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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 137/96

of 22 January 1996

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (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 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 consulting the Advisory Committee,

Whereas :

PROVISIONAL MEASURES

(1) By Regulation (EC) No 1878/95 (3) (hereinafter 'the provisional duty Regulation'), the Commission imposed a provisional anti-dumping duty on imports into the Community of refractory chamottes (hereinafter 'chamottes' or 'product concerned') originating in the People's of Republic of China, falling within CN codes ex 2507 and ex 2508.

(2) By Regulation (EC) No 2735/95 (4), the Council extended the validity of these duties for a period of two months.

SUBSEQUENT PROCEDURE

(3) Following the imposition of the provisional anti-dumping duty, Argiles & Minéraux AGS, the complainant Community producer, and two companies of the Community user industry made their views know in writing. A company of the user industry requested and was granted a hearing by the Commission.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the collection of amounts secured by way of the provisional duty. The parties were also granted a reasonable period within which to make representations subsequent to the disclosures.

(5) The parties' comments were considered and, where appropriate, taken into account.

PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(6) After publication of the provisional duty Regulation, a company of the Community refractory industry (user industry) raised the argument that Chinese chamottes, though comparable with the product concerned produced by the main Community producer or a large producer in the United States (which was chosen as the 'analogue country' for the determination of normal value, see recitals 11-14 of the provisional duty Regulation) in terms of its chemical characteristics, could not be compared with these products as to the end-use because of the inferior calcination of Chinese chamottes. The company has supported its arguments by pointing to the allegedly inferior quality of refractory products made from Chinese chamottes when burned at high temperatures, i.e. at temperatures of 1 450 °C and above. In order to substantiate this allegation, the company submitted

(1) OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Council 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 Council Regulation (EC) No 522/94, OJ No L 66, 10. 3. 1994, p. 10.
(3) OJ No L 179, 29. 7. 1995, p. 56.
(4) OJ No L 285, 29. 11. 1995, p. 1.

two studies it had carried out in order to examine the usage at high temperatures of the product concerned of different origins. As a result, both studies concluded that Chinese chamottes could, like the other chamottes being subject to the test, be used at temperatures of up to 1 400 °C. However, for use at temperatures of 1 450 °C and above, only chamottes of Israeli origin or chamottes produced by one US company or produced by the complainant could be used, as the study stated, without considerable disadvantages. One of the studies furthermore recommended that, for a particular kind of use within high temperature application, the use of chamottes produced by one US producer should be preferred over all the others subject to the test.

(7) These arguments, which had already been raised prior to the provisional determination (see recitals 9 and 10 of the provisional duty Regulation), have now been supported by evidence. It remains however, as the Commission has established during its investigation, that chamottes of different origins and from different producers cannot, from a technical point of view, be absolutely identical to each other with regard to their chemical and physical specifications, due to natural chemical differences in the raw material and different burning techniques. This entails that chamottes of certain origin or produced by certain manufacturers may show advantages or disadvantages when used for particular applications. It should also be noted that contradictory opinions exist with regard to the quality of the Chinese chamottes (see recitals 9 and 10 of the provisional duty Regulation). Despite such difference in quality, however, there is only one market on which these products compete and, as the Commission has established, the product concerned of Chinese origin is, in general, used in the same applications as chamottes of other origins and has, overall, the chemical and physical characteristics defined for the product under consideration.

(8) Therefore, the findings set out in recital 10 of the provisional duty Regulation, that 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, are hereby confirmed.

DUMPING

Normal value

(9) A company of the Community user industry argued that the information obtained from one company in the analogue country appeared not to be credible because the US producer concerned was related to the complainant. The company did not further substantiate its allegation, in particular it did not point out in which respect it presumed the information in question to be unreliable.

