COUNCIL REGULATION (EC) No 2819/94

of 17 November 1994

imposing a definitive anti-dumping duty on imports of potassium permanganate originating in the People's Republic of China

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 Articles 12, 14 and 15 thereof,

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

Whereas :

A. PROCEDURE

(1) The proceeding was first initiated by notice published in the *Official Journal of the European Communities* [2]. In November 1986, the Commission, by Decision 86/589/EEC [3], *inter alia* accepted a price undertaking offered by the exporter in the People's Republic of China in connection with the anti-dumping proceeding concerning imports of potassium permanganate.

(2) After failure of the exporter in the People's Republic of China to comply with the undertaking, the Commission withdrew its acceptance of the undertaking and reimposed a provisional anti-dumping duty by Regulation (EEC) No 360/88 [4] and decided [5] to reopen the anti-dumping investigation concerning imports of potassium permanganate originating in the People's Republic of China. The Council, by Regulation (EEC) No 1531/88 [6], imposed a definitive anti-dumping duty on imports of potassium permanganate originating in the People's Republic of China. The amount of the duty imposed was equal to either the amount by which the free-at-Community-frontier-price per kilogram net, before duty, is less than ECU 2,25 or 20 % of that price per kilogram net, free-at-Community frontier, before duty, whichever is the higher.

(3) Following the publication in December 1992 [7] of a notice of the impending expiry of the measures in force, the Commission received a request for a review lodged by the European Chemical Industry Council (Cefic), on behalf of producers allegedly representing the totality of the Community production of potassium permanganate.

(4) Subsequently, in a notice published in the *Official Journal of the European Communities* [8], the Commission announced a review of the anti-dumping measures in force.

(5) The Commission notified the exporter and importers known to be concerned, the representatives of the exporting country and the complainant Community producers, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) All complainant Community producers replied to the questionnaire and made their views known in writing.

(7) Neither the Chinese Government nor the exporter in the People's Republic of China nor the related importers known to exist in the Community nor any unrelated importers replied to the questionnaire.

(8) The Commission sought and verified all information it deemed necessary for the purpose of a determination. Normal value had to be determined on the basis of domestic prices in an analogous country (see recital 29). Consequently investigations have been carried out at the premises of the following companies :

— complainant Community producers :

  — Chemie AG (Germany),

  — Industrial Química del Nalón (Spain),

— reference country :

  — Carus Chemical Company, Ottawa, Illinois, USA.

(9) The investigation of dumping covered the period from 1 July 1992 to 30 June 1993 (the investigation period).

[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 C 63, 18. 3. 1986, p. 5.
[3] OJ No L 339, 2. 12. 1986, p. 32.
[4] OJ No L 35, 9. 2. 1988, p. 13.
[5] OJ No C 37, 9. 2. 1988, p. 3.
[6] OJ No L 138, 3. 6. 1988, p. 1.
[7] OJ No C 319, 5. 12. 1992, p. 4.
[8] OJ No C 248, 11. 9. 1993, p. 9.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(10) The product covered by the complaint and for which the review investigation was initiated is potassium permanganate falling within CN code 2841 60 10 (before 1992 the CN code was ex 2841 60 00). It is identical to the product which was the subject of the previous investigation and for which the definitive duty was imposed.

(11) Potassium permanganate is a strong oxidizing agent and is used for potable water treatment, waste water treatment, chemical manufacture and processing, aquaculture, metal refining and metal surface cleaning, disinfectant in agriculture and veterinary practices, flue gas purification, process gas deodorization, bleaching and special treatment in textile industry, odour abatement, radioactive decontamination, gas turbine engine cleaning, manufacture of printed circuit boards and submarine air purification.

The product can be manufactured in three grades, technical, free flowing and pharmaceutical. All grades are obtained from the same production process, show the same chemical properties and are interchangeable in all uses. The material is assigned to the specific grade according to demand and after having performed the different analyses needed.

(12) The investigation showed that the product produced and sold by the Community producers on the Community market is identical in its chemical characteristics to the potassium permanganate imported from the People's Republic of China. It is therefore considered as being a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic Regulation').

