COMMISSION REGULATION (EC) No 892/94

of 21 April 1994

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

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 Articles 7 and 11 thereof,

After consultation within the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In January 1988, following a complaint by the Chambre Syndicale de l'Electrométallurgie et de l'Electrochimie on behalf of Community producer accounting for the entire Community production of calcium metal, the Commission initiated an anti-dumping investigation concerning imports of this product originating in the People's Republic of China and the former Soviet Union [3].

Following the investigation, the Council imposed definitive anti-dumping duties by Regulation (EEC) No 2808/89 [4] which was subsequently declared void by the Court of Justice in its judgment of 11 June 1992 [5].

(2) Following that judgment, the Commission received submissions from the Community industry containing sufficient evidence of dumping and consequent injury, relating both to the former Soviet Union and to China and, after consultation of the Advisory Committee, resumed the investigation and published a notice to that effect in the *Official Journal of the European Communities* [6].

The Commission indicated in that notice that, as Russia was the sole independent State of the former Soviet Union in which producers of calcium metal were located, the proceeding would be restricted to that State as far as the former Soviet Union was concerned.

(3) The Commission officially advised the exporters and importers known to be concerned and the complainant. Parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

(4) Representatives of the exporters, the complainant and some importers made their views known in writing. One Chinese exporter, the Community producer and one importer requested, and were granted, a hearing.

(5) The Commission sought and verified the information it deemed to be necessary for the purposes of the investigation and carried out investigations at the premises of the following :

(a) *the Community producer,* Péchiney Electrométallurgie, in La Roche de Rame (France) and Paris (France) ;

(b) *Importers in the Community,* Industries des Poudres Sphériques (IPS, formerly Extramet), in Annemasse (France) ;

(c) *A producer in a third-country market economy,* Mineral Technologies, in New York (USA).

(6) The period selected for the investigation of dumping and of the effects of the allegedly dumped imports in the Community market ran from 1 July 1991 to 31 October 1992. The establishment of a new investigation period, immediately prior to the date of publication of the notice announcing the resumption of the investigation, was required in order for the Commission to act on the basis of the most up-to-date information and to collect new data concerning dumping and injury resulting therefrom. The previous investigation period used in the proceeding had run from 1 January to 31 December 1987.

(7) The Chinese exporter, China Nuclear Energy Industry Corporation (CNEIC), the trading arm of the sole producer of calcium metal in the People's Republic of China, China National Nuclear Corporation (CNNC), requested individual treatment leading to the establishment of a specific individual anti-dumping duty.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 66, 10. 3. 1994, p. 10.
(3) OJ No C 20, 26. 1. 1988, p. 3.
(4) OJ No L 271, 20. 9. 1989, p. 1.
(5) Case C-358/89, Extramet Industrie SA v. Council, [1992] ECR I, p. 3813.
(6) OJ No C 298, 14. 11. 1992, p. 3.

The preliminary investigation showed, however, that there is a single Chinese producer of calcium metal and the Commission considers, therefore, that the question of individual treatment in the present case does not arise.

B. PRODUCT

(8) The product under investigation is calcium metal falling within CN code 2805 21 00. It is produced in one of two ways: the reduction of lime with aluminium, which is used by the Community producer and producers in the United States of America and Canada, and the igneous electrolysis of calcium that has to be followed by distillation, used by the Russian and the Chinese producers.

The product is available in various forms (size): crowns, chunks, turnings, chips and grains (or granules) and at different levels of purity (above 96 % whatever the manufacturing process). Prices tend to vary according to differences in the size of the pieces and to a lesser extent in the purity.

(9) Calcium metal is mainly used within the Community by two industries: the lead and ferro-alloy industries, which require chunks and chips, and the steel industry, which requires grains obtained through mechanical pulverizing of chunks, turnings or chips, or granules obtained through re-smelting and atomization.

The calcium normally produced in the Community, the United States of America and Canada for use in the lead and ferro-alloy industries is non-distilled calcium. Distilled calcium, more than 99 % pure, which is produced in large quantities in the People's Republic of China and Russia, is produced for only marginal uses in the Community, the United States of America and Canada, where it accounts for a minute percentage of sales. This is because distillation is not necessary for aluminothermic processes and is costly.

Processors like IPS or its competitors seek a product that may be either distilled or non-distilled, as long as it is of a purity compatible with the designated final use; final users in the lead and ferro-alloy industries do not use only a calcium over 98 % pure.

(10) The preliminary investigation showed that, although the Community producer had recently supplied calcium metal to the main importer, IPS, which IPS had then processed, IPS had nevertheless encountered serious difficulties in carrying out the processing. Those difficulties, which the Community producer admitted to, led the Commission to wonder whether, since IPS did not find any difficulty in processing Russian or Chinese calcium, the product originating in Russia and the People's Republic of China and the Community product could indeed be considered to be similar products.