(10) It was established during the investigation that one of the two producers in the analogue country which cooperated in this proceeding, and on whose information the determination of normal value was based, belongs to the same group as the complainant. The Commission services obtained from this producer, *inter alia*, specific information on sales prices of the product concerned charged to unrelated customers in the United States. This information was used for determining normal value together with the information received from another producer in the United States which cooperated in this proceeding and which was found not to be related to the complainant. The sales data submitted by the company in question was verified by the Commission. It was found that this company sold substantial quantities of the product concerned on the domestic market and that the sales were made in the ordinary course of trade. It was carefully checked whether the relationship in question had any bearing on costs of production and, consequently, on profitability of the US producer concerned. No indication was found that costs of production, profitability or sales to unrelated customers were influenced by the relationship between this company and the complainant.

(11) In the light of the foregoing, it is considered that the information in question can be used for determining normal value, an approach confirmed by the judgment of the Court of First Instance in Case T-164/94, Ferchimex SA v. Council [1].

(12) Therefore, and in the absence of any further new arguments regarding normal value, the findings laid down in recitals 11 to 14 of the provisional duty Regulation are hereby confirmed.

Export price

(13) In the absence of any new arguments, the findings laid down in recitals 15 and 16 of the provisional duty Regulation concerning the determination of the export price are hereby confirmed.

[1] Judgment of 28 September 1995. Not yet reported.

Comparison

(14) As already pointed out in recital 3 above, one company of the Community user industry argued that the product concerned of Chinese origin was inferior to, *inter alia*, that of a producer in the analogue country which cooperated in this proceeding. The user company did not further substantiate to what extent this alleged inferiority of Chinese chamottes had an impact on the import prices.

(15) The Commission had established in its provisional findings (see recital 17 of the provisional duty Regulation) that, for comparison purposes, an adjustment had to be made in order to take acocunt of certain inferior physical characteristics of Chinese chamottes. The Commission found that the adjustment could be quantified, in the absence of any other available information, by the level of the price difference found between chamottes of different alumina contents sold on the market of the analogue country in the investigation period. Since the argument raised by the user company did not give any indication that an adjustment different from that made for the purpose of the provisional findings should be applied, and in the absence of any other new argument, this finding is hereby confirmed.

(16) In the light of the foregoing, and in the absence of any further new arguments, the findings set out in recital 17 of the provisional duty Regulation concerning comparison are hereby confirmed.

Dumping margin

(17) Since, finally, the determination of the dumping margin remains unchanged, the findings set out in recital 18 of the provisional duty Regulation are hereby confirmed. The dumping margin is thus definitively determined at 28,4 % of the free-at-Community-frontier price, before duty.

COMMUNITY INDUSTRY

(18) In the absence of any new arguments, the findings set out in recital 19 of the provisional duty Regulation concerning the definition of the Community industry are hereby confirmed.

INJURY

(19) No new arguments were made with regard to the injury findings set out in recital 30 of the provisional duty Regulation. They are, therefore, hereby confirmed.

CAUSATION OF INJURY

(20) In the absence of any new arguments, the findings with regard to the causal link between dumped imports and the material injury suffered by the Community industry, set out in recital 34 of the provisional duty Regulation, are hereby confirmed.

COMMUNITY INTEREST

(21) Two companies of the Community user industry argued that the imposition of anti-dumping measures against imports of Chinese chamottes, which would lead to a price increase of this basic material, would subsequently result in a price increase for refractory products and thus to a deterioration of the industry's sales on the Community market, where it competes with suppliers from non-Community countries, and on export markets. Such decrease of sales revenue, and consequently of profit, would have to be compensated by a decrease in the workforce of the user industry which would be more significant than the number of employees still maintained in the chamottes industry. It was further argued that the imposition of measures would lead to a deterioration of the trade relationship between the Community industry and the People's Republic of China in general, and the potential damage for the Community economy as a whole would be more significant than the remedial effect for the chamottes industry. One company claimed also that the price increase for Chinese chamottes, due to anti-dumping measures, would result in a monopolistic position of the Community producers.