C. COMMUNITY INDUSTRY

(13) Until 1990, there was only one Community producer. The other producer, the producer located in the former German Democratic Republic, became part of the Community industry in the course of the German unification.

For the German producer, unification implied fundamental institutional changes towards a market economy. From the beginning of the economic, monetary and social union on 1 July 1990, it had to adapt to market conditions. It was part of the former combine 'VEB Chemiekombinat Bitterfeld' and is now offered for privatization by the 'Treuhandanstalt', the German State-holding company.

On a Community level, during the period preceding formal unification (1 July 1990 until 2 October 1990), rules governing trade with the former German Democratic Republic where geared towards free access of Community products to the former German Democratic Republic and towards equivalent access to the Community for products of the latter (Council Regulation (EEC) No 1794/90) [1]. By Commission Regulation (EEC) No 1795/90 [2] the former German Democratic Republic was regarded, for implementation purposes, as forming a part of the Community. With formal unification on 3 October 1990, the former German Democratic Republic became part of the Community.

Consequently, since 1 July 1990, all German producers form a part of the Community industry. The complainant producers manufacture the total Community output of potassium permanganate. Therefore, they comprise the Community industry within the meaning of Article 4 (5) of the basic Regulation.

D. PRESENT SITUATION IN THE COMMUNITY MARKET

(14) In order to establish whether the expiry of the measures in force would lead again to injury or threat of injury, it was first necessary to examine the present economic situation of the Community industry.

Production

(15) The total Community production of potassium permanganate decreased by 74 % from 1989 to the investigation period. This figure is influenced by the adjustment of the German producer to market conditions, which took place to a large part in just one year (1990 to 1991). However, comparing 1991 and the investigation period, production of the Community industry fell by 52 %.

Production capacity and utilization rate

(16) The capacity remained stable at 7 500 metric tonnes (MT) per year. The utilization rate dropped from 75,8 % in 1989 to 33,9 % in the investigation period.

[1] OJ No L 166, 29. 6. 1990, p. 1.
[2] OJ No L 166, 29. 6. 1990, p. 3.

Sales

(17) Sales of the Community industry on the Community market declined from 1989 to the investigation period by nearly 50 %. This rate is higher than the drop in consumption of 36 % during this period.

Stocks

(18) Stocks decreased from 1 132 MT (1989) to 785 MT (investigation period), passing a peak in 1991 with 1 349 MT. This decrease was caused by sales made from stocks, meanwhile the Community industry stopped producing for certain periods, in 1992 and in the investigation period.

Employment

(19) Thus the reduction of the stocks was at the expense of employment, which decreased by 37,3 % from 1989 to the investigation period. The transitional situation in the eastern part of Germany accounted for 70 % of this decrease. However, these figures do not include temporary lay-offs and short-time working, which had to be introduced to bridge stand-still periods in the factories.

Community consumption and market share held by the Community industry

(20) The apparent consumption in the Community market, based on imports and sales volume of the Community industry decreased from 4 459 MT in 1989 to 2 641 MT in the investigation period, a drop of 41 %. However the statistical data 1989 to 1991 include 'other Manganates', which account for 14 % of the imports recorded under CN code ex 2841 60 00. These adjusted import figures for the years 1989 to 1991 result in an adjustment to the drop in consumption to 36 %.

The reduction in sales of the Community industry (see recital 17) was higher than the shrinking of the market and therefore resulted in a loss of its market share of 7,8 percentage points.

Price trends

(21) Net sales prices showed an increase on average by 6,8 % from 1990 to the investigation period. However this figure is influenced by the special and singular developments in the course of the German unification (see recital 13). Since then, the German producer has had to adjust to market economy conditions and increased its prices by more than 12 % from a much lower base than on the Community market until, in the investigation period, prices of the Community industry worked out on the same level. By contrast, the other Community producer, which was not affected by such influences, showed a steady fall in prices from 1990 to the investigation period of 13 %. Therefore it can be concluded that, overall in the Community, market prices have been depressed.

Profitability

(22) Due to the special situation of the German producer (see recital 13), no average profit/loss margin is available for 1989. The average loss margin for the Community producers was 1,8 % in 1990. This loss margin reached 15,1 % in the investigation period. The Community producers were not able to regain profitability, since sales were made at a loss from 1990 to the investigation period.

