COUNCIL REGULATION (EC) No 1507/98

of 13 July 1998

imposing a definitive anti-dumping duty on imports of potassium permanganate originating in India and the Ukraine 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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 9(4) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 178/98 [2] (hereinafter referred to as 'the provisional duty Regulation') a provisional anti-dumping duty was imposed on imports into the Community of potassium permanganate falling within CN code 2841 61 00 originating in India and the Ukraine.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping measures, the complaining Community industry and both the Indian and Ukrainian cooperating exporting producers submitted comments in writing.

(3) The Ukrainian cooperating exporting producer, who was the only interested party to have so requested, was granted a hearing.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.

(6) The oral and written comments were considered and, where deemed appropriate, taken into account in the definitive findings.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(7) As no comments or new facts were submitted by any interested party with regard to the definition of the product concerned and the like product, the findings made on these issues, as set out in recitals 8 and 9 of the provisional duty Regulation, are confirmed.

D. DUMPING

1. Normal value and export price

(8) In the absence of further arguments concerning the establishment of normal value and export price, the provisional findings as set out in recitals 10 to 17 of the provisional duty Regulation, are hereby confirmed.

2. Comparison

(9) The Ukrainian and Indian exporting producers claimed that no deduction to the export price for certain ancillary costs and credit costs respectively should have been made. These issues were examined and since it was found that indeed no such deductions should have been made, corrections to the export price were made accordingly.

(10) In the absence of any other new arguments concerning comparison, the remaining provisional findings, as set out in recitals 18 to 23 of the provisional duty Regulation, are hereby confirmed.

3. Dumping margin

General

(11) In the absence of new arguments concerning the determination of the dumping margin, the methodology set out in recitals 24 to 26 of the provisional duty Regulation is hereby confirmed.

India

(12) The dumping margin definitively established for India, expressed as a percentage of the cif price at Community frontier level, is as follows:

Universal Chemicals and Industries Pvt. Ltd., Mumbai: 5,6 %.

As this company is deemed to represent 100 % of the Indian production of the product concerned, the residual dumping margin definitively established is also 5,6 %.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulations (EC) Nos 2331/96 (OJ L 317, 6. 12. 1996, p. 1) and 905/98 (OJ L 128, 30. 4. 1998, p. 18).
[2] OJ L 19, 24. 1. 1998, p. 23.

Ukraine

(13) The dumping margin definitively established for the Ukraine, expressed as a percentage of the cif price at Community frontier level, is 36,2 %.

E. COMMUNITY INDUSTRY

(14) As no comments or new facts were submitted by any interested party with regard to the definition of the Community industry, the findings made as set out in recital 27 of the provisional duty Regulation, are hereby confirmed.

F. INJURY

1. General

(15) Comments were made by the exporting producers in respect of the provisional findings regarding the following injury factors: prices of the dumped imports, price undercutting and the situation of the Community industry. No other interested party expressed any contradicting view.

2. Prices of the dumped imports and price undercutting

(16) The Indian and Ukrainian exporting producers both contested the provisional findings concerning price undercutting and claimed in particular that information they had previously submitted (in the form of 'offers' or invoices) had been disregarded without sufficient detailed explanations. They again submitted information concerning resales of the product concerned in the Community (in the form, *inter alia,* of invoices) obtained from a number of unrelated importers allegedly showing the absence of price undercutting.

It should be noted, however, that the previously and newly submitted information concerned importers who either did not cooperate or only insufficiently cooperated with the Commission's investigation. This information could not, therefore, be verified during on-the-spot verifications (in particular as regards the existence of possible credit notes reducing actual sales prices or, in the case of 'offers', as regards the question whether such offers led to actual sales transactions or not). In any case it covers a very small part of the imports concerned and examined by the Commission. Moreover, in support of their contention that the Commission's price undercutting findings were not correct, the Indian and Ukrainian exporting producers had submitted calculations based on figures concerning their export price on the Community market which did not match the corresponding verified figures they themselves reported in the course of the investigation. The information submitted cannot therefore invalidate the findings of clear price undercutting as set out in recitals 36 to 38 of the provisional duty Regulation.

(17) The Ukrainian exporting producer again claimed that its 'special relationship' with its sole importer in the Community, allegedly consisting of the importer financing the purchase of the raw materials as well as granting pre-payment for deliveries, would have necessitated certain adjustments to the export price.

In this respect, it has to be stressed that this relationship, interrupted in 1997, could not be investigated due to the lack of cooperation from the sole importer in question. Indeed, despite repeated requests from the Commission, the company in question failed to submit relevant data. Therefore, adjustments claimed by the Ukrainian exporting producer could not be granted.

(18) As regards the Community industry's selling price used in order to determine the price undercutting margin, it was alleged that data reported by the German producer (Chemie GmbH Bitterfeld-Wolfen) had been disregarded.

In this respect it should be recalled that, as indicated in the provisional duty Regulation, the calculation of price undercutting was made by comparing the prices of the Community industry as a whole, i.e. its weighted average prices, including those of the Community producer in question, with prices of the Indian and Ukrainian exporting producers.

Moreover, it should be stressed that, as noted in recital 37 of the provisional duty Regulation, the Commission based the price undercutting calculation on import sales figures adjusted for post-importation costs, i.e. for customs duty, loading and warehousing costs and credit costs (prices were adjusted to a cash payment level), in conformity with the Community Institutions' established practice and as requested by the exporting producers in their submissions.

(19) The undercutting margins of 26 % for the Ukraine and 8,4 % for India as set out in recital 38 of the provisional duty Regulation, are accordingly hereby confirmed.

3. Situation of the Community industry

(20) The exporting producers alleged that, in the assessment of the situation of the Community industry, data relating to the German producer's situation had been fully excluded from the analysis.

