COMMISSION REGULATION (EC) No 2286/94

of 21 September 1994

imposing a provisional anti-dumping duty on imports of tungsten ores and concentrates, tungstic oxide, tungstic acid, tungsten carbide and fused tungsten carbide originating in the People's Republic of China

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 10 (6) thereof,

After consultations within the Advisory Committee as provided,

Whereas :

A. Procedure

(1) On 15 December 1988 and 4 January 1989 the Commission pubished in the *Official Journal of the European Communities* five notices of initiation of anti-dumping proceedings concerning imports :

(a) of ammonium paratungstate falling within CN code 2841 80 00, originating in the People's Republic of China or the Republic of Korea (3);

(b) of tungstic oxide and tungstic acid falling within CN code 2825 90 40 originating in the People's Republic of China (4);

(c) of tungsten metal powder falling within CN code 8101 10 00 orignating in the People's Republic of China or the Republic of Korea (5);

(d) of tungsten carbide and fused tungsten carbide falling within CN code 2849 90 30 originating in the People's Republic of China or the Republic of Korea (6);

(e) of tungsten ores and concentrates falling within CN code 2611 00 00 originating in the People's Republic of China and exported from his country or from Hong Kong (7).

Investigations were carried out.

(2) The Commission terminated the anti-dumping proceedings concerning imports of ammonium paratungstate originating in the People's Republic of China or the Republic of Korea by Commission Decision 90/154/EEC (8) and imports of tungsten metal powder originating in the People's Republic of China or the Republic of Korea by Commission Decision 90/155/EEC (9).

(3) However, in the case of the other products in question, it was established that dumping was being practised, that the imports concerned were causing injury to Community industry and that definitive measures were required in the Community's interest.

The Council imposed on imports originating in China definitive anti-dumping duties :

(a) of 37 % for tungsten ores and concentrates (Council Regulation (EEC) No 2735/90) (10);

(b) of 35 % for tungstic oxide and tungstic acid (Council Regulation (EEC) No 2736/90) (11);

(c) of 33 % for tungsten carbide and fused tungsten carbide (Council Regulation (EEC) No 2737/90) (12).

By Decisions 90/478/EEC (13), 90/479/EEC (14) and 90/480/EEC (15) the Commission accepted price undertakings offered by the two Chinese exporters, China National Non-Ferrous Metals Import and Export Corporation (CNIEC) and China National Metals and Minerals Import and Export Corporation (Minmetals), for the products covered by the above Council Regulations. The Council consequently exempted imports of tungsten ores and concentrates, tungstic oxide and tungstic acid and tungsten carbide and fused tungsten carbide exported by CNIEC and Minmetals from the respective definitive anti-dumping duties.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 66, 10. 3. 1994, p. 10.
(3) OJ No C 322, 15. 12. 1988, p. 4.
(4) OJ No C 322, 15. 12. 1988, p. 5.
(5) OJ No C 322, 15. 12. 1988, p. 6.
(6) OJ No C 322, 15. 12. 1988, p. 7.
(7) OJ No C 2, 4. 1. 1989, p. 5.
(8) OJ No L 83, 26. 3. 1990, p. 117.
(9) OJ No L 83, 26. 3. 1990, p. 124.
(10) OJ No L 264, 27. 9. 1990, p. 1.
(11) OJ No L 264, 27. 9. 1990, p. 4.
(12) OJ No L 264, 27. 9. 1990, p. 7.
(13) OJ No L 264, 27. 9. 1990, p. 55.
(14) OJ No L 264, 27. 9. 1990, p. 57.
(15) OJ No L 264, 27. 9. 1990, p. 59.

B. Withdrawal of undertakings

(4) Following a reminder of the need to submit six-monthly reports on exports to the Community of the products referred to in paragraph A (3) one of the two exporters who had signed the undertakings, CNIEC, stated that it was no longer able to export to the Community at the minimum prices laid down in the undertakings owing to the situation on the world market for tungsten and derivative products and changes which had been introduced in company management in China. It gave 20 days' notice that it would be withdrawing from its undertakings in accordance with the provisions thereof.

Shortly afterwards the other exporter, Minmetals, also withdrew from its undertakings following CNIEC's example. The exemption from anti-dumping duties applying to imports of the products in question exported by these two Chinese exporters by virtue of these undertakings is thus no longer justified.

The Commission informed the exporters that, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88, it intended, following the withdrawal of their undertakings, to apply provisional anti-dumping duties on the basis of the facts established before the acceptance of the undertakings and invited them to submit their comments.