Investments

(23) For more than five years, only small amounts have been invested by the Community industry in replacements and minor upgrades of single parts of the factories. Due to the stand-still periods (see recital 18), wear and tear of the production facilities was less than under normal production conditions. More significant amounts invested by Chemie AG, the producer in the eastern part of Germany, in the investigation period were necessary to increase productivity. To prepare for privatization, the former combine was split up and restructured, which led to the separation of formerly integrated chemical processes. Investments were aimed at substituting these lost internal links. However this brought no gains in productivity or efficiency.

Conclusion

(24) It was accordingly concluded that, in spite of the measures in force, the Community industry continued to show clear signs of economic difficulties. The Community industry experienced a considerable drop of sales in terms of both volume and market share. These developments, combined with continued sales at losses and price depression, heavily affected production and employment figures.

E. THE BEHAVIOUR OF THE EXPORTERS CONCERNED

(25) It was also necessary to examine the behaviour of the exporters concerned. However, the lack of cooperation from the Chinese Government, the Chinese exporter and all known importers (recital 7) made any accurate assessment difficult.

Volume and market share of imports from the People's Republic of China

(26) Imports from the People's Republic of China increased from 433 MT in 1989 to 448 MT in the investigation period. That is in contrast to the development of consumption (recital 20) which decreased significantly.

In terms of market share, Chinese imports rose from 9,7 % in 1989 to 16,9 % in the investigation period.

However the real market share was almost certainly higher. The statistics recorded imports from non-member countries which have no, or very small, production, of the like product. For example, imports from North Korea have been recorded, while apparently no production exists in this country. Similarly most of the imports statistically registered to originate in India must have a different origin since the three plants known to exist in India have a very small capacity of less than 40 tonnes a year each, which is just 26 % of the Indian import volume according to Eurostat. In addition, a customs investigation in 1991 proved that potassium permanganate was fraudulently declared to originate in Hong Kong or Taiwan, although it was established that no production existed in these countries. The results of this investigation are not reflected in Eurostat statistics.

Consequently, if the imports from India, North Korea and Taiwan suspected of having a different origin were to be attributed to the People's Republic of China, its market share in the Community would approach 40 %.

Sales prices

(27) It was investigated whether the exporting producer was undercutting the prices of the Community producers during the investigation period. Based on Eurostat data, cif prices for Chinese product were undercutting the prices of the Community producers during the investigation period by 11,5 %.

The findings of the investigation confirmed that Eurostat prices for imports of potassium permanganate from China into the Community are not in line with actual prices quoted for Chinese material. Indeed, the complainants submitted evidence that, during the investigation period, real prices for the Chinese product were much lower than reported in Eurostat. In support of this, they attached to the complaint quotations for Chinese product at an average cif price significantly below the Eurostat figures. In addition, the attribution of imports of the like product of suspected Chinese origin actually recorded to originate from other non-member countries (see recital 26) already results in a lower price level for Chinese product, since average prices for imports from India (ECU 1,4 per kg), Thailand (ECU 1,3 per kg) and Hong Kong (ECU 1,1 per kg) are significantly below the prices reported for imports from China in Eurostat.

Thus, it was concluded that Eurostat figures were not an appropriate basis for a calculation of price undercutting in the present case and that actual undercutting must have been higher than appeared from the statistical figures.

Conclusion

(28) Chinese imports increased their market share and price undercutting continued despite the anti-dumping duty in force. It was therefore considered necessary to examine whether dumping was occuring which contributed to the deteriorated situation of the Community industry described above and whether the expiry of the anti-dumping duty would lead again to a recurrence of dumping and injury.

F. RECURRENCE OF DUMPING

I. Reference country

(29) The People's Republic of China is a non-market economy country. Therefore normal value had to be based on data obtained in a market economy country, in accordance with Article 2 (5) of the basic Regulation. The complainants suggested the United States of America (USA) for this purpose.

The Commission considered that the US product is alike in all respects to potassium permanganate manufactured in China. Furthermore, the USA is the biggest market world-wide. Since potassium permanganate is a homogenous product, imports to the USA, which accounted for about 25 to 30 % market share in the investigation period, backed by

substantial capacities in the exporting countries, ensured that price levels were in reasonable proportion to production costs. Furthermore, potassium permanganate competes for numerous applications with other oxidizing agents such as ozone and pure oxygen, which tends to have a reducing effect on prices of potassium permanganate.

