COMMISSION REGULATION (EC) No 1878/95

of 28 July 1995

imposing a provisional anti-dumping duty on imports of refractory chamottes originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community (1), as last amended by Regulation (EC) No 1251/95 (2), and in particular Article 23 thereof,

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 (3), as last amended by Regulation (EC) No 522/94 (4), and in particular Article 11 thereof,

After consultation with the Advisory Committee,

Whereas :

A. PROCEDURE

(1) In April 1993 the Commission announced by a notice in the *Official Journal of the European Communities* (5) the initiation of an anti-dumping proceeding concerning imports into the Community of certain types of refractory chamottes originating in the People's Republic of China falling within CN codes ex 2507 and 2508.

(2) This notice followed the receipt of a written complaint lodged by Société Argiles et Minéraux AGS ('AGS'), Clérac, F-17270 Montguyon allegedly representing a major proportion of the total Community production of refractory chamottes. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom. This evidence was considered sufficient to justify the initiation of a proceeding.

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

(4) Two associations and two companies of the user industry made their views known in writing.

(5) No producer or exporter nor any other intersted party from the People's Republic of China made their views known during the investigation or replied to the questionnaires sent to them by the Commission.

(6) The Commission sought and verified all information it deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) *Community producers :*

Société Argiles et Minéraux AGS
Clérac
F-17270 Montguyon

Arcichamotas (Arcillas y Chamotas Asturianas, SL)
C/Uria, No 76, 3° D
E-Oviedo ;

(b) *Unrelated importers :*

Frank & Schulte GmbH
Alfredstr. 154
D-45131 Essen

Possehl Erzkontor GmbH
Beckergrube 38-52
D-23552 Lübeck.

(7) The investigation of dumping covered the period 1 April 1992 to 31 March 1993.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

Description of the product

(8) The product concerned is unprocessed, also called 'kiln-run', refractory chamottes (sometimes called 'calcined fireclay' or 'calcined fintclay' or 'calcined clay' or 'calcined kaolin') with an alumina content of at least 40 % but not exceeding 55 %. These chamottes are produced from clays or ores mainly based on kaolinite, i.e. hydro alumina silicates, calcined at high temperatures. The calcination process is mainly carried out in rotary kilns. They are used in the manufacture of shaped or unshaped silico-alumina products.

The complaint and the notice of initiation covered both processed and unprocessed refractory chamottes. However, the investigation showed that a distinction has to be made between processed and non-processed refractory chamottes. This distinc-

(1) OJ No L 349, 31. 12. 1994, p. 1.
(2) OJ No L 122, 2. 6. 1995, p. 1.
(3) OJ No L 209, 2. 8. 1988, p. 1.
(4) OJ No L 66, 10. 3. 1994, p. 10.
(5) OJ No C 104, 15. 4. 1993, p. 8.

tion is founded primarily on the differences in physical characteristics which are the result of the processing and which determine the different end-uses of the products, such as the resistance to sudden temperature variations. The processing sometimes also leads to changes in the chemical composition, for instance a change in the alumina content. These differences between processed and non-processed refractory chamottes are reflected in significant differences in production costs and sales prices. For these reasons non-processed and processed refractory chamotts should not be considered one product for the purpose of this proceeding.

Eurostat statistics on the imports under CN codes ex 2507 and ex 2508 do not distinguish between processed and unprocessed chamottes. They also include non-calcined clays. In order to eliminate those clays and processd chamottes from the overall figures, the Commission, on the basis of the evidence supplied by the Community industry and the cooperating importers, has taken into consideration only those imports for which the average price during 1989 and the end of the investigation period was between ECU 50 and 85 per tonne. Imports for which the average price per tonne was less than ECU 50 are presumed to have been non-calcined clays, while those above ECU 85 per tonne are presumed to have been processed chamottes.

The information obtained from the cooperating importers showed that they imported only unprocessed chamottes. Furthermore, no claims were made that imports from the People's Republic of China under CN code ex 2507 or ex 2508 were non-calcined clays or processed chamottes.

