COUNCIL REGULATION (EC) No 2557/94

of 19 October 1994

imposing a definitive anti-dumping duty on imports of calcium metal originating in the People's Republic of China and Russia

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], and in particular Article 12 thereof,

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

Whereas :

A. PROVISIONAL MEASURES

(1) By Regulation (EC) No 892/94 [2] hereinafter referred to as 'the Provisional Regulation', the Commission imposed provisional anti-dumping duties on duties of calcium metal falling within CN code 2805 21 00 and originating in the People's Republic of China and Russia.

By Regulation (EC) No 1777/94 [3] the Council extended the validity of these duties for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, several interested parties submitted comments in writing. One exporter requested, and was granted, a hearing.

(3) The Commission continued to seek all information it deemed necessary for its definitive findings. The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of the amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to these disclosures.

(4) The parties' comments were taken into consideration and the Commission's conclusions altered accordingly where justified.

(5) Owing to the complexity of the case the investigation could not be completed within the normal time limit of one year as provided for in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

(6) The product under consideration is calcium metal falling within CN code 2805 21 00.

(7) Following submissions by the largest single importer in the Community of the product under investigation, IPS, on the issue of like product and, in particular, the different processes by which calcium metal is produced in different parts of the world and the uses to which it may be put, the Commission further examined this issue.

(8) This examination confirmed that the product can be produced either by the aluminothermic process (i.e. the reduction of lime with aluminium) which is used by the Community producer and producers in the United States of America and Canada, or by electrolytic process (i.e. the igneous electrolysis of calcium followed by distillation) used by the Russian and Chinese producers.

(9) Calcium metal produced by either process referred to above has characteristics closely resembling each other, although there is a slightly higher level of purity in the product produced by electrolysis. This difference however, as explained in recitals (10) to (13), does not generally affect the uses to which calcium produced by both processes can be mainly put.

The product can be available in various forms (size) i.e. crowns, chunks, turnings or chips and, for certain uses (see recital (10)) be further processed into grains or granules, a process that, generally, does not change the basic nature of the product.

(10) Calcium metal is mainly used in the Community by the following industries :

[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 104, 23. 4. 1994, p. 5.
[3] OJ No L 184, 20. 7. 1994, p. 15.

— lead and ferro-alloys industries, which use the product in the form of broken crowns, chunks, turnings or chips,

— the steel industry, which uses calcium metal in granulated form,

— applications in high temperature calcium treatments (e.g. production of magnets) which also require calcium in granulated form.

(11) The investigation has shown for uses in the lead and ferro-alloy industries, the product imported from the People's Republic of China and Russia and that produced in the Community and the United States of America (the market economy used as a reference for the exports under investigation) are completely interchangeable. This is also the case as regards the use by the steel industry of the grains or granules obtained from calcium produced from either source.

(12) As regards applications in high temperature calcium treatments (magnets), which also need calcium in granulated form, a calcium metal with a higher level of purity than that which is obtained in the Community by aluminothermie appears to be required. For these uses the Community producer also has a specific type of the product available that also competes with the Russian and Chinese calcium metal and which is obtained by submitting the standard aluminothermic product to a distillation. Given that applications in this sector account for less than 10 % of Community consumption and that this distillation considerably increases costs, production of this type of calcium metal in the Community is limited.

(13) One importer in the Community questioned, however, the interchangeability of the products at the level of processing into grains or granules.

In this context, the Commission has received indication that there are at least four companies in the Community which carry out this activity. One of these companies, IPS, uses a process of granulation (granules obtained by re-smelting and atomization) which is different from the process used by others (mechanical pulverization). It has not been contested that both the product imported from Russia and China and Community produced calcium metal are suitable for granulation by the mechanical method, and that, with the exception of IPS, processors in the Community could therefore use both products for granulation.

As regards IPS, the Commission has concluded that this company was unable to use, without difficulty, the calcium metal produced by the Community industry. This inability appears to result from the process used by IPS being different from that used by all other processors and, as a consequence, having certain requirements related to the level of oxygen in the calcium metal used as raw material which appeared not to be met by the product produced by the Community industry but which are not relevant for use by other processors.

Under these circumstances, this factor alone, given the overall conclusion on similarity and interchangeability in uses and applications of imported and Community-produced calcium metal, does not affect the conclusion that the Chinese and Russian products are alike to that produced by the Community industry within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

(14) In the light of the above considerations, the conclusions on the issue of like product, as set out in recital (11) of the Provisional Regulation, are confirmed.

D. DUMPING

1. Normal value

1.1. *Reference country*

(15) Requirements were made by interested parties with regard to the appropriateness of the choice of the United States of America as the reference country. In one case, it was questioned that the calcium metal produced by the United States company concerned could be considered representative, it being claimed that it accounted for a marginal production of this producer. The Commission's investigation, however, showed that the volumes of own produced calcium metal sold domestically to unrelated customers during the investigation period by the United States company was sufficiently representative for constituting a basis for normal value.

