COUNCIL REGULATION (EC) No 2556/94

of 19 October 1994

amending Regulation (EEC) No 2552/93 imposing a definitive anti-dumping duty on imports of artificial corundum originating in the People's Republic of China, the Russian Federation and Ukraine, with the exception of those imports sold for export to the Community by companies whose undertakings have been accepted, and definitively collecting the amounts secured by way of the provisional anti-dumping duty imposed by Commission Regulation (EC) No 1418/94

THE COUNCIL OF THE EUROPEAN UNION,

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], hereinafter referred to as 'the Basic Regulation', and in particular Article 12 thereof,

Having regard to the proposal from the Commission submitted after consultation within the Advisory Committee,

Whereas,

A. Provisional measures

(1) By Decision 91/512/EEC [2], the Commission accepted undertakings given in connection with the review of anti-dumping measures concerning imports of artificial corundum originating in the Soviet Union, Hungary, Poland, Czechoslovakia and the People's Republic of China and in connection with the anti-dumping proceeding concerning imports of artificial corundum originating in Brazil and Yugoslavia. By Council Regulation (EEC) No 2552/93 [3], a definitive anti-dumping duty was imposed on imports of artificial corundum originating in the People's Republic of China, the Russian Federation and Ukraine, with the exception of those imports sold for export to the Community by companies whose undertakings had been accepted.

(2) The Commission, by Regulation (EC) No 1418/94 [4], imposed a provisional anti-dumping duty on imports into the Community of artificial corundum falling within CN code 2818 10 00 (Taric additional code : 8725), originating in the People's Republic of China and exported to the Community by the following companies :

— CMEC — China National Machinery and Equipment Import and Export Co., Beijing,

— The second abrasive wheel factory of China, Zhengzhou, Henan,

— Mount Tai Co. of the fourth Grinding Wheel factory of China, Zhangian, ZiBo, Sha Dong,

— Shandong Machinery and Equipment Import and Export Co., Qingdao,

— Guandong Machinery and Equipment Import and Export Group Co., Guangzhou,

— CAEC — China Abrasives Import and Export Co., Zhengzhou, Henan.

This provisional duty was imposed in accordance with Article 10 (6) of the Basic Regulation, as the Commission has reason to believe that the undertakings of the abovementioned exporters had been violated, and that Community interests called for such intervention. The rate of duty was 30,8 % of the net free-at-Community frontier price of the product before customs duty, and was based on the facts established before the acceptance of the undertaking.

B. Subsequent procedure

(3) Following the imposition of the provisional anti-dumping duty, the European Chemical Industry Council (Cefic), on behalf of the Community industry of artificial corundum, and the Machine Tool and Tool Branch Chamber of the Chinese Chamber of Commerce (CCC), on behalf of the exporters concerned, made their views known in writing and, at their request, were granted an opportunity to be heard by the Commission. Both parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of the amounts secured by way of the provisional duty, and were granted a period within which to make representations subsequent to the disclosure.

The views of both parties were considered, which resulted in the position adopted below.

[1] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[2] OJ No L 275, 2. 10. 1991, p. 27.
[3] OJ No L 235, 18. 9. 1993, p. 1.
[4] OJ No L 155, 22. 6. 1994, p. 8.

C. **Definitive duty**

(4) The CCC contested the need for a provisional or definitive duty, arguing that the exports covered by the undertaking were not dumped and had been made in small volumes only and that the exporters concerned had not violated the substantive terms of the undertaking. Violation of the procedural terms of the undertaking was admitted. The idea was raised of a new price undertaking, without, however, a precise offer being made. A review was also requested, based on the same claim that exports covered by the undertaking were not dumped, and on the claim that the undertaking price was above EC market prices.

(5) Cefic argued for the quick introduction of definitive duties, given the alleged ineffectiveness of the undertaking. Cefic underlined that the volume of imports of artificial corundum from China as a whole had more than quadrupled from 4 149 tonnes in 1991 to 17 324 tonnes in 1993 following the acceptance of the undertakings, that the largest part of these exports was covered by the undertaking and that export prices had on average fallen by 14 %. This import situation had contributed to the announced closure of two plants of Community industry and to a decline in production volumes, capacity utilization, prices and profitability for the Community producers. Cefic confirmed that, despite this precarious situation, an important Community industry for artificial corundum still existed, with an estimated 400 jobs at stake in the short term.

(6) The Council considers that undertakings can operate satisfactorily only if strict compliance exists in respect of the reporting and other procedural obligations that permit the Commission to verify whether the substantive terms of the undertaking are being correctly implemented. It was precisely because of the non-compliance with the reporting requirement, admitted by the CCC, that the Commission was prevented from determining to what precise degree the Chinese exporters still complied with their substantive obligations.