The complainant agreed to limit the proceeding to unprocessed chamottes.

Consequently, the Commission has decided to limit the proceeding, as far as the product is concerned, to unprocessd refractory chamottes.

Like product

(9) One user company argued that the product concerned originating in the People's Republic of China, though comparable with the product concerned of the main Community producer in terms of its chemical characteristics, could not be compared as to the end-use because of the inferior calcination of Chinese chamottes. Two unrelated importers which cooperated in this proceeding also argued that the range of use of Chinese chamottes would be limited due to inferior calcination.

A further company of the user industry argued that Chinese chamottes would, with regard to chemical characteristics, be of superior quality to chamottes of the main Community producer and that Chinese chamottes would not be interchangeable with chamottes of the main Community producer for the production of fire-resistant bricks to be used in the steel industry.

One national association argued that Chinese chamottes are superior to those of the Community industry and that the refractory industry of Member State concerned is dependent for supply on the People's Republic of China.

(10) The abovementioned allegations were partly contradictory and not supported by evidence. Furthermore, the investigation showed that no significant differences existed between the chemical and physical specifications of the unprocessed chamottes produced by the Community producers, the producers in the analogue country (see below), or the Chinese producers or exporters. Consequently, the products imported from the People's Republic of China, those produced in the analogue country and those produced by the Community industry are considered to be like products.

C. DUMPING

Normal value

(11) The People's Republic of China being a non-market economy, the normal value for the like product originating in that country had to be determined in accordance with Article 2 (5) (b) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation') on the basis of sales prices or cost of production of the like product in a market economy third country, a so-called analogue country.

(12) No suggestions as to the choice of analogue country were received from the People's Republic of China, while the complainant proposed the United States of America.

On this issue, the Commission confirmed that the United States of America has an open market for the product concerned with a significant number of competing suppliers which use the lower-cost open-cast mining for obtaining the necessary raw materials, which have easy access to several energy sources and to an efficient transport network and which sell substantial amounts on their domestic market at profitable prices. In the absence of information of other better qualified market economies, the Commission accordingly decided that it was appropriate and not unreasonable to use the United States of America for the determination of the normal value.

(13) To this end the Commission obtained the cooperation of two producers in the United States of America. Both companies fulfilled the abovementionend criteria and completed the questionnaires sent to them ; their data was confirmed during an on-spot verification.

(14) Consequently, the normal value for the refractory chamottes originating in China was based on the weighted average sales prices ex-factory, paid or payable in the ordinary course of trade, of the like product of the cooperating American companies sold for consumption on the USA market.

Export price

(15) No cooperation was obtained from any Chinese exporter or related importer. Both unrelated importers which cooperated accounted, together, for almost 25 % of the import volume found on the basis of the Eurostat statistics, and their average import price per tonne was slightly below the average price based on the same statistics.

(16) In view of the relatively low percentage of imports covered by the unrelated importers and the lack of cooperation of the Chinese exporters, the Commission used the facts available to establish export prices in accordance with Article 7 (7) (b) of the basic Regulation and considered the most reasonable facts to be the prices contained in Eurostat.

Comparison

(17) The normal value was compared with the fob export price at the same level of trade, i.e. wholesale level, after an adjustment had been made on the basis of differences in physical characteristics, in particular the alumina content. In order to arrive at the fob export price the Commission reduced the export price found on the basis of the Eurostat data with the costs of sea-transport and insurance found at the unrelated importers.

Dumping margin

(18) The comparison showed the existence of dumping. The difference between the normal value and the export price amounts to ECU 19,34 per metric tonne, representing 28,44 % of the cif Community frontier value.

