COUNCIL REGULATION (EC) No 2381/95

of 10 October 1995

imposing a definitive anti-dumping duty on imports of disodium carbonate originating in the United States of America and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

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), 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 (2), 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) The Commission, by Regulation (EC) No 823/95 (3) hereinafter referred to as 'the provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of disodium carbonate originating in the United States of America and falling within CN code 2836 20 00. By Regulation (EC) No 1974/95 (4), the Council extended the validity of this duty for a period of two months expiring on 14 October 1995.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the imposition of the provisional anti-dumping duty, four US soda ash producers, the Community glass producers and other interested parties who so requested were granted a hearing by the Commission. Some of these parties also presented written submissions making known their views on the provisional findings. In particular, four US soda ash producers and the Community glass producers reiterated certain views expressed at various stages of the proceeding.

(3) The Commission continued to seek and verify all information it deemed to be 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 a definitive anti-dumping duty 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 the disclosure. Their representations were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(4) As no new arguments have been presented regarding the product under consideration and the like product, the findings set out in recitals (9) to (11) of the provisional duty Regulation are confirmed.

D. DUMPING

1. Normal value

(5) For the purpose of definitive findings, normal value was established using the same methodology as set out in recitals 12 to 15 of the provisional duty Regulation. Certain exporters requested corrections to the provisional cost of production calculations for items such as selling, general and administrative expenses and financial costs. Where these requests were duly substantiated, they were taken into account and normal values were adjusted accordingly.

2. Export prices

(6) Two exporters had argued that the exchange rates fixed in their global hedging contracts should be used as the conversion rates for their export sales in foreign currency. For the provisional determination, the currency hedging technique used by these two companies for part of their export sales in foreign currencies was disregarded by the Commission on the ground that the contracts were not tied to the invoices relating to the export transactions for the product under consideration. The Commission

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).
(2) 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).
(3) OJ No L 83, 13. 4. 1995, p. 8.
(4) OJ No L 191, 12. 8. 1995, p. 1.

therefore used average monthly exchange rates in relation to the export invoices. Since no information has been submitted by the companies concerned to warrant a change to this methodology, it is confirmed for the definitive determination. However, on the basis of this methodology and following duly substantiated requests by the exporters concerned certain corrections were subsequently made to the Commission's export price calculations in US dollars to reflect the appropriate exchange rates for certain months.

(7) Two exporters that made their sales through a related importer claimed corrections to the provisional calculations for certain costs incurred between importation and resale by related importers. Where these claims were duly substantiated, they were taken into account and export prices were adjusted accordingly.

(8) Another exporter exported soda ash to independent customers in the Community and to one related importer in the Community. In its provisional determination, the Commission disregarded the sales made to the related importer because the soda ash imports in question were processed into a downstream product under inward processing relief arrangements which was subsequently re-exported from the Community.

(9) The exporter concerned argued that these soda ash export sales transactions should be considered for the dumping calculations since their export price was similar to the prices charged by a Community producer to the same related importer.

(10) Since the importer was a wholly-owned subsidiary of the exporter, the export price between the two parties was considered to be unreliable.

Furthermore, since the soda ash imports were processed into a downstream product which was re-exported, no price of the downstream product to an independent buyer in the Community existed, thereby preventing a construction of the export price in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88. In any event, no cost data for the processing activities was provided.

(11) The Commission therefore based its dumping findings on export sales to independent customers which were considered to have been made in sufficient quantities to be considered representative.

This approach is confirmed.

(12) Taking into consideration the corrections and methodology outlined above, the provisional determination of the export prices is confirmed.

3. Comparison

(13) Several exporters claimed corrections to the adjustments made for comparison purposes. These corrections related to adjustments to normal value and export price for credit terms, delivery terms and transport costs. These claims were duly substantiated and taken into consideration for the determination of the dumping margins.