In addition, the USA was already chosen as the analogous country in the initial case. Finally, production in other countries is not operational (Brazil) or has not yet started (Japan), has only a minor size (India), is near to closure (Czechoslovakia) or is situated in non-market economy countries (Russian Federation and Ukraine). Consequently, the USA remained the sole appropriate and reasonable choice.

II. Normal value

(30) Normal value was determined on the basis of prices in the ordinary course of trade at which the potassium permanganate was actually sold for consumption on the US market.

No distinction was made between sales to distributors and sales to end-users since there was no differentiation in terms of prices. Therefore, normal value was determined on the basis of the weighted average sales in the investigation period.

III. Export price

(31) In view of the non-cooperation of the Chinese producer/exporter and of the related importers known to exist in the Community, the facts available had to be used in accordance with Article 7 (7) (b) of the basic Regulation.

(32) It was examined whether Eurostat figures could be considered as a basis for establishing export price.

For the forecast needed for the determination of recurrence of dumping, Eurostat figures could not be taken into account. They were influenced by the change of tariff headings and the attribution of imports to non-member countries with no, or a very small, production, as set out in recital 27. Thus, prices which would be applied for Chinese exports to the Community if the duty were allowed to expire could not be deducted from this source.

The price information supplied by the complainants was considered for the determination of the export price. The quotations were considered reliable. The same price level appears to be applied for Chinese exports to Morocco. Prices for exports of Chinese product to the United States are higher, since they are most likely influenced by the anti-dumping duty of 128,9 % imposed in 1991 on imports of Chinese product into the United States.

(33) The price information is confirmed by additional quotations and information on the price at which Chinese potassium permanganate was actually sold. This information had been requested and received from the complainants. It shows that the quotes initially supplied were not exceptional but part of a consistent pricing policy. The exporter/producer in China was aware of the price level which was alleged in the complaint and had the opportunity to make comments on it.

IV. Comparison

(34) Normal value has been compared to the export prices of Chinese potassium permanganate at ex-works level. For the People's Republic of China, ex-works was taken as ex-national border in accordance with normal practice for non-market economy countries.

For the purpose of ensuring a fair comparison, normal value has been adjusted in accordance with Article 2 (9) (a) of the basic Regulation. Deductions were made for freight costs, packing and salesmen's salaries. Similarly the export price has been adjusted deducting estimated amounts for ocean freight and insurance.

V. Dumping margin

(35) The comparison resulted in a dumping margin of ECU 1,26 per kilogram.

G. RECURRENCE OF INJURY

(36) In the light of the above and in order to assess the likely effect of the expiry of the measures in force, the following was considered :

(37) Product from the People's Republic of China was found to be sold to the Community at prices which significantly undercut those of the Community industry thereby gaining an increased market share.

I. **Effect of dumped imports**

(38) A clear correlation was found between the evolution of the Community industry market share and the Chinese import market share according to statistical figures. In fact, while the former lost 7,8 percentage points the latter gained at least 7 percentage points between 1989 and the investigation period, despite the existence of anti-dumping measures. It is evident that these imports which were found to have been dumped have continued to injure the Community industry and it can therefore be expected that the expiry of measures will only lead to further deterioration of an already weakened Community industry.

(39) In addition, market access in the USA is now more difficult for the Chinese exporter/producer due to higher anti-dumping measures taken in 1991 by the US authorities (from 39,0 to 128,9 %). This will inevitably increase the pressure on the Community market should the measures currently in force expire whereby the Chinese exporter/producer has the capacity (approximately 5 000 to 6 000 MT/year) to meet the entire demand in the Community.

II. **Effect of other factors**

(40) Apparent consumption of potassium permanganate in the Community fell by 36 %. The Community industry would have been in a better position to adapt to this decrease in demand if it had not continued to be affected by unfair trading practices, which should have been the case since anti-dumping measures were in force. Instead the Community industry lost market shares since imports of the like product originating from the People's Republic of China at low prices continued, thus not allowing the intended relief.