While the product originating in Russia and in the People's Republic of China is clearly of greater purity than the Community product as a result of the distillation which is an integral part of the manufacturing process, the Community product meets the normal specifications, which are acceptable to the other processors. Moreover, IPS admits that in the past it has used without any difficulty calcium originating in Canada, which is produced by the same process as Community calcium and that of the United States of America, also non-distilled and of equivalent purity.

As the Advocate-General pointed out to the Court in case C-358/89, it would be puzzling if IPS had made so much effort, especially in the form of legal action, to obtain a product — namely Péchiney's — if the product did not suit its requirements and was not a 'like product' within the meaning of the anti-dumping legislation.

(11) In the light of those considerations the Commission found that the product under consideration, namely the product exported by the People's Republic of China and by Russia to the Community, closely resembles the product produced in the Community and in the United States of America and can replace it for the uses in question. The products are therefore 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

C. DUMPING

1. Normal value

1.1. *Reference country*

(12) Both the People's Republic of China and Russia are non-market economies within the meaning of Article 2 (5) of the basic Regulation. The United States of America was considered in the initial investigation as an appropriate and not unreasonable choice as a reference country and the Commission found no reason to opt for an alternative at this stage, nor did it receive any representations to that effect.

1.2. *Representative nature of sales in the reference country*

(13) Calcium metal was imported from the People's Republic of China and Russia during the investigation period in the form of turnings, i.e. pieces equal to or above 7 mm. The United States producer only produced calcium similar in size to that produced in Russia and the People's Republic of China.

(14) The United States producer, on whose figures normal value was based, was subject to competition on its own market in the form of significant volumes of imports from at least three different sources. Furthermore, production in the United States of America was comparable to those imports during the investigation period. The prices charged by the United States producer during the investigation period allowed a reasonable but not excessive profit.

(15) The Commission compared volumes exported to the Community by the People's Republic of China or Russia and volumes sold domestically by the United States producer on which normal value was based, and considered the volume of sales in the reference country to be adequately representative.

(16) As regards the ease of access to, and the nature of, raw materials, there is no difference between the reference country and the People's Republic of China or Russia.

(17) The production process is, however, different in the reference country (reduction of lime with aluminium) from that in the People's Republic of China or Russia (igneous electrolysis of calcium followed by distillation). Nevertheless, the Commission considered that the reference country offered a fair basis for establishing the normal value since the electrolytic process, if used in the Community or in the United States of America or in Canada, would generate higher costs of production.

1.3. *Basis for normal value*

(18) The results of the Commission's investigation confirmed the representative nature of sales in the United States of America and that that country was a reasonable and appropriate choice of reference country. The normal value was, therefore, established on the basis of domestic market prices in the United States of America.

2. Export prices

2.1. *The People's Republic of China*

(19) The Commission received information on export prices from a Chinese exporter which sold direct to independent importers, at whose premises the figures were verified, and which accounted for approximately 60 % of total exports of calcium of Chinese origin to the Community.

As regards the remaining sales, the investigation showed that the Chinese producer also exported to the Community through traders established in the People's Republic of China or in other third countries, which did not cooperate in the investigation. The volume of those sales (40 % of total imports of the Chinese product) could be reconciled with trade statistics, and the prices were in line with those of the direct sales of the Chinese producer in the Community. It was therefore considered that the prices charged by the Chinese exporter to buyers in the Community could be regarded as representative of the export prices of the Chinese calcium metal.

Export prices were, accordingly, determined on the basis of prices actually paid or payable for the product sold for export to the Community.

2.2. *Russia*

(20) The response to the questionnaire by the main importer (more than 70 % of Russian exports) of calcium metal of Russian origin in the Community was verified and the prices and quantities were found comparable with both the customs statistics and the partial reply of the Russian respondent to the questionnaire. The view was therefore taken that those prices were appropriate as the export prices of the Russian exporters.

Export prices were, accordingly, determined on the basis of prices actually paid or payable for the product sold for export to the Community.

3. Comparison

(21) In comparing normal value with export prices, the Commission took account, when circumstances permitted and when sufficient evidence was available, of differences affecting price comparability, including transport costs, cost of credit and other selling expenses, namely agents' commissions, in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88.

The comparison was made at the same level, which was considered to be ex works level for the normal value in the United States of America and the ex national frontier level for the export prices for the People's Republic of China and Russia.

4. Dumping margin

(22) The comparison 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.

D. INJURY

(23) In analysing injury the Commission has taken account of the fact that, during most of the investigation period and in the preceding years, anti-dumping measures were in force.