4. Dumping margins

(14) The definitive examination of the facts showed the existence of dumping in respect of imports of the product concerned originating in the United States of America.

(15) The weighted average dumping margins definitively established for the companies involved and expressed as a percentage of the free-at-Community frontier price, duty unpaid, are the following:

— FMC	8,9 %
— AG Soda Corporation	5,5 %
— General Chemical Partners	2,5 %
— NACC	7,1 %
— Rhône-Poulenc of Wyoming	13,9 %
— Solvay Minerals Inc.	6,2 %
— Tg Soda Ash Inc.	0,1 %.

(16) No comments were received in respect of the Commission's methodology as set out in recital 21 of the provisional duty Regulation for determining the dumping margin with regard to companies which failed to cooperate in the investigation. This methodology is therefore confirmed for the definitive determination which, when taking into account the dumping margins definitively calculated, leads to a margin for such companies of 13,9 %.

E. COMMUNITY INDUSTRY

(17) No new arguments having been received in connection with the findings in recitals (22) to (27) of the provisional duty Regulation. These findings are therefore confirmed.

F. INJURY

1. Community consumption of soda ash

(18) As no new arguments were received in connection with the findings in recital (28) of the provisional duty Regulation, these findings are confirmed.

2. Exporters' behaviour in the Community market

(19) As regards the volume of imports of soda ash originating in the United States of America, four US exporters and the Community glass producers raised the argument that the Commission should have excluded one US producer's imports with a 'de minimis' dumping margin when assessing injury and causation and that, if this had been done, the impact of US imports would have decreased significantly.

This argument has no basis as Article 4 of Regulation (EEC) No 2423/88 does not differentiate between imports according to the level of the dumping margin established. In addition, some sales transactions carried out by the exporter concerned showed significant dumping.

In any event, even if this exporter's imports in the Community were excluded from the figures given in recital (29) of the provisional duty Regulation, it would still appear that US dumped imports increased their market share significantly during the investigation period (1 January 1992 to 30 June 1993) when compared to previous years. The conclusions drawn in this respect would therefore not be affected.

(20) As regards the findings on undercutting as set out in recital 30 of the provisional duty Regulation, the US exporters and the Community glass producers contested the Commission's figures, without substantiating their claim that undercutting was lower. The undercutting margins were recalculated in order to reflect the corrections made to the export prices and, for one exporter, following a substantiated claim, to reflect actual handling and discharging costs in order to bring the import prices to a comparable level with the Community producers' prices. As a result, the definitive undercutting margins, calculated on a weighted average basis, range from 4 % to 17 %.

3. Situation of the Community soda ash industry

(21) No new arguments were presented in relation to the findings set out in recitals (31) to (37) of the provisional duty Regulation. These findings are therefore confirmed.

4. The scope of injury

(22) The Community glass producers reiterated their claim as set out in recital (38) of the provisional duty Regulation that the Commission should establish injury on a regional or national basis, as the position of soda ash producers in certain Member States or regions of the Community differed significantly from that of producers in other Member States or regions and that some had not suffered any injury at all.

(23) As already stated in recital (39) of the provisional duty Regulation, the conditions set out at Article 4 (5) of the Regulation (EEC) No 2423/88 for an assessment under regional aspects are not met here. Furthermore, it should be pointed out that the complaint has been lodged with the support of the whole Community soda ash industry. In such circumstances, injury has to be established on a Community-wide basis. The findings as set out in recital (39) of the provisional duty Regulation are therefore confirmed.

5. Conclusions

(24) In the light of the above and in the absence of any other arguments, the conclusions as set out in recital (40) of the provisional duty Regulation that the Community industry suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88 are confirmed.

6. Causation of injury

(25) The Community glass producers and four US exporters reiterated a number of claims made previously concerning causation of injury. These parties claimed that the Commission, when arriving at its provisional findings, had not sufficiently taken account of the arguments raised by them. As shown below, this contention is not correct. The points in question were explicitly addressed by the Commission under recitals (41) to (55) of the provisional duty Regulation.