Imports from third countries other than the People's Republic of China fell in terms of volume from 1 664 MT (1989) to 1 023 MT (investigation period). The market share represented by these imports during the period considered remained relatively stable, increasing only slightly to 38,7 %. However, the import volumes from India, Hong Kong and Taiwan accounting for more than 23 % market share are to a large part most likely attributable to the People's Republic of China (recital 26). Imports from the USA represent 15 % of the market, but at a price level considerably above those of Asian imports. Therefore imports, other than Chinese, had, if any, a limited influence on market conditions for potassium permanganate. Under these conditions, it was considered that only a very limited part of imports other than Chinese imports could have contributed to the difficult state of the Community industry, while the Chinese imports taken in isolation have clearly been a cause of this difficult state.

III. **Conclusion**

(41) In the light of the new dumping and injury findings, it was concluded that the expiry of the measures currently in force would lead to recurrence and even aggravation of injury caused by dumping and that the nature of these measures has to be reconsidered in order to take account of the new dumping and injury findings.

H. COMMUNITY INTEREST

(42) The purpose of anti-dumping measures is, in general, to eliminate distortion of competition arising from dumping practices and thus re-establish open and effective competition on the Community market. In considering the Community interest, account has been taken of the position of the Community potassium permanganate industry and of the users of potassium permanganate. In this respect it is also recalled that in the previous investigation, the adoption of measures was considered to be in the interest of the Community.

(43) The Community industry will have to cease production of potassium permanganate if it cannot quickly regain market share and profitability. This would not be possible under the current price pressure and this will be increased should the measures be removed.

(44) The Community industry was prevented from regaining profitability during the past period of anti-dumping measures because of ongoing dumping. In 1986 and 1987, a breach of the undertaking led to the imposition of the definitive duties (Regulation (EEC) No 1531/88) and, up to 1991, circumvention of the anti-dumping measures eroded their intended effect and left no breathing space to the Community producers which they required to develop new markets and to make the investment needed for necessary productivity gains. The Community industry would be deprived of its efforts already undertaken to develop these markets and would not be in a position to make the possible future productivity improvements involving significant investment if the measures currently in force were to be removed and no action taken in order to remove the further injury caused by dumping established during the investigation.

(45) As far as the users of potassium permanganate are concerned, an anti-dumping duty will have a limited effect, since the addition to the costs of products for which potassium permanganate is used will be very small. It has to be considered that, without measures, the Community industry would disappear, while its maintenance on the market will ensure competition between the Community producers and imports from other non-member countries which will have a beneficiary effect on price levels. In addition, since the new applications for the product include drinking water and waste water purification, and the customers in this case are not big industries but municipalities, stability of supply is an important objective. Therefore it is in the interest of the users and, more particularly, the general public that the Community industry remains as a reliable supplier of this product and is not forced out of the market.

(46) After considering the various interests involved, it is concluded to be in the Community interest to maintain definitive anti-dumping measures in force which should, however, be adapted to eliminate the injurious effects of increase in dumping. These measures should take the form of anti-dumping duties. As already in the past (see recital 26) appropriate steps should be taken in order to avoid duty evasion and in this context it was considered that a fixed amount in ecu per kilogram constitutes the most appropriate type of anti-dumping duty.

I. DUTY

(47) When calculating the amount of duty necessary to provide adequate protection to the Community industry from continued injurious dumping, it was considered that any measure should allow the Community industry to cover the costs of production and to obtain a reasonable profit.

(48) For this purpose a minimum price level was established by adding to the cost of production of the Community industry a profit margin of 5 % of the cost of production which is considered a minimum return on sales under current market conditions for the industry sector in question.

An inury margin was then calculated on the basis of a comparison between this minimum price and the average free-at-Community-frontier value of the Chinese imported like product.

(49) As the injury margin found was higher than the dumping margin, the anti-dumping duty should be based on the latter pursuant to Article 13 (3) of the basic Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium permanganate falling within CN code 2841 60 10 and originating in the People's Republic of China.

2. The amount of duty is ECU 1,26 per kilogram.

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

Article 2

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, 17 November 1994.

For the Council

The President

G. O. PFEFFERMANN