COUNCIL REGULATION (EC) No 2961/95

of 18 December 1995

imposing a definitive anti-dumping duty on imports of peroxodisulphates (persulphates), originating in the People's Republic of China, 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 (EC) 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 from the Commission after consulting the Advisory Committee,

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EC) No 1748/95 (3), hereinafter referred to as the 'provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of peroxodisulphates (persulphates) originating in the People's Republic of China and falling within CN code ex 2833 40 00. By Regulation (EC) No 2677/95 (4), the Council extended the validity of this duty for a period of two months expiring on 20 January 1996.

B. Subsequent procedure

(2) Subsequent to the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive duty and the definitive collection of amounts by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

C. Product under consideration

(5) For the purpose of its preliminary findings, the Commission determined, pursuant to recital 9 of the provisional duty Regulation, that the three types of persulphates (ammonium, sodium and potassium) should be treated as one product. According to the preliminary determination, the three different types of persulphates have the same end-uses as an initiator and oxidizing agent in the textile and chemical industries and can be substituted one for another.

(6) The two cooperating exporters claimed that the three different types of persulphates are not sufficiently interchangeable, in particular because the end-users in practice have only a limited possibility to switch from one type of persulphates to another. According to the exporters, the pricing of intermediate products like persulphates is essential for the finished product to be competitive in the market and the purchase of one of the types of persulphates is determined by end-users' needs to produce a specific competitive end-product. In addition, all industrial end-users would, if the three types of persulphates were interchangeable, due to the price difference among them, purchase exclusively the cheapest persulphate in order to minimize costs of their finished products.

(7) After consideration of the exporters' arguments and having obtained comments from the Community industry, the Council confirms the preliminary findings that the three types of persulphates should be regarded as one product for the following reasons :

— the essential characteristics of the three types of persulphates are the same, because, regardless of the type of persulphate, the persulphate anion is the active substance which generally gives end-users the ability to alternate among the different types,

— the basic end-use as initiator and oxidizing agent is the same for all the three different types of persulphates,

(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. 1).
(3) OJ No L 169, 19. 7. 1995, p. 15.
(4) OJ No L 275, 18. 11. 1995, p. 21.

— price differences are mainly due to differences in production cost stemming from price variation of the chemical components ammonium, sodium and potassium used to manufacture the three types of persulphates,

— price levels for persulphates in the Community show a high degree of interdependence among the different types,

— persulphate as accessory material forms only an extremely small part of the overall manufacturing cost in the production process of other products, and the price difference among the three types of persulphates is only one element for the customer's choice, as *inter alia*, production equipment, particle size and environmental considerations seem to play an important role.

D. Like product

(8) For the purpose of its preliminary findings, the Commission considered persulphates imported from the People's Republic of China as like the product manufactured and sold by the Community and Japanese producers because persulphates of these origins are identical in their chemical compositions and in their applications.

(9) The exporters claimed that persulphates imported from the People's Republic of China are not like the product manufactured and sold by the Community and Japanese producers. According to the exporters, the quality of Chinese persulphates is inferior to the Community and Japanese product, as the iron content is higher and the purity of the Chinese persulphate is often 98 %, i.e. below 99 % as produced by the Community producers. In addition, the Chinese product has a tendency to stickiness.

(10) Having examined the exporters' arguments and the comments received from the Community industry, the Council confirms the preliminary findings that persulphates manufactured by the Community and Japanese producers are like the Chinese product for the following reasons:

— the three different types of persulphates are produced and exported by the People's Republic of China and the same three types of persulphates are produced and sold in the Community and in Japan,

— the fact that quality differences in purity and iron content between the origins of the persulphates may exist, does not lead to the conclusion that they should not be regarded as like products, particularly since the persulphates produced in Japan and in the Community, on the one hand, and the People's Republic of China, on the other, when compared on a type-by-type basis, are identical in their basic chemical compositions and in their applications.

E. Dumping

1. *Normal value*

(11) The Commission established normal value on the basis of net selling price at which the like product was sold in Japan, which was selected as the reference country.

(12) In the light of the economic reforms which have taken place in the People' Republic of China, the two cooperating exporters object to China still being regarded as a non-market economy country. In addition, the exporters opposed the choice of Japan as reference country because, *inter alia*, of the allegedly closed nature of the Japanese domestic distribution channels, which allegedly result in high domestic prices.

(13) According to Article 2 (5) of Regulation (EEC) No 2423/88, the People's Republic of China is to be regarded as a non-market economy country. As a result, normal value must be based on one of the criteria set out in that Article. In the present case, normal value was established pursuant to Article 2 (5) (a) (i).

(14) The choice of Japan as reference country was explained extensively by the Commission in recitals 15 and 17 of the provisional duty Regulation. In addition, the exporters in question have not suggested any other suitable reference country. The allegation that the product concerned is sold at high prices in the domestic market due to the distribution system in Japan, suggesting that sales were not made in the ordinary course of trade in the domestic market in Japan, is not confirmed by the results of the verifications carried out at the premises of two independent Japanese companies nor by information obtained from other producers involved in the investigation.