(26) In general terms, the Community glass producers argued that the Commission 'mistakenly attribute to US imports the main cause for economic misfortunes which subsequently hit the European soda ash industry'. As already explained in its provisional duty Regulation, the Commission did not base its decision on a finding that US imports were the sole cause of injury suffered by the Community soda ash industry, but that these imports, through the effect of dumping, were responsible for an impact on the Community industry which, taken in isolation, had to be regarded as material. These are the conditions which, under Regulation (EEC) No 2423/88, justify the imposition of anti-dumping measures.

(27) More specifically, the Community glass producers and four US exporters reiterated their argument that the primary cause for the deterioration of the Community soda ash industry's situation was the Commission's Decisions of December 1990 (under Articles 85 and 86 of the Treaty) penalizing discriminatory practices, with the consequence that this industry was exposed to strong competitive pressure, as evidenced by the increase in intra-Community trade in soda ash since 1988.

As already stated in recitals (44) to (46) of the provisional duty Regulation, the Commission does not contest that, as a result of the Article 85 and Article 86 Decisions, the Community soda ash market is today more competitive and that in particular, intra-Community trade shows an increasing trend between 1993 (second half) and 1994, whereas between 1990 and the beginning of 1993 its volume remained practically unchanged. This is, however, not an argument to invalidate the finding on the injurious effect of dumping by the US exporters, and even less so since this evolution only occurred after the investigation period.

(28) The Community glass producers also pointed again to the fact that the Article 85 and Article 86 Decisions made it impossible for the soda ash producers to apply their so-called 'top slice rebate' system and reiterated its position that this was a decisive factor which allowed the US exporters to penetrate the Community market. The Commission has dealt with this argument in recital (45) of the provisional duty Regulation. While it can be accepted that this aspect of the December 1990 Decisions facilitated the access of foreign competitors to the Community market, an effect which was indeed intended, again it is not an argument against the affirmation of a causal link between dumping and injury in the present case.

(29) One US exporter argued that the Community soda ash production capacity exceeds demand and that this overcapacity is the actual cause of the injury suffered by Community soda ash producers.

This argument contrasts with the fears voiced by the Community glass industry and other US exporters that the Community soda ash producers may not be able to meet the demand (see recital 37 below). This argument also neglects the Community industry's export sales (of 750 000 tonnes in 1992 and 650 000 tonnes in 1993). It is true, however, that the shrinking of Community consumption has forced the soda ash producers to take drastic restructuring measures. While this situation is undoubtedly an important cause of financial difficulties, it is equally clear that being confronted, under such conditions, with unfair foreign competition considerably reduces the chances of successfully adapting to a changing market.

(30) Several US exporters and the glass producers argued that the American soda ash exports to the Community started to regress after the initiation of the proceeding and have still continued to do so ; while the imports at low prices from other countries have risen. This would show that the American soda ash sales have not been a major cause of the financial difficulties of the Community soda ash producers.

As this argument refers again to events after the investigation period, the question to be answered here is only whether this evolution would invalidate the conclusions of causation at which the Commission arrived in its provisional duty Regulation.

The regression of the American soda ash imports was partly compensated by imports of soda ash from Eastern Europe. These imports may have contributed to preventing a price recovery.

However, no arguments can be derived from that in order to deny the price depressing effect of US soda ash imports during the investigation period.

In addition, the bulk of soda ash sales, in the Community as well as worldwide, is made on the basis of yearly contracts. This means that to a very large extent, sales transactions in 1995 are carried out at prices fixed in October/November 1994. Therefore, even if it were appropriate to examine the matter in the light of events after the investigation period is still partly attributable to the presence of US operators in the Community market.