Furthermore, the Commission has written evidence in its possession that price offers and sales were made by Chinese exporters covered by the undertaking to Community customers at prices well below those stipulated in the undertaking. In some cases this concerned Chinese exporters, or local subsidiaries or branches thereof, that claimed not to have exported anything to the Community, thus discrediting the Chinese claim that exports covered by the undertaking were small in volume. This evidence was disclosed in non-confidential form to the CCC, which was unable to rebut it. In any case, even if the quantity exported under the undertaking was small, this is no excuse for not respecting the price stipulated in the undertaking. A violation of the substantive terms of the undertakings has therefore also been determined definitively.

Once an undertaking has been violated, whether in terms of procedure or substance, or, as in this case, both, there is normally no valid reason for the Commission to maintain or renew the undertaking. By not complying with the terms of the undertaking, exporters know and accept in advance the consequences that may flow therefrom. In this case, it was established that all six Chinese exporters violated the terms of the undertaking in one way or another. In addition, it was established that the CCC, which has acted as cosignatory of the undertaking and has represented all of the six exporters concerned before the Commission, could not be relied upon to ensure the correct functioning of the undertaking in respect of those exporters. This undertaking has therefore proved unreliable as a whole. The Council thus considers that the imposition of a definitive duty on all six Chinese exporters is in the interest of the Community, in order to prevent injury to the Community industry from imports into the Community that are no longer effectively controlled by an undertaking.

(7) This interest is not outweighed by the interests of the industrial users of artificial corundum. They have had an exceptional advantage resulting from unfair low prices, which under normal trading conditions would not have existed. It is the basic purpose of anti-dumping measures to restore normal conditions. This price benefit to companies which use artificial corundum as one input into their production process is, in any case, minor in comparison with the very survival of an entire Community industry which is at stake in the case of artificial corundum, as documented by Cefic. The Council therefore considers that in this respect the same considerations regarding Community interest still apply as mentioned in Decision 91/512/EEC accepting the undertakings, and confirmed in September 1993 by Regulation (EEC) No 2552/93 imposing a residual duty. No comments were received from users of artificial corundum that contested this view.

(8) The arguments by the CCC that exports are not submitted have been examined. In this context it was submitted that China is no longer a non-market economy country, that Chinese export prices are higher than prices in the Chinese market, and that under the market mechanism prices cannot be lower than cost of production. The Council observes, in this respect, that China is regarded as a non-market economy country, that its domestic prices therefore cannot be used to prove an absence of dumping, and that even in a market economy, experience indicates that it is quite possible for prices to be below full cost of production.

It was also argued that the undertaking price would be above Community market prices. Even if true, this would not be relevant as there is no reason to believe that the undertaking price is at a level higher than necessary to remove the injury to the Community industry. The prices currently prevailing in the Community market are not prices that permit the Community industry a reasonable profit, the more so as those prices are influenced by the same Chinese exporters that violated their undertaking by offering artificial corundum at lower prices. The closure of two additional plants of the Community industry is an indication that reasonable profits are in fact not being made.

(9) In its Regulation (EEC) No 2552/93 imposing a residual duty, the Council considered that the findings of the original investigation, including those on dumping and injury resulting therefrom, remained reliable and that the residual duty introduced at that time for other Chinese exporters than the ones from which undertakings had been accepted could be based thereon. The export prices now advanced by the CCC to demonstrate an absence of dumping are well below the injury threshold and do not indicate that these findings need to be revised downward. The Council therefore considers that the level of the duty should be set at 30,8 %, as determined originally for the People's Republic of China.

(10) Regulation (EEC) No 2552/93 exempted the six Chinese exporters concerned from the country-wide duty of 30,8 %, on the basis that undertakings had been accepted from them. Since those undertakings have now been violated, this exemption should be revoked. The Council thus considers that Regulation (EEC) No 2552/93 should be amended so as to apply the same duty of 30,8 % to all Chinese exporters.

D. Collection of provisional duty

(11) In view of the seriousness of violating an undertaking, it is considered necessary to collect definitively and in their entirety the amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1418/94,

HAS ADOPTED THIS REGULATION:

Article 1

The references to the People's Republic of China and the six Chinese exporters mentioned in Article 1 (5) of Regulation (EEC) No 2552/93 shall be deleted.

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EC) No 1418/94 shall be definitively collected.

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, 19 October 1994.

For the Council

The President

Th. WAIGEL