2. *Export price*

(15) No further arguments were submitted on the methodology used by the Commission in its preliminary findings, and the findings in recitals 19 and 20 of the provisional duty Regulation have therefore been confirmed.

3. *Comparison*

(16) The two cooperating exporters claimed that the quality of persulphates originating in the People's Republic of China is inferior to persulphates produced in Japan and that a reasonable allowance should be made to take account of this difference in physical characteristics.

(17) The alleged differences between persulphates produced in Japan and in the Community, on the one side, and persulphates produced in the People's Republic of China, on the other, consist of lower purity, difference an iron content and tendency of stickiness of the Chinese product. However, the claim for an adjustment due to differences in physical characteristics between Chinese and Japanese persulphates was not supported by any evidence, showing that these differences affect price comparability. The claim was therefore rejected.

F. Dumping margin

(18) The two cooperating exporters claimed that the calculation of dumping margins should be based on export prices supplied by each individual exporter and that, as far as the non-cooperating exporters are concerned, a separate dumping margin should have been calculated on the facts available for these exporters.

(19) Since the two cooperating exporting companies are wholly owned by the Chinese State, no individual treatment could be granted under these circumstances, in accordance with the Community institutions' standing practice.

(20) No other arguments were submitted on the methodology used by the Commission in its preliminary determination. Therefore, the weighted average dumping margin definitively established and expressed as a percentage of the cif Community frontier import price is confirmed to be 110,1 %.

G. Injury

4. *Factors relating to dumped imports*

(21) The two exporters cooperating with the Commission claimed that, when calculating price undercutting, account should be taken of the inferior quality (purity, iron content, stickiness) of Chinese persulphates compared to persulphates produced in the Community.

(22) No evidence has been presented that differences in quality between persulphates manufactured in the Community and in the People's Republic of China have an influence on the pricing of the products. Tendency to stickiness of persulphates is a general attribute of the product and it is not substantiated that this characteristic is due to origin or quality of the product.

(23) The provisional findings on undercutting are therefore confirmed. As no other arguments were submitted regarding the provisional conclusion on injury, the Council concludes definitively that the Community industry has suffered injury.

H. Causation

5. *Effect of other factors*

(24) The two exporters alleged that the Community producers in the past have been able to charge high prices due to a collective market dominance of the Community producers and previously high prices had to be adjusted downwards when the economy went into recession.

(25) No evidence has been presented to substantiate the claim that the injury suffered by the Community industry is due to an alleged discontinuance of a former collective market dominance of the Community producers. On the contrary, the Commission's investigation showed that the companies investigated follow different policies with regard to marketing and pricing of the product concerned. In addition, price levels in the Community were not at a level sufficient to allow profitable sales by the Community producers. Imports from third countries not subject to the proceeding in significant quantities have contributed to maintain a competitive market situation.

(26) As set out in recitals 25 and 35 of the provisional duty Regulation, the downturn in prices on the Community market and the loss of market share coincided with the arrival of the dumped imports accompanied by price undercutting which led to a substantial fall in profits or even financial losses. Even if the contraction in demand has contributed to the injury, the import of significant quantities at dumped prices clearly caused material injury to the Community industry.

(27) The preliminary findings with regard to causation are therefore confirmed.

I. Community interest

(28) In the absence of other new arguments, the findings laid down in recitals 40 and 41 of the provisional duty Regulation are confirmed.

J. Duty

(29) The two cooperating Chinese exporters have claimed that separate injury margins for each of the three types of persulphates should be calculated because the different types of persulphates could not, due to the alleged lack of interchangeability, be regarded as one single product.

(30) For the reasons stated in recital 7, the three types of persulphates should be treated as one product. The claim by the exporters in this respect is therefore rejected and the methodology adopted by the Commission for the establishment of the provisional duty rate to be applied, as set out in recitals 42 to 44 of the provisional duty Regulation, is confirmed.

(31) Since the margin of dumping found was greater than the corresponding increase in export prices necessary to remove the injury suffered by the Community industry, the definitive duty to be imposed should therefore correspond to the injury margin established, i.e. 83,3 %.

K. Collection of the provisional duty

(32) In view of the dumping margin established and the injury caused to the Community industry, it is considered necessary that the amounts secured by way of a provisional anti-dumping duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports into the Community of peroxodisulphates (persulphates) originating in the People's Republic of China and falling within CN code ex 2833 40 00 (Taric code: 2833 40 00 * 10).

2. The rate of duty applicable to the net, free-at-Community-frontier price, before duty shall be 83,3 %.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EC) No 1748/95 shall be definitively collected at the rate of duty definitively imposed.

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, 18 December 1995.

For the Council

The President

J. BORRELL FONTELLES