of exporters and importers, was unable to know the volume of the fluorspar concerned imported under CN code 2529 21 00, the Chinese imported quantities falling within this CN code have not been taken into account for the determination of the export price.

(18) In these circumstances, the best information available was considered to be that contained in Eurostat for Chinese exports under CN code 2529 22 00. This shows an average CIF price at the Community frontier of ECU 82,5 per tonne.

4. Comparison

(19) For the purpose of a fair comparison between normal value and export prices the Commission took account where appropriate, of differences affecting price comparability, in accordance with the Article 2 (9) and (10) of the Basic Regulation.

The comparison was made for South Africa on an ex-works basis and for China on an FOB Chinese harbour basis, at the same level of trade, for products falling under CN code 2529 22 00.

In the case of normal value, the product exported from China is in a wet form (it contains around 10 % moisture) called filtercake. The product sold on the South African market was in a dry form. Therefore the Commission made an adjustment corresponding to the drying costs in South Africa, for this difference in physical characteristics.

In the case of the export prices, ocean freight and insurance costs for transport from China were deducted, as shown by the cooperating Chinese exporters.

(20) The Chinese exporters claimed that the Chinese, in contrast to the South African product, was of lower quality being less refined and therefore commanded lower prices. The Commission has found no evidence of such differences. On the contrary, it was noted that end users in the Community do not differentiate between the South African and Chinese product from a quality point of view.

This claim has therefore, for the purpose of provisional findings, been rejected.

5. Dumping margin

(21) The preliminary examination of the facts shows that imports of fluorspar were being dumped. The dumping margin was equal to the difference between the normal value, determined as described above and the price for export to the Community. Calculated as a percentage of the weighted average CIF value of the imports concerned the dumping margin found was 13,2 %.

(22) The cooperating Chinese exporters requested that individual dumping margins should be established for these companies.

In this respect, it is considered that with regard to exports from a non-market economy individual treatment must remain a strict exception, to be applied solely in cases where the producer concerned has provided evidence that it was free to establish export prices without the influence of State authorities. Indeed, individual dumping margins or anti-dumping duties are inappropriate when the State, through any form of control on the exporters concerned, can take advantage of differentiation of the anti-dumping duty and thus undermine the effectiveness of the measures taken.

As the exporters concerned were all State-owned, the conditions required in order to grant individual treatment were not met and therefore a single dumping margin has been established for all imports from China.

D. INJURY

1. Preliminary considerations

(23) (a) Due to the limited cooperation of the exporters and importers and since CN code 2529 21 00 also covers a product (as explained in recital 17) which is not concerned by the proceeding, the Commission could not determine the exact quantity of fluorspar imported.

For this reason, in order to evaluate the incidence of the imports in the Community market, the Commission took into account for the injury determination only the product falling within CN code 2529 22 00.

(b) A large proportion of the sales (1991 = 83 %) carried out by the Community producers on the Community market are sold either to related companies or sold under long-term agreements (captive market). The long-term agreements (up to 10 years) provide for quantity and price levels which can vary only within a certain margin which depends largely on Community producers' cost prices and world market sales prices. On the other hand, the Chinese exporters sell exclusively on a short-term basis to independent importers and end users (free market). The total free market in 1991 represents at minimum around 30 % of the total fluorspar market. If the imports under (N) code 2529 21 00 are taken into consideration the total free fluorspar market will be substantially higher and might even go up to a level of around 50 % of the total fluorspar market.

The Commission has examined whether in these circumstances the so established captive and free markets can be considered to be distinct on the basis of the criteria laid down in this respect by the jurisprudence of the Court of Justice. The Commission notes in this regard that the captive and free markets are quite distinct in this case and the sales of the Community industry on the captive market are not in direct competition with the product sold by the Chinese imports on the free market. This is due to the fact that the present price difference between these markets is not sufficient to change the source of supply. Therefore, the present prices of the Chinese imports on the free market do not materially influence the Community producers' prices on the captive market and have only a limited effect on other injury aspects like market share, sales, etc.

(c) For all these reasons, the Commission considers that the captive market is not materially affected by the dumping practices of the Chinese exports.

Consequently the assessment of injury has been exclusively based on data referring to the free market unless otherwise stated.

2. Injury factors relating to dumped imports

(a) *Market share and volume of dumped imports*

(24) In the light of the above-mentioned considerations, Community consumption of fluorspar was established to be around 155 000 tonnes in 1988 and around 124 500 tonnes in 1991. The Chinese market share has risen substantially from just above 3 % in 1988 to almost 50 % in 1991.

(25) Imports of fluorspar originating in the People's Republic of China increased by 1 090 % between 1988 (5 145 tonnes) and 1991 (61 244 tonnes). For the investigation period, adjusted to one year, this increase is 916 %. This increase should be viewed in the light of a decrease of the market by 20 % between 1988 and 1991.