(31) The Community glass producers also argued again that recession had played a significant part in the evolution of the financial and commercial situation of the Community soda ash producers. The Commission has dealt with this argument in recitals (47) and (48) of the provisional duty Regulation. While the effect of the overall economic recession has certainly negatively affected the position of the European soda ash industry, these difficulties have been exacerbated by the dumped imports which exerted further downward pressure on the prices on the Community market.

(32) Four US producers and the Community glass producers argued that plants producing less than 500 000 tonnes or one million tonnes of soda ash annually are not efficient enough to produce on a low cost scale.

The Community soda ash industry has been subject to continuous restructuring measures which have improved the overall productivity of the soda ash plants. The Commission did not, however, find any indication confirming that a production capacity as high as 1 000 000 tonnes would be a threshold for cost effective production. Furthermore, to concentrate production in such huge units would lead to numerous plant closures and create oligopolistic structures with the risk of price increases.

(33) In conclusion, the claim made by the US exporters and the Community glass producers to the effect that no causal link existed between dumping and injury has to be rejected. The findings made in this respect in recitals (41) to (55) of the provisional duty Regulation are, therefore, confirmed.

G. COMMUNITY INTEREST

(34) The US exporters and the Community glass producers raised again arguments pertaining to competition in the Community, to the cost of soda ash to the glass industry and to the recovery of the Community soda ash industry. They claimed that, by provisionally concluding that the Community interest called for anti-dumping measures in this case, the Commission had completely neglected the position of exporters and importers/processors in the Community. This claim is unjustified. In its recitals (56) to (65), the provisional duty Regulation addresses all arguments concerning Community interest made by the parties during that stage of the proceeding.

(35) According to the US producers and the Community glass producers, the imposition of measures on US imports of soda ash will lead to a reduction in competition on the Community market.

The Commission dealt with this argument in recitals (57) and (58) of the provisional duty Regulation. There is no indication that the imposition of measures will render the Community soda ash market non-competitive. First of all, competition between Community producers on the Community market has increased. Furthermore, as regards imports from US suppliers, the levels of the duties range from 0 % to 9 %, while the depreciation of the US dollar since the investigation period is substantially higher. Finally, the Community glass producers have also the possibility of buying from sources such as Eastern Europe.

(36) As concerns more specifically the impact of anti-dumping duties on the cost of producing glass, the glass producers submit that soda ash may amount to up to 20 % of the production cost and not only 8 % as found by the Commission in its provisional duty Regulation.

This claim is based on a misunderstanding. The Commission provisionally estimated that the cost of soda ash represents 8 % of the sales price of unprocessed flat glass; according to the glass producers, the cost of soda ash represents 20 % of the cost of production of unprocessed flat glass which corresponds to approximately 13 % of the price of unprocessed flag glass. Given that the average effect of the revised duties is around 4,5 %, the impact on the glass price resulting from the glass producers' figures would be about 0,6 % (4,5 % × 13 %) while the Commission figure is about 0,4 % (4,5 % × 8 %).

These calculations are based on a single product type approach, namely unprocessed flat glass. If all glass products (unprocessed and processed) are considered, the impact of the price of glass should be much lower (0,3 % by using the glass producers approach, 0,2 % by using the Commission calculation). Furthermore, the argument of the impact of the anti-dumping measures on the glass prices is, for the moment, theoretical, given that the soda ash prices, for the reasons set out in recital 30 above, have so far not increased.

(37) Furthermore, according to the exporters and the glass producers, the imposition of provisional duties has led to a shortage of supply in the Community, which negatively affects the position of European glass manufacturers.

The Commission confirms that in 1995 demand for soda ash in the Community has increased. This increase has led to certain difficulties in supply. However, no structural supply deficit seems to exist : annual production capacity of the Community producers today is 6 900 000 tonnes while the Community consumption for 1995 is estimated to be 5,8 million tonnes (1).