1. Cumulation

(24) It was considered that the effects of the Chinese and the Russian imports of calcium metal should be analysed cumulatively: the imported products and those of the Community industry are interchangeable, are sold or offered for sale to the same customers in the same geographical markets, and have common or similar channels of distribution. Furthermore, the imports from either source are not negligible, the People's Republic of China and Russia having market shares of 23,3 and 29,5 % respectively.

2. Market shares of the dumped imports

(25) Community consumption was established by combining trade statistics and information gathered by the investigation. Overall, consumption has been relatively stable, although variations can be observed from one year to another. Expressed as indexes it was (1988 = 100), 116 in 1989, 90 in 1990, 96 in 1991 and 122 in 1992.

(26) The market share of calcium metal imported from the People's Republic of China and Russia went up from 35,3 % in 1989 to 40,7 % in 1990, to 48,8 % in 1991 and to 52,8 % in 1992.

3. Prices

(27) In comparing the prices of the Community industry and the prices of imports, the Commission restricted its calculations to the types of the product imported from the People's Republic of China and from Russia during the investigation period, namely pieces equal to or above 7 mm excluding grains and granules. In the case of the imports, account was taken of customs duty payable and other costs to the buyer in the Community in order to make the comparison at the same level.

Price decreases by both the Russian and the Chinese exporters have, since 1989, been continuous and have effectively led to the total absorption of the anti-dumping duties in force.

(28) Price undercutting during the investigation period, despite price reductions by the Community producer, amounted, on average, to 22,9 % for imports originating in the People's Republic of China and 23,9 % for imports originating in Russia.

4. Situation of the Community industry

4.1. *Capacity, utilization rate, production*

(29) As from 1989, the Community producer invested in new furnaces and slightly increased its production capacity (index 103 in 1990, 107 in 1991 and 111 in 1992, against 100 in 1989).

(30) Production was stable: index 88 in 1990, 94 in 1991 and 101 in 1992, against 100 in 1989.

(31) The rate of capacity utilization reflected the benefit derived from the imposition of anti-dumping duties in 1989; then it stabilized at a lower level, slightly above 50 %.

4.2. *Market shares*

(32) The Community producer increased market share in 1989 following the imposition of duties, since when a continuous reduction has been experienced. It went down from 50,2 % in 1989 to 44 % in 1990, 34,7 % in 1991 and 31,7 % in 1992.

4.3. *Prices*

(33) In its efforts to follow the prices of the dumped products, the Community industry suffered price depression. Price reductions on the part of the Community producer in the Community have amounted, since 1989, to more than 20 %.

4.4. *Profitability*

(34) Because prices of the Community producer were depressed, its sales were made at a loss. Profitability of the Community producer, which was temporarily improved by the imposition of the anti-dumping duties although not to the extent of allowing the Community producer to make a profit, has again dropped since 1991. Its financial losses have now reached a level which casts doubt on the continuation of its activity in this sector.

4.5. *Employment*

(35) Employment has been stable since 1989 at a level just sufficient to maintain the activity.

5. Conclusion

(36) In the light of those findings, the Commission has concluded that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, particularly in the form of losses of market shares, depressed prices and consequent financial losses.

E. CAUSATION OF INJURY

1. Effects of dumped imports

(37) The increase in the volumes of dumped imports, in a context of stable Community consumption, coincided with loss of market share, price erosion and reduced profitability on the part of the Community industry. The effect of dumped imports can be isolated, since imports from other countries, namely the United States of America and Canada, fell by half from 31 % in 1988 to 14,6 % in 1989, then 15,3 % in 1990, 16,5 % in 1991 and 15,6 % in 1992. The very existence of a Community industry is threatened by dumped calcium from the People's Republic of China and Russia.

2. Other factors

(38) In its judgment of 11 June 1992 in case C-358/89, the Court of Justice declared that, as regards their findings on injury and causal link, the institutions had 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 Extramet, the largest user in the Community of the product concerned. Indeed, the Community producer was condemned in March 1992 by the Competition Court 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.

However, the Cour d'Appel also declared that no abuse of a dominant position or any unlawful competitive practices could be attributed to Péchiney after 1984.

(39) The Commission nevertheless tried to establish whether the injury incurred by the Community industry could have been caused in part by the unwillingness of the Community producer to supply to one of the main importers of dumped products a product that the importer could use to operate its plant satisfactorily and on a sustainable basis (see recital 10).

In addition to Péchiney's manifest willingness to supply IPS, as witnessed by a number of deliveries of the product, the Commission sought to find out what means the Community producer had deployed to meet the demand of IPS. Péchiney provided sufficient evidence of investment made in plant and research and development to adapt its standard product to IPS's processing requirements. The Commission was able to establish that this investment accounted for a significant percentage of Péchiney's potential volume of business with IPS.