(b) *Prices*

(26) Eurostat shows that Chinese export prices at the Community frontier between 1988 and 1990 were on average ECU 98 per tonne. During the investigation period this price was ECU 82 per tonne, a decrease of around 16 %. The Commission also compared the weighted average price of the imports from China (on a free at Community frontier customs cleared basis) and the weighted average selling price, calculated at ex-works level, at the same level of trade, for the same qualities of the product sold by Community producers.

The price undercutting based on Community producers' weighted average sales prices during the investigation period was 41 %.

3. Factors relating to the state of the Community industry

(a) *Production*

(27) Community total production of the product concerned has dropped from around 440 000 tonnes in 1988 to around 350 000 tonnes during the investigation period adjusted to 12 months. In 1990 the production was 425 000 tonnes.

In 1988 around 26 % of this production was sold on the free market. In the investigation period 16 % of total production was sold on the free market, in 1990 it was 27 %.

(b) *Capacity utilization*

(28) In the 1988 to 1991 period the total capacity utilization decreased from 85 % to 67 %.

(c) *Stocks*

(29) Stocks which built up over the period 1988 to 1990 decreased slightly despite fewer sales during the investigation period. This is due to considerably lower production and increased sales from stock.

(d) *Sales and Market share*

(30) Community producers' sales on the free market show a decrease from 113 000 tonnes in 1988 to 56 000 tonnes in 1991 while their market share dropped from 73 % in 1988 to 45 % in 1991. In 1990 these sales were 114 000 with a market share of 72 %.

(e) *Prices*

(31) In the investigation period the average prices of the Community industry show an increase of around 5 % over 1990. The Commission considers that this development is not related to a general price increase for the product in question but to the fact that the Community industry has withdrawn from the bulk market segment which has been lost to the Chinese imports. Indeed, the sales of the Community industry are now concentrated in the small quantities market which commands higher prices.

(f) *Profits*

(32) The financial situation of the Community industry was far from satisfactory; over the past years the return on sales was clearly insufficient to recover the investments necessary in the mines. In the investigation period the Community industry suffered on average considerable losses.

(g) *Employment*

(33) During the investigation the Commission has noted that, because of lower production and fewer sales, the number of employees in this industry is declining.

4. Conclusion

(34) The Commission considers that the Community industry has suffered material injury within the meaning of Article 4 (1) of the Basic Regulation. The fall in production, the decline in sales and the loss of market share are important indicators of this injury.

E. CAUSAL LINK BETWEEN THE INJURY AND THE DUMPED IMPORTS

1. Effect of dumped imports

(35) The Commission compared the volume and price trends of the dumped imports from the People's Republic of China side by side with the development of the return on sales, and market share of the Community industry. It found that the deterioration of the economic situation of the Community industry coincided with the increase in volume of imports of Chinese fluorspar.

The Commission found further that price is the most important factor for customers in determining their source of supply on the free market. In view of the transparency and price elasticity of the market, the fall in the Chinese fluorspar price forced the Community industry to reduce its price in an attempt to keep a reasonable capacity utilization and market share. However, due to the volume of the dumped imports, the Community producers were not able to maintain their market share and reduced their production with, as a consequence, higher production costs per unit. This higher cost was combined with a lower return on sales thus leading to an unhealthy financial situation.

2. Effect of other factors

(36) The Commission considered whether injury to the Community industry has also been caused by other factors.

(a) *South African imports*

(37) The Commission identified South Africa as being the biggest exporter of fluorspar to the Community. Export prices from South Africa reported by Eurostat in 1991 were ECU 82 per tonne, a price comparable to the Chinese export price. The majority of these imports, however, are made by companies related to the exporters. These prices cannot therefore be considered to be representative prices on the free market. In addition the imported South African fluorspar is not further channelled into the free market and therefore does not directly compete with the Community industry sales.

As far as the relatively limited sales of South African exporters on the free market are concerned it was found that the prices on this market in the Community are substantially higher than the average export price from South Africa reported by Eurostat.

Apart from this the Commission noted that quantities imported from South Africa show a considerable decrease between 1988 and 1991. In view of the above the Commission considers that the imports from South Africa did not cause or contribute to the injury to the Community industry.

(b) *Other importing countries*

(38) Eurostat data show that the trend of other imports into the Community from the rest of the world decreased in the abovementioned period. In the depressed Community market only the Chinese imports went up substantially. The price level of imports from other third countries was substantially higher than the price of Chinese imports.

(c) *Contraction in demand*

(39) The Chinese exporters have suggested that the environmental measures taken on an international level and a consequent contraction in demand are the reason for the reduced production and sales of the Community industry. Indeed, a reduction of 20 % in worldwide consumption of chlorofluorocarbons (CFCs) for which hydrofluoric acid is an important component is provided for in 1993 by an international agreement. However, the abovementioned measures, taken for the reduction of CFC consumption, have only had a limited impact on fluorspar production. The substitute products for CFCs are also fundamentally based on fluorspar and an increase of fluorspar production is the result.