The supply difficulties stem from the practice of concluding contracts on a yearly basis, in order to align production as closely as possible with the foreseeable demand. This practice is a consequence of the particularly high fixed costs the soda ash industry has to face. It appears, indeed, that in the early months of 1995, the Community glass industry, following increased demand, in particular in the automobile and construction sectors, placed supplementary orders in excess of the existing yearly contracts. According to the Community soda ash producers, they will be in a position to satisfy the increased demand in the coming months, i.e. after the period required to adjust their production ; the problem would thus be of a transient nature. Given the production capacity available overall, this seems plausible.

By contrast, it cannot reasonably be argued that these transient delivery difficulties are the result of the existence of anti-dumping measures. In fact, the average impact of the provisional duties is around 4,5 % while the dollar depreciation against Community currencies is 20 %, thus giving the US soda ash producers a substantial competitive advantage. A more realistic cause of the decline in US imports to the Community seems to be in the current strong demand on the US and Asian markets where prices are, for the time being, substantially higher than in the Community.

(38) Four US exporters argued that, as the Community market has now expanded from 12 to 15 members, the whole dimension of the market has changed.

This claim was not substantiated. However, in accordance with its notice 95/C/40 of 17 February 1995 (2) regarding the application of anti-dumping measures in force in the Community following enlargement to include Austria, Finland and Sweden, the Commission is prepared, following the imposition of definitive measures, to review immediately the measures pursuant to Article 11 (3) of Regulation (EC) No 3283/94, if evidence is submitted that the measures would have been significantly different had they been based on information including the new Member States.

(39) These US exporters and the Community glass producers argued that a major Community soda ash producer has recently published its annual report for 1994 in which it registered an improvement of its results having been achieved by the demand recovery as well as by restructuring measures.

These results concern only one out of six Community soda ash producers. The results, modest when considering the ratio investment to turnover, also include other products. Furthermore, for this producer, sales turnover has regressed which demonstrates that prices remained low in a climate of fierce competition. Finally, the slight improvement (in volume, not in value) is partly due to the regression of US soda ash imports as a result of the opening of the proceeding. This is, however, not a reason for denying protection agaisnt dumped imports on a Community interest basis.

(40) No other new arguments on the Community interest were put forward in this connection. Under these conditions, the conclusion set out in recital (65) of the provisional duty Regulation that the

(1) This figure relates to the former Community of Twelve.

(2) OJ No C 40, 17. 2. 1995, p. 5.

Community interest calls for the imposition of anti-dumping measures is confirmed.

H. DUTY

(41) Several US producers argued that the Commission's methodology to establish the level of underselling margins as set out in recital (68) of the provisional duty Regulation was flawed. They pointed out that the Commission compared the weighted average cost of production of the Community producers to which was added a profit margin of 6 %, with the average free-at-Community frontier import price of the dumped product, duty unpaid, instead of making the comparison on the basis of duty paid import prices. As a consequence, it was argued that the underselling margin had been overstated and that a correct calculation would have had the effect of reducing underselling margins to insignificant levels.

(42) The Commission has verified its calculations for the underselling margins and acknowledges that it erroneously used duty unpaid import prices in its calculations. The error, therefore, has been corrected. The effect of this correction is an increase of the import price corresponding to the amount of the CCT duty (10 %) and, as a consequence, a corresponding decrease of the underselling margin.

(43) However, in this verification and recalculation of the underselling margins the Commision discovered an error with regard to the calculation of the Community producers' cost of production. In the provisional calculation the underselling margin was established for one group of Community producers, only on the basis of the cost of manufacture for its different plants, without including items such as selling, general and administrative expenses, financing costs and depreciation. The inclusion of these costs led to an increase in total costs of production for the concerned entire Community industry by approximately 14 %. Taking into consideration these corrections in addition to the corrections made to the export prices (see recital (13)) and the adjustments to the export prices (see recital (20)) to bring these prices to a comparable level for the undercutting and underselling margin calculations, the underselling margins decreased for three US companies, but rose for four others. It should be noted, however, that in the final result, the duty decreases for all US exporters including those with increased underselling margins, because of the establishment of lower dumping margins (for six companies) or a lower underselling margin (for one company).

