COUNCIL REGULATION (EC) No 621/94

of 17 March 1994

imposing a definitive anti-dumping duty on imports of ferro-silicon originating in South Africa and 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 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 (EEC) No 2581/93 [2], the Commission imposed provisional anti-dumping duties into the community of ferro-silicon on imports originating in South Africa and the People's Republic of China and falling within CN codes 7202 21 10, 7201 21 90 and ex 7202 29 00.

By Regulation (EC) No 3371/93 [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, one South African company requested and was granted an opportunity to be heard by the Commission and made its views known in writing.

(3) The Commission continued to seek and verify 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.

C. DUMPING

1. Normal value

(4) For the purpose of definitive findings, normal value was established on the basis of the same methods as those used in the provisional determination of dumping. No new calculation adjustment was presented by the interested parties.

2. Export prices

(5) The method used to establish export prices, as set out in recitals 18 to 20 of Regulation (EEC) No 2581/93, is hereby confirmed, as no comments in this respect were made by interested parties.

3. Comparison

(6) The findings and conclusions set out in recital 21 of Regulation (EEC) No 2581/93 are hereby confirmed.

4. Dumping margins

(7) The definitive examination of the facts showed the existence of dumping in respect of imports of the product concerned originating in South Africa and the People's Republic of China.

(8) The weighted average dumping margins definitively established for each South African producer concerned and expressed as a percentage of the net, free-at-Community-frontier price of imports, not cleared through customs were as follows :

— Highveld-Rand Carbide : 34,7 %,

— Samancor : 47,4 %.

(9) The weighted average dumping margin definitively established for the People's Republic of China and expressed as a percentage of the net, free-at-Community frontier price of imports, not cleared through customs was 49,7 %.

D. INJURY

(10) Two South African producers questioned the Commission's decision to cumulate imports from their companies with the other imports from South Africa and the People's Republic of China.

[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 237, 22. 9. 1993, p. 2.
[3] OJ No L 303, 10. 12. 1993, p. 1.

It is hereby confirmed that the effects of the imports should be analysed cumulatively, since the exports originating in each of these countries amounted to significant quantities of the like product, since they competed with the Community production and with each other, and since the exporters' market behaviour was similar.

(11) The Commission concluded in its provisional findings, as set out in recitals 26 to 40 of Regulation (EEC) No 2581/93, that the Community industry had suffered material injury. No new facts concerning these findings were subsequently put forward in this connection.

This conclusion is therefore confirmed.

E. COMMUNITY INTEREST

(12) In the Commission's provisional findings on imports of ferro-silicon originating in South Africa and the People's Republic of China, as set out in recitals 41 to 48 of Regulation (EEC) No 2581/93, the interests of the Community industry, of the consumers and of other industries and activities concerned have been considered.

No new arguments were put forward in this connection.

(13) Therefore, the findings of Regulation (EEC) No 2581/93 in this respect are confirmed.

F. UNDERTAKINGS

(14) One South African exporter proposed that any measures should take the form of either an undertaking or a minimum price duty. The monitoring of such a price undertaking has been shown in previous cases to be very complex and difficult for a product like ferro-silicon which is imported into the Community in forms containing different percentages of silicon which should be reflected in distinct price levels. The differences are, however, not discernible without technical analysis thus making any such undertaking potentially ineffective.

Therefore, undertakings, or indeed minimum price duties which give rise to the same problems, can no longer be considered as an appropriate remedy for a product like ferro-silicon, as set out in recital 88 of Council Regulation (EC) No 3359/93 [1]. Furthermore, imports from other countries concerned by this product, namely Norway, Sweden, Iceland, Kazakhstan, Russia, Ukraine, Brazil, Venezuela and China, as well as from the other South African producers, are subject to *ad valorem* duties.

(15) Given the above, it is concluded that measures should be imposed in the form of definitive *ad valorem* anti-dumping duties.

G. DUTY

(16) Provisional measures took the form of anti-dumping duties; these were imposed for both South Africa and China at the level of the dumping margins found, since the level necessary to remove injury was higher, as set out in recital 50 of Regulation (EEC) No 2581/93.

No new arguments were put forward to contradict this approach. Therefore, duties should be established at the level of the dumping margins definitively determined in recitals 8 and 9 of this Regulation.

(17) In the case of South African firms which failed to cooperate in the investigation, the Commission considered in recital 52 of Regulation (EEC) No 2581/93 that the duty should be established on the basis of the facts available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In order not to reward non-cooperation, it was considered that the most reasonable facts were those established during the investigation and that there was no reason to believe that any duty lower than that corresponding to the highest margin of dumping found would be appropriate to take account of the effect of dumping by non-cooperating companies in South Africa.

(18) Accordingly, the following duties should be imposed:

— People's Republic of China:	49,7 %,
— South Africa, except Highveld-Rand Carbide:	47,4 %,
— Highveld-Rand Carbide:	34,7 %.

H. COLLECTION OF THE PROVISIONAL DUTIES

(19) In view of the dumping margins 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 for all companies and the People's Republic of China should be definitively collected,

[1] OJ No L 302, 9. 12. 1993, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro-silicon containing between 20 and 96 % of silicon by weight falling within CN codes 7202 21 10, 7202 21 90 and ex 7202 29 00 (Taric code 7202 29 00*11) and originating in South Africa and in the People's Republic of China.

2. The rate of duty applicable to the net, free-at-Community-frontier price, not cleared through customs, shall be as follows;

— 49,7 % for ferro-silicon originating in the People's Republic of China,

— 47,4 % for ferro-silicon originating in South Africa (additional Taric code 8733) with the exception of that produced by the company referred to in the third indent,

— 34,7 % for ferro-silicon originating in South Africa and produced by Rand Carbide, Division of Highveld Steel and Vanadium Corp. Ltd, Witbank (additional Taric code 8732).

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EEC) No 2581/93 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, 17 March 1994.

For the Council

The President

Th. PANGALOS