3. Conclusion

(40) The Commission established that factors such as imports from South Africa did not cause material injury to the Community industry.

The measures for the protection of the environment had only a limited impact and are not sufficient to explain the fall in production, the decline in jobs and the loss of market share which are the main indicators of injury.

In these circumstances, the Commission concludes that, for the purpose of its provisional findings, the dumped imports originating in the People's Republic of China, due to their strong presence in the Community market, their low prices, and the resultant lack of profitability of the Community industry, have, taken in isolation, caused material injury to this industry.

F. COMMUNITY INTEREST

(41) In order to examine whether the interests of the Community call for intervention to prevent the injury being caused by the dumped imports, the Commission considered that the purpose of antidumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.

With regard to this proceeding the Commission considers that without measures to correct the effects of dumped Chinese imports the Community industry will have to withdraw from the free market. This will have as a consequence that they will have to close down part of their mining operations and to adjust production to a lower level. Unit costs will increase commensurately and production for the captive market may also become uneconomic. This would lead to further mine closures with the consequent loss of jobs, technology and investment.

In reality, however, the fluorspar industry has real perspectives of a considerable increase of consumption in the near future.

However to be able to profit from this development the Community industry will require to remain viable by being in a position to produce and sell at a level which will generate a reasonable return.

(42) The Chinese exporters claimed that anti-dumping measures would seriously affect the ability of end-users to compete on the international market because the cost of an important raw material would be increased putting them at a considerable disadvantage with competitors in the United States which are able to import Chinese fluorspar at lower prices.

Anti-dumping measures may indeed affect the end-users of the product concerned by the proceeding. However, in this case, fluorspar forms a small part of the overall cost for end users. On the whole therefore it would not be in the Community interest to allow these unfair trade practices to continue with the resultant higher unit costs, uneconomic production and possible closure of mines.

The Community would then be left without a fluorspar industry and be dependent on import supplies. Furthermore, in the long term, fewer competitors may mean higher prices for end users i.e. mainly basic chemical industry. This is even more valid for the fluorspar industry since only a very limited number of countries outside the Community have a production of any importance.

(43) In view of these reasons the Commission considers that the predominant Community interest lies more in sustaining, over the long term a viable fluorspar industry.

(44) Therefore the Commission concludes that it is in the Community interest to adopt measures to eliminate the injury caused to Community production by imports of fluorspar originating in the People's Republic of China and that the measures should take the form of an anti-dumping duty.

G. PROVISIONAL DUTY

(45) The preliminary investigation has shown that the injury has mainly been caused by the price undercutting by the dumped imports. Therefore and in order to determine whether a lower duty than the dumping margin should be imposed, the Commission compared the weighted average selling price of Chinese fluorspar (on a free Community frontier customs cleared basis) with the corresponding average price of fluorspar produced during the same period by the Community industry, since this difference was higher than the dumping margin established, it is the latter which should be imposed.

As far as the form of the duty is concerned the Commission considers that the structure of a State-controlled economy gives the Chinese exporters considerable room for manoeuvre to further decrease their export price and such reductions in price by Chinese exporters have indeed taken place since 1988. The fluorspar market is sensitive to price instability, thus the form of the duty should be such as to prevent further unjustified price decreases by the Chinese exporters. Therefore, neither a fixed amount of duty nor an *ad-valorem* duty seem to be appropriate.

In these circumstances, it is considered that a minimum price at which the Chinese fluorspar would be sold on the Community market should be established. This minimum price has been calculated on the basis of the weighted average normal value of fluorspar as established in recital 15 and as adjusted to *CIF* Community frontier value. This minimum price is ECU 93,40 per tonne. Consequently the duty should be equal to the difference between this minimum price and the net free at Community frontier price before customs clearance.

H. FINAL PROVISION

(46) In the interests of sound administration a period should be allowed for interested parties to make known their views in writing on the findings contained in this Regulation and request to be heard by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of fluorspar presented in filter cake form or in powder form, containing more than 97 % of calcium fluoride (CaF_2) falling within CN code ex 2529 2200 (Taric code 2529 22 00 * 10) or containing less than 97 % of calcium fluoride (CaF_2) falling within CN code ex 2529 21 00 (Taric code 2529 21 00 * 10), originating in the People's Republic of China.

2. The duty shall be equal to the difference between a minimum price of ECU 93,40 per tonne (dry net weight) and the net free at Community frontier price before customs clearance.

3. The provisions in force concerning customs duties shall apply.

4. 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) of Regulation (EEC) No 2423/88 the parties may make known their views in writing and apply to be heard by the Commission within one month of the 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.*

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 1 September 1993.

For the Commission

Leon BRITTAN

Vice-President