No comments on the imposition of the provisional duties were received during the time limit granted.

As regards the reasons put forward by the Chinese exporters for withdrawal of the undertakings, it should be noted that CNIEC and Minmetals had entered into these undertakings not only on their own behalf but also on behalf of their subsidiaries and export agents. If their right of control over their subsidiaries and export agents has indeed changed, provisional duties will have to be swiftly imposed as it will clearly be impossible to monitor their undertakings. This is reason enough to replace undertakings which no longer work by provisional anti-dumping duties on the basis of the same facts as those originally established. This is expressly provided for by Article 10 (6) of Regulation (EEC) No 2423/88. This provision acts as a safety net and is designed to ensure anti-dumping measures are effective. It cannot be transformed into a review procedure. The conditions for initiating such a procedure are laid down in Article 14 of the same Regulation. A detailed written explanation has been given to the Chinese exporters in question of the conditions and procedure for requesting such a review.

They have not provided any evidence to show that the original situation where dumping was being practised to the detriment of Community industry has changed. The argument that the prices given in the undertakings are higher than the world market prices quoted in the London Metal Bulletin (LMB) provides no new evidence. In Regulation (EEC) No 761/90 [1], the Commission had already established that the prices quoted in the LMB did not appear to cover production costs in market economy countries. Moreover, the reason for this may lie in the fact that virtually all tungsten ores or ammonium paratungstate are supplied by a non-market economy country, i.e. China.

The Commission therefore takes the view that the imposition of provisional duties under the conditions laid down in Article 10 (6) of Regulation (EEC) No 2423/88 should be considered.

C. Community interest

(5) The withdrawal of an undertaking is a voluntary act by a producer/exporter who thereby assumes the consequences which ensue, i.e. a change in the form of the anti-dumping measures from an undertaking to a duty. In such cases it is in the Community's interest to impose provisional duties to ensure that the imports into the Community by the company in question, which are no longer controlled through an undertaking, do not cause injury to Community industry. The Commission has no reason to believe at this point in time that the imposition of provisional duties on one or the other of the tungsten products in question would not be in the Community interest. The Commission consequently considers that provisional anti-dumping duties should be imposed.

D. Provisional duties

(6) Accordance with Article 10 (6) of Regulation (EEC) No 2423/88 the provisional anti-dumping duties should be applied on the basis of the facts established before the acceptance of the undertaking. The rates of these duties shall be :

[1] OJ No L 83, 30. 3. 1990, p. 23.

(a) 37 % on imports of tungsten ores and concentrates originating in the People's Republic of China;

(b) 35 % on imports of tungstic oxide and tungstic acid originating in the People's Republic of China;

(c) 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China,

HAS ADOPTED THIS REGULATION:

Article 1

1. Provisional anti-dumping duties are hereby imposed:

(a) on imports of tungsten ores and concentrates falling within CN code 2611 00 00 originating in the People's Republic of China and exported by China National Non-Ferrous Import and Export Corporation (CNIEC) or China National Metals and Minerals Import and Export Corporation (Minmetals) (additional Taric code 8432);

(b) on imports of tungstic oxide and tungstic acid falling within CN code 2825 90 40 originating in the People's Republic of China and exported by China National Non-Ferrous Import and Export Corporation (CNIEC) or China National Metals and Minerals Import and Export Corporation (Minmetals) (additional Taric code 8481);

(c) on imports of tungsten carbide and fused tungsten carbide falling within CN code 2849 90 30 originating in the People's Republic of China and exported by China National Non-Ferrous Import and Export Corporation (CNIEC) or China National Metals and Minerals Import and Export Corporation (Minmetals) (additional Taric code 8478).

2. The rate of duty shall be:

(a) 37 % of the net free-at-Community-frontier price, before customs clearance, of tungsten ores and concentrates;

(b) 35 % of the net free-at-Community-frontier price, before customs clearance, of tungstic oxide and tungstic acid;

(c) 33 % of the net free-at-Community-frontier price, before customs clearance, of tungsten carbide and fused tungsten carbide.

The free-at-Community-frontier price shall be net if the actual conditions of payment provide for payment within 30 days of the arrival of the goods on the Community's customs territory. It shall be increased by 1 % for each further month by which the period for payment is extended.

3. The release for free circulation in the Community of the goods referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned 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.*

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

Done at Brussels, 21 September 1994.

For the Commission

Leon BRITTAN

Member of the Commission