The arguments concerning the effect of anti-dumping measures on sales were further substantiated by one user company which pointed out that the direct impact of the potential price increase for Chinese chamottes, as a result of the imposition of an anti-dumping duty based on a minimum-price of ECU 75 per tonne (cif Community frontier), on its sales prices would be an increase of around 1,4 %. This user company stated that a variable duty based on a minimum price of ECU 75 would lead to a relatively modest price increase for Chinese chamottes which, though disturbing, would not have a seriously damaging effect on its business. The company thus confirmed, in effect, the provisional findings set out in recital 38 of the provisional duty Regulation.

In view of the foregoing, the Commission considered the following:

(22) The purpose of anti-dumping measures is to remedy unfair trading practices which have an injurious effect on a Community industry. Such a remedy should result in the re-establishment of a fair competitive situation which, as such, is in the interest of the Community. In this proceeding, the investigation has shown that the Community industry was suffering material injury which, without a remedy, would threaten its viability. On the other hand, the imposition of anti-dumping measures would probably result in a price increase which would effect the user industry for which chamottes are a basic material. On balance, in view of the extent to which the Community industry was injured, and taking account of the very modest impact of a variable duty, based on a minimum price of ECU 75 per tonne (cif Community frontier), on the prices for Chinese chamottes, and with regard to the very limited effect of the measure on the sales prices of the user industry, the Commission considers that the disadvantage to the user industry is not sufficient to deny the Community industry protection against dumped imports of Chinese chamottes.

(23) The Community pursues a policy which aims at increasing its economic links with the People's Republic of China. However, it expects the Chinese producers and exporters to operate on the Community market in accordance with the principles of fair trade. Therefore, there is no contradiction between this policy and the defence of the Community industry against unfair trade practices. Moreover, it should be noted that the exports of chamottes to the Community represent only a very small fraction of the total Chinese exports to the Community and the fact that neither the Chinese producers and exporters nor the authorities of the People's Republic of China have cooperated in this proceeding can also be seen as an indication that the chamottes exports to the Community is not a priority issue for these parties. It is therefore considered to be unrealistic to assume that anti-dumping measures imposed to restore fair trade in this market sector will have a significant impact on the trade relationship between the Community industry and the People's Republic of China.

(24) Lastly, the argument that the imposition of anti-dumping measures might led to a monopolistic position of the Community industry is considered to be unfounded. The measures will have the effect of maintaining the number of competing suppliers of chamottes on the Community market because they will ensure the continued presence of the Community producers together with exporters from other countries, e.g. the United States and the Czech Republic, and the modest increase in import prices for Chinese chamottes resulting from the imposition of measures will also permit the continued presence of the Chinese exporters.

(25) Therefore, in the light of the above and in the absence of any other new arguments, it is confirmed that the imposition of measures against imports of Chinese chamottes is in the Community interest.

DUTY

(26) In the absence of any new arguments, the findings set out in recitals 36 to 38 of the provisional duty Regulation, with regard to the level and type of the measures, are hereby confirmed. Therefore, definitive anti-dumping measures should be imposed against the imports into the Community of Chinese chamottes, in the form of a viable anti-dumping duty, based on a minimum price of ECU 75 cif Community frontier, duty unpaid, per tonne.

COLLECTION OF THE PROVISIONAL DUTIES

(27) In view of the dumping margins established and the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the 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 of unprocessed (not ground or in powder form) refractory chamottes 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 00*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 the price of ECU 75 per tonne and the net free-at-Community frontier price, per tonne, if the latter price is lower.

3. For the purpose of calculating the duty payable, the minimum price shall be converted into the relevant national currency at the exchange rate established in the same way as that used for a calculation of customs value.

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

Article 2

1. The amounts secured by way of the provisional anti-dumping duty on imports of unprocessed refractory chamottes originating in the People's Republic of China pursuant to Regulation (EC) No 1878/95 shall be definitively collected.

2. The provisions of Article 1 (4) shall also apply to the definitive collection of the amounts secured by way of the provisional anti-dumping duty.

Article 3

This Regulation shall enter into force on the day following its publication of 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, 22 January 1996.

For the Council

The President

L. DINI