(44) Interested parties were informed of the revised calculations. Several US exporters argued that they were unable to verify whether costs of production were indeed erroneously established in the provisional determination. This is not correct. It is true that, for confidentiality reasons, the Commission was unable to communicate, to the exporters or their representatives, the amount of the Community producers' individual cost of production. However, they have received from the Commission information allowing them to quantify the average cost elements added to the calculation. In addition, the US exporters were informed by the Commission of the amount of the undercutting margins which, already at the provisional stage, were calculated duty paid. These margins are, in substance, not contested by the exporters. Equally uncontested is the fact that, on average, the Community producers did not reach the minimum profit established (6 %) and, in most cases, made losses. Under these conditions, Community-wide underselling must be higher than undercutting. The exporters concerned, therefore, were, already on that basis, in a position to establish that the costs of production used for the underselling margin calculation were underestimated.

(45) No other comments were received on the methodology adopted by the Commission for the establishment of the duty rates to be applied, as set out in recitals (67) to (70) of the provisional duty Regulation. The remaining findings are therefore confirmed. The injury elimination margins as definitively established exceed the dumping margins definitively determined, except for the one exporter (Rhône-Poulenc of Wyoming) where the injury elimination margin is lower than the dumping margin. Pursuant to Article 13 (3) of Regulation (EEC) No 2423/88, the amount of the anti-dumping duty should be based on the dumping

margin with the exception of Rhône-Poulenc of Wyoming for which it should be based on the injury elimination margin.

(46) Accordingly the following definitive duties should be imposed :

— FMC	8,9 %
— AG Soda Corporation	5,5 %
— General Chemical Partners	2,5 %
— NACC	7,1 %
— Rhône-Poulenc of Wyoming	5,3 %
— Solvay Minerals Inc.	6,2 %
— Other exporters	13,9 %.

Given its *de minimis* dumping margin definitively established, no duty should apply to soda ash produced and exported by Tg Soda Ash Inc.

I. COLLECTION OF PROVISIONAL DUTIES

(47) In view of the nature and the level of the injury caused to the Community industry by the dumped imports and since the Commission's provisional findings are, for the most part definitively confirmed, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty should be definitively collected at the rate definitively imposed.

J. REVIEW

(48) The Commission intends to conduct a review of the measures after one year from the date of their imposition, in order to examine, in particular, the situation on the Community soda ash market and the position of users of soda ash in the Community.

(49) This approach is confirmed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of disodium carbonate falling within CN code 2836 20 00 originating in the United States of America.

2 The rate of the definitive anti-dumping duty shall be 13,9 % of the net, free-at-Community frontier price, before duty (Taric additional code : 8826) except for the following companies for which the rate shall be as follows :

— FMC Wyoming Corporation, Philadelphia — PA (Taric additional code : 8852)	8,9 %
— AG Soda Corporation, New York — NY (Taric additional code : 8820)	5,5 %
— General Chemical (Soda Ash) Partners, Parsipanny — NJ (Taric additional code : 8821)	2,5 %
— North American Chemical Company (NACC), Overland Park — KS (Taric additional code : 8822)	7,1 %
— Rhône-Poulenc of Wyoming Basic Chemicals Co., Shelton — CT (Taric additional code : 8823)	5,3 %
— Solvay Minerals Inc., Houston — TX (Taric additional code : 8824)	6,2 %.

The duty shall not apply to products produced and exported by Tg Soda Ash Inc., Raleigh NC (Taric additional code 8825).

3. Unless otherwise specified the provisions in force concerning customs duties shall apply to the said duty.

Article 2

1. The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 823/95 shall be definitively collected at the duty rate definitively imposed.

2. Amounts secured in excess of the definitive rate of duty shall be released.

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, 10 October 1995.

For the Council

The President

J. SOLANA