In another case, it was suggested that the product manufactured by the United States company was not like that produced in Russia. For the reasons set out in recitals (8) to (13), this claim is rejected.

It should further be noted that no alternative reference market has been proposed by any of the parties concerned.

For the purpose of definitive findings, normal value was therefore established according to the same method used in the provisional conclusions, as set out in recitals (12) to (18) of the Provisional Regulation.

2. Export price

(16) The method used to establish export prices, as set out in recitals (19) and (20) of the Provisional Regulation, are hereby confirmed, as no comments in this respect were made by interested parties.

3. Comparison

(17) The findings and conclusions set out in recital (21) of the Provisional Regulation are hereby confirmed.

4. Dumping margin

(18) The definitive examination of the facts showed that Chinese and Russian exports were being dumped during the investigation period. The weighted average dumping margin at the level of the free-at-Community frontier was ECU 2 202 per tonne for the Chinese product and ECU 2 502 per tonne for the Russian product.

E. INJURY

(19) In its determination of the extent to which injury has been suffered by the Community industry, the Commission restricted its calculations for the most part to the calcium metal in the form of pieces equal to and above 7 mm, on which information concerning the product imported from China and Russia was available. As far as grains and granules are concerned, no information on sales volumes and prices of the processors in the Community was available to the Commission given that the two major processors did not supply the information requested of them on these issues.

Indeed, one of these processors claimed that the product is not resold in the form in which it is imported and should not therefore be included in the investigation. The Commission notes, however, that the product processed into grains by these processors competes, for mose uses, with the granulated product of the Community producer which itself has the same chemical characteristics as its primary calcium. Under these circumstances, the factors concerning the market for granulated calcium are relevant to the examination of the injury suffered by the Community producer since granulated and primary calcium have characteristics which sufficiently closely resemble one another to be considered part of the same product range.

In this context, the Commission notes, furthermore, that as regards the situation of the Community producer, its prices for grains obtained from primary calcium also fell substantially, i.e. by more than 17 % between 1989 and 1992 and its sales volume by more than 5 % in the same period, leading to considerable losses in the investigation period.

(20) One importer questioned the Commission's provisional conclusions concerning the levels of capacity utilization of the Community producer during the period under consideration. The Commission further examined this issue and concluded that capacity utilization, in the context of a slight in installed capacity, remained at low levels, fluctuating between approximately 50 and 60 % during the period under consideration.

In the absence of other representations from interested parties on the issue of injury, the Commission confirms the remaining findings as set out in recitals (23) to (36) of the Provisional Regulation.

F. CAUSATION OF INJURY

1. Effect of the dumped imported

(21) The Commission's findings showed that the increase in volume of dumped imports, in a context of stable Community consumption, coincided with a loss of market share, price erosion and negative financial results on the part of the Community industry. These losses were particularly the result of significant price decreases and also of low capacity utilization caused by the effect of sales in the Community of dumped Chinese and Russian calcium metal in the form of pieces equal to, or greater than, 7 mm and processed into grains.

Furthermore, imports from other countries, namely the United States of America and Canada fell from 31 % in 1988 to 14,6 % in 1989 then remaining stable to 15,3 % in 1990, 16,5 % in 1991 and 15,6 % in 1992.

2. Other factors

(22) In its Judgement of 11 June 1992 in case C-358/89, the Court of Justice of the European Communities declared that, as regards their findings on injury and causal link, the institutions and insufficiently examined the question of whether injury could have been the result of the Community producer's behaviour aimed at hindering the setting-up of a competitor in a downstream market by effectively refusing to supply IPS (then operating under the name Extramet), the largest single user of the imported product under consideration. Indeed Péchiney Electrométallurgie (PEM) was condemned in March 1992 in France (Conseil de la Concurrence) for this behaviour, and on appeal ('Cour d'Appel de Paris') the judgment at first instance was confirmed in January 1993.

The appeal Judgment, however, also declared that no abuse of a dominant position or any unlawful competitive practices could be attributed to PEM after 1984.

(23) The Commission has, accordingly, continued to examine this issue. In particular, the Commission examined whether there had been refusal by PEM to supply the product to IPS.

(24) This examination has confirmed, that due to the specificity of the granulation process used by IPS, this company had technical difficulties in using the product produced by the Community producer, as presently available (see also recital (13)). In this context, however, PEM has shown that it made efforts to achieve a product suitable for use by IPS. Indeed, contacts were made between the parties which resulted in a number of deliveries of the product and tests being carried out by IPS. Furthermore, PEM has made investment in plant and research in an attempt to meet IPS requirements, although facing a precarious financial situation in this sector and being aware, at the same time that IPS could continue to purchase calcium metal from China and Russia at heavily dumped prices.