D. COMMUNITY INDUSTRY

(19) With regard to the Community industry it was found that one Community producer imported the product from the People's Republic of China. Although invited by the Commission to cooperate in the present proceeding, the company refused to do so. The Commission therefore was not in a position to establish whether this Community producer imported the product concerned only for defensive reasons. Under these circumstances, the Commission, for the purpose of the provisional findings, did not regard this producer as part of the Community industry, in accordance with the first indent of Article 4 (5) of the basic Regulation. The remaining producers represented 100 % of the Community industry.

E. INJURY

Community consumption

(20) Community consumption has been calculated by adding the sales by the Community industry and the imports of the product concerned under CN codes ex 2507 and ex 2508 calculated in accordance with the method explained in recital 9. According to this calculation, consumption in the Community of the product concerned decreased from 131 000 tonnes in 1989 to 127 500 tonnes in 1991 and to 107 000 tonnes during the investigation period, a decrease of 17,7 % over the whole period.

Volume, market share and prices of the dumped imports

(21) The volume of imports from the People's Republic of China increased from 41 118 tonnes in 1989 to 50 635 tonnes in 1991 and reached a level of 50 142 tonnes during the investigation period, an increae of 21,9 %.

(22) Market share of the imports from the People's Republic of China rose from 31,4 % in 1989 to 39,7 % in 1991 and reached a level of 46,5 % during the investigation period.

(23) Weighted aversage sales prices per tonne of the imports from the People's Republic of China at the cif level dropped from ECU 75,6 in 1989 to ECU 67,5 in 1991 and ECU 68 during the investigation period, a decrease of 10,1 %.

(24) A comparison of this weighted average sales price at the ex-warehouse importer level (which reflects the costs of the importer and a profit margin of 3 %, estimated to be reasonable) with the weighted average sales price of the Community industry at the same level of trade, demonstrates a continued undercutting by 4 % of the latter prices. This undercutting was systematic, in the sense that, when the Community industry tried to maintain market share by aligning its prices with those of the imports from the People's Republic of China, these latter prices were adjusted downwards in order to maintain the undercutting margin.

Situation of the Community industry

(25) Sales by the Commission industry on the Community market dropped from 74 757 tonnes in 1989 to 57 603 tonnes in 1991 and to 43 371 tonnes during the investigation period, a decrease of 42 %.

(26) Market share of the Community industry fell from 57,1 % in 1989 to 45,2 % in 1991 and to 40,2 % during the investigation period.

(27) Production of the product concerned by the Community industry dropped correspondingly. As a result capacity utilization fell from 55,9 % in 1989 to 45,7 % in 1991 and to 38,3 % during the investigation period, even after the Community industry had already reduced its overall capacity.

(28) The work force involved in the production of the like product decreased from 165 in 1989 to 151 in 1991 and to 100 during the investigation period, i.e. by 39 %.

(29) Net profitability of the Community industry deteriorated significantly from 6,8 % in 1989 to 2 % in 1991 and to minus 0,5 % of turnover during the investigation period.

Conclusion

(30) In the light of the circumstances described above, it is concluded that the Community industry suffered material injury within the meaning of Article 4 (1) of the basic Regulation.

F. CAUSATION OF INJURY

Dumped imports

(31) Dumped refractory chamottes from the People's Republic of China managed to gain a significant market share to the detriment of the Community industry by systematically undercutting the prices of the like product of the Community industry and by being offered on the Community market in substantial quantities.

Intermediate and end-users of refractory chamottes were, during the investigation period, more price-conscious because they themselves were confronted with a severe reduction in demand from their own products and therefore needed to reduce their production costs. Consequently they shifted their purchases of refractory chamottes to those of the lower priced imports from the People's Republic of China.

By forcing the Community industry to adjust its prices downwards in order not to lose further market share, the imports of refractory chamottes from the People's Republic of China depressed still further the profitability of the Community industry, which already was negatively affected by the loss of sales volume and the resulting increase in unit costs.