The preliminary investigation showed that Péchiney's considerable efforts were sufficient evidence of the Community producer's willingness to supply IPS and that the lack of regular deliveries from Péchiney to IPS was not attributable to a lack of willingness on the part of Péchiney.

IPS's argument that only evidence of regular deliveries by Péchiney to IPS could prove the lack of unwillingness on the part of Péchiney is not convincing. The availability of supplies at dumping prices might well lead IPS to choose imported products at dumping prices in preference to those of the Community producer, regardless of other considerations.

What is more, the argument that IPS used calcium of Canadian origin in the past is not sufficient evidence of any current unwillingness by Péchiney to supply. IPS has not imported or processed any significant quantity of Canadian calcium for a long time. The Commission does not believe that the difficulties encountered by IPS in using Péchiney's calcium are attributable to Péchiney's lack of willingness to supply it but attributable to the lack of willingness of IPS, to adjust its processing to the use of Péchiney's calcium.

(40) In view of these considerations, the Commission has rejected a request from IPS that an expert be appointed to assess Péchiney's willingness to provide supplies. First, establishment of willingness to supply would not appear to fall within the remit of a technical expert. Second, the request for the appointment of an expert is not justified by the existence of serious technical problems, whereas it has been shown that the dumped imports and the Community product are 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (see recital 11). Lastly, the appointment of an expert would have considerably and unduly delayed the conclusion of the investigation.

(41) Accordingly, since, in the investigation period, Péchiney was willing to supply IPS or any other potential buyer, the precarious situation of the Community industry cannot be attributed to anti-competitive behaviour by Péchiney and, since the Commission found no other factor which could explain this situation, the dumped imports are to be considered to have caused the material injury to the Community industry.

F. LEVEL OF THE DUTIES

(42) Pursuant to Article 13 (3) of the basic Regulation, the level of the provisional duty should be equal either to the margin of dumping or to the amount necessary to remove the injury, whichever is lower.

In order to establish the amount necessary to eliminate injury, the sales prices of the dumped products were compared to the price at which the Community producer would need to sell in order to realize an adequate return. This price was based on the Community producer's average cost of production plus a profit considered sufficient in this sector of 5 % on sales. The comparison has shown a difference of ECU 2 074 per tonne for the Chinese imports and ECU 2 120 per tonne for the Russian imports, which represent the injury levels.

Since the dumping margins (see recital 22) exceeded the injury levels, the latter should form the basis of the anti-dumping duties to be provisionally imposed.

In order to minimize the risks that the effects of the duty might be evaded by price manipulation (see recital 27), it is considered appropriate to impose the duty in the form of a specific amount per tonne.

G. COMMUNITY INTEREST

(43) In assessing Community interest, the Community institutions have consistently maintained that the purpose of anti-dumping measures is to stop distortions of competition arising from unfair commercial practices, and thus re-establish open and fair competition on the Community market, and that it is fundamentally in the general Community interest to do so. Furthermore, failure to take provisional measures would aggravate the already precarious situation of the Community industry, especially noticeable from the lack of profitability, adversely affecting its viability. 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.

(44) The Commission 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 facts that the Community producer was willing to supply any potential buyer, including IPS, that alternative 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, the Commission concluded that the danger was not such as to override the need to preserve the Community industry, the disappearance of which would, indeed, cause a reduction of competition.

(45) The Commission also assessed the possible impact of the measures on two categories of users: the primary users, i.e. the processors, such as IPS and the user industries, i.e. the lead and ferro-alloy industry and the steel industry.

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, such processors would be able to obtain their supplies the Community producer or from the United States of America or Canada and would also be able to continue to obtain supplies from Russia and the People's Republic of China at non-dumped prices. Further, for their sales of processed calcium metal outside the Community, they could continue to derive their inputs from Russia or the People's Republic of China under the inward processing arrangements without paying any duty. With regard to the competition from imports of a product processed from calcium metal originating in Russia or the People's Republic of China, such imports would also be subject to anti-dumping measures, since processing does not change the customs classification of the product and does not appear to be sufficient to confer origin. The impact of anti-dumping measures on the competitive situation of the processors would thus be minimal and therefore not such as to render the imposition of protective measures contrary to the Community interest.

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 provisionally 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 the user industry would therefore be minimal.

H. FINAL PROVISION

(46) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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 amount of duty applicable to the net free-at-Community-frontier price, before duty, shall be ECU 2 074 per tonne for the People's Republic of China and ECU 2 120 per tonne for Russia.

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

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and may apply to be heard orally by the Commission within one month from the date of 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 April 1994.

For the Commission

Padraig FLYNN

Member of the Commission