(25) The circumstance that, for the reasons set out in recital (13), PEM's product does not appear to be fully suitable for use by IPS, although being suitable for use by other processors and users in the Community, therefore does not in the view of the Council justify a finding of self-inflicted injury.

(26) IPS claimed, nonetheless, that because it could not use without considerable difficulty the product produced by PEM, its imports of Russian and Chinese calcium metal could not have caused injury to the Community producer. In this context, it should be noted in the first place, that imports made by IPS during the investigation period accounted for less than 50 % of the total quantities of calcium metal imported for subsequent resale in the Community either in the form imported or further processed into granules. Secondly, the Commission notes that granules sourced from primary calcium imported from China and Russia caused injury to the Community producer's sales of granulated calcium (see recital (19)). In addition, to the extent that the production of grains requires an input of primary calcium, any negative factors affecting the segment of the market for grains has a commensurate negative effect on the production of primary calcium of the Community producer.

3. Conclusion

(27) In light of the above, the Council concludes that the Community industry suffered material injury as a result of the volume and prices of the dumped Russian and Chinese product sold in the form in which it is imported and further processed by Community processors into granulated form.

G. COMMUNITY INTEREST

(28) In assessing Community interest, the Community institutions have consistently maintained that the purpose of anti-dumping measures is to remove distortions of competition arising from unfair commercial practices, and thus re-establish effective competition on the Community market, and that it is fundamentally in the general Community interest to do so. Furthermore, in the present case, failure to take definitive measures would aggravate the already precarious situation of the Community industry, especially noticeable from the continued and heavy losses which jeopardize its viability and therefore its continued existence. Should the industry be forced to cease production, effects on purchasers would almost certainly be detrimental as a result of the lower number of competitors in the market.

(29) In this context, the Council considered whether the adoption of anti-dumping measures might lead to a situation in which effective competition might be significantly reduced. In view of the fact that supplies were available from the United States of America and Canada, and that the imports from the People's Republic of China and Russia would remain available at non-dumped prices, the Council concluded that there was no such danger and that there was a need to ensure that the Community industry continued to operate.

(30) The Commission also assessed the possible impact of the measures on several categories of users of the product : the primary users, i.e. the processors, and the user industries, i.e. the lead, ferro-alloy and steel industries.

As regards the sales within the Community achieved by processors which obtained their supplies of calcium metal from Russia or the People's Republic of China, IPS claimed that in case anti-dumping measures were taken, this would exclude from the market its only source of supply. This claim is unfounded, since processors, including IPS, would be able to continue to obtain supplies from Russia and the People's Republic of China at non-dumped prices and also from the United States of America and Canada. Furthermore, for their sales of processed calcium metal outside the Community, they could continue to purchase from Russia and the People's Republic of China under the inward processing régime without paying duty of any kind.

As regards the final user industry, the Commission found that a price increase for calcium metal originating in the People's Republic of China or Russia from its present levels, by the amount of the anti-dumping duty definitively imposed, would increase the cost of a tonne of lead, incorporating such material, by less than 0,3 % and that of a tonne of steel, before rolling, by less than 0,2 %. The effect on these user industries would therefore be minimal.

The Council therefore concludes that the Community interest calls for the imposition of definitive measures.

(31) In view of the fact that there is only one Community producer of calcium metal and given the advisability, in this case, of examining the effect of the measures in conjunction with the development of the market situation of this particular product, it is considered appropriate that the Commission undertakes a review of this Regulation, which shall be initiated after six months have elapsed from its coming into force, provided that competition conditions in the sector concerned so require. Otherwise the review should be initiated after one year.

H. FINAL PROVISION

(32) Provisional measures took the form of anti-dumping duties in the form of a specific amount per tonne. These were imposed for both the People's Republic of China and Russia at the injury elimination levels determined, since these were lower than the respective dumping margins established, as set out in recital (42) of the Provisional Regulation.

No new arguments were put forward to contradict this approach. Therefore, duties should be definitively established at the level provisionally imposed, i.e. ECU 2 074 per tonne for the Chinese imports and ECU 2 120 per tonne for the Russian imports.

I. COLLECTION OF THE PROVISIONAL DUTIES

(33) In view of the dumping magins established, the injury caused to the Community industry and of the latter's precarious situation, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty should be definitively collected,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of calcium metal falling within CN code 2805 21 00 and originating in the People's Republic of China and Russia.

2. The rate of the duty applicable is ECU 2 074 per tonne for imports originating in the People's Republic of China and ECU 2 120 per tonne for imports originating in Russia.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts securred by way of the provisional anti-dumping duty, pursuant to Regulation (EC) No 892/94, shall be definitively collected in full.

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