Other factors

(32) Overall demand for chamottes decreased between 1989 and the end of the investigation period, primarily due to the cyclical downturn in the Community steel industry, the most important end-user of the product concerned. The decrease in demand caused a decline in the sales volume of the Community industry and thereby also affected negatively its profitability. However, the decline in overall demand could not have caused the loss of market share. Furthermore, the decline in overall demand was not exceptional. Comparable cyclical downturns in overall demand had never before led to the loss of profitability and employment as was experienced by the Community industry during the investigation period.

(33) The investigation showed furthermore that imports from the former Republic of Czechoslovakia decreased from 15 144 tonnes in 1989 to 14 284 tonnes during the investigation period. The market share of these imports increased nevertheless from

11,6 % to 13,3 % as a result of falling consumption. Evidence supplied by the complainant showed slight undercutting by these imports of the prices of the Community industry, but no conclusive evidence on dumping was provided nor found during the investigation. Eurostat data showed an increase in price per tonne of these imports but according to the data provided by the complainant this increase is attributable to the change, during the period covered, in the level of trade at which these imports were sold, i.e. more direct sales to end-users and fewer sales to wholesalers or through intermediaries.

Conclusion

(34) Other factors have contributed to the injury suffered by the Community industry, but they do not detract from the fact that the imports of refractory chamottes originating in the People's Republic of China, by reason of their lower prices and significant volume, taken in isolation, have caused material injury to the Community industry.

G. COMMUNITY INTEREST

(35) Refractory chamottes from the basic material for the producers of refractory products, which play, *inter alia,* an essential role in the process of steel making. The proven reserves of the necessary clays and minerals will enable the Community industry to supply the Community intermediate and end users in the long run, and, because of its distance to these users, in an economical way. Its maintenance is therefore in the interest of these users. However, the viability of the Community industry is threatened by the unfair trading of the imports from the People's Republic of China. Consequently, measures against this unfair trading are in the interests of the user industry as well as of the Community producers of refractory chamottes.

Such measures will undoubtedly have a slight effect on the general price level of refractory chamottes and consequently on the costs of the end-users of refractory products, in particular the steel industry, and should therefore be limited to a level which is strictly necessary to remove the injury to the Community industry. They should, furthermore, not result in a withdrawal from the Community market by the Chinese exporters, because such a withdrawal could lead to an undesirable diminution of fair competition on this market.

In such circumstances, and in view of design of the measures (see below), taking adequate measures against the unfair trading of imports from the People's Republic of China of unprocessed refractory chamottes is in the interests of the Community.

H. DUTY

(36) For the purpose of establishing the level and type of measures to be taken, account was taken of the need for the Community industry to restore and maintain its viability and of the need for the intermediate and end users of refractory chamottes to have access to a variety of sources of supply.

(37) Consequently, the measures should take the form of a variable duty based on a minimum price set at the cif Community frontier level, which would enable the Community industry to cover its cost of production (including sales, general and administrative costs) and a profit of 5 %, a margin considered appropriate for the refractory chamottes industry in the absence of the effect of dumped imports.

(38) Accordingly, and taking into account importers' costs and profit as explained in recital 24, the minimum import price should be set at a level of ECU 75 cif Community frontier, duty unpaid, per tonne, being equivalent to an increase of 10 % of the average import price found during the investigation period.

I. FINAL PROVISIONS

(39) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings 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 antid-dumping duty is hereby imposed on imports of unprocessed (not ground or in power form) calcined refractory products falling within CN codes ex 2507 and ex 2508 (Taric codes: 2507 00 20*10, 2507 00 80*10, 2508 10 00*10, 2508 20 00*10, 2508 30 00*10, 2508 40 00*10, 2508 50 00*10, 2508 60 00*10, 2508 70 10*10 and 2508 70 90*10) and originating in the People's Republic of China.

2. The amount of duty shall be the difference between ECU 75 and the net free-at-Community frontier price, per tonne, if the latter price is lower

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

4. The release for free circulation in the Community of the products 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) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of 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.*

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 1995.

For the Commission

Leon BRITTAN

Vice-President