Again, this allegation is not correct as the provisional findings were based on an overall assessment of the situation of the entire Community industry. Only the costs of production of the German producer were disregarded in the calculation of the injury elimination level (see recital 31 of the present Regulation), and its profitability data were not included when determining the injury indicator 'profitability of the Community industry'. Indeed, it was found that these figures were likely to be influenced by the current restructuring of its operations. This is in conformity with the usual practice of the Community Institutions, consisting of disregarding extraordinary items in accounts. In any event, had the German producer's data relating to these two items been taken into consideration, the situation of the Community industry would have been found to be even worse.

All other injury indicators were examined taking into consideration the verified information given by both the German producer and the Spanish producer (Industrial Química del Nalón) constituting the Community industry.

(21) It was also alleged that, on balance, the injury indicators did not show that the Community industry was experiencing material injury. The exporting producers based this allegation on an improvement of the situation of the industry following the previous imposition of anti-dumping measures on Chinese imports by Council Regulation (EC) No 2819/94 ([1]) and the data relating to the exceptional year 1995 where demand for the product concerned increased substantially because of climatic circumstances.

It is considered that these considerations should not detract from the weak overall situation of the Community industry. Indeed, prices of the Community industry decreased by 10 % from 1992 to the investigation period (April 1996 to March 1997), in a very price-sensitive market, and the Spanish producer recorded losses for the same period, while the Indian and Ukrainian exporting producers undercut the Community industry's prices significantly and doubled their market share of potassium permanganate on the Community market.

It should also be recalled that the injury indicators have to be seen in the context of an industry recovering from past dumping. Accordingly, the injury indicators should be assessed bearing in mind the overall historical situation of the market, which had been affected by Chinese dumped imports, with a consecutive impact on the Community industry's state and with certain positive consequences for the situation of the Community industry after the imposition of anti-dumping measures concerning Chinese imports.

4. Conclusion on injury

(22) In the light of the above and in the absence of other arguments concerning the determination of injury, the provisional findings laid down in recitals 28 to 50 of the provisional duty Regulation, according to which the Community industry has suffered material injury, are hereby confirmed.

G. CAUSATION

(23) In order to show that the injury suffered had not been caused by the dumped imports subject to the current investigation, the exporting producers brought forward three main other potential causes of injury: pressure of Chinese imports, the particular situation of the German producer and certain alleged changes in the pattern of consumption.

1. Impact of Chinese imports

(24) The exporting producers argued that the overwhelming cause of injury was Chinese imports.

In this respect, it should be noted that the Chinese imports have been countered by a definitive anti-dumping measure imposed in November 1994 and virtually ceased after 1994. The Chinese imports could not, since then, be regarded as a cause of the injury experienced by the Community industry, particularly noticeable at the end of the five year period examined for the assessment of injury, i.e. during the period 1 April 1996 to 31 March 1997.

2. Competitiveness of the Community industry/self-inflicted injury

(25) It was alleged that one of the complainants, the German producer, is inefficient and undercuts its competitor's prices on the Community market.

In this respect it should be noted that the findings of substantial undercutting by Ukrainian and Indian exports were based on data including sales prices of the German producer. It was therefore confirmed by the investigation that, contrary to the allegation made, the Indian and Ukrainian exporting producers' prices undercut in fact the average Community industry's price.

In addition, while it is a mere assumption that the current restructuring is in itself a proof of inefficiency of the Community producer concerned, it was established that the dumped imports weakened the position of this producer and, in fact, impeded the improvement of its economic situation.

([1]) OJ L 298, 19. 11. 1994, p. 32.

3. Changes in the pattern of consumption

(26) The exporting producers argued that the injury suffered was also due to a change in the pattern of consumption resulting from competition from emergent substitute products.

As regards substitute products, it should be recalled that potassium permanganate is mainly used for potable water treatment, waste-water treatment, chemical and pharmaceutical manufacture, metal refining and disinfectant. Four substances were put forward as emergent substitute products to potassium permanganate: sodium dichromate, mono potassium persulphate, ozone and hydrogen peroxide. The first three products mentioned above, even if sold in significant quantities on the Indian market, are still marginal on the Community market. Sodium dichromate is not in use in the Community due to its cancerogenic characteristics. Mono-potassium persulphate is a chemical product totally unknown in the water-treatment sector in the Community and only marginally used in other applications. Ozone can be potentially seen as a substitute product to potassium permanganate in water treatment. However, use of this product is, for the moment, limited, and cannot be considered to have had a significant impact on the Community potassium permanganate market and the situation of the Community industry. Finally, hydrogen peroxide cannot be considered as an emergent product because it has been used as an industrial oxidiser for as long as potassium permanganate and did not gain importance at the expense of potassium permanganate.

It is therefore considered that none of these alleged substitute products have significantly affected the pattern of consumption of the product concerned. Accordingly, the alleged emergence of such products cannot be construed as a significant alternative source of injury to the Community industry.

4. Conclusion on causation

(27) None of the above factors can be considered to have an impact such as to break the causal link between the dumped imports and the injury suffered by the Community industry in this case. Therefore, the provisional findings concerning causation, as set out in recitals 51 to 72 of the provisional duty Regulation, are hereby confirmed.

H. COMMUNITY INTEREST

(28) The only comments submitted on this issue were in respect of the Community industry's interest in seeing the dumping practices counteracted.

1. Interest of the Community industry

(29) In this respect, it was argued that the imposition of anti-dumping duties would be against the interests of the German producer, which was allegedly reluctant to support the current anti-dumping proceeding as anti-dumping measures would serve only the Spanish producer because of its allegedly dominating position.

This argument was not supported by any evidence. The German producer is a complainant, which cooperated fully in the investigation and did not make any indication that it would no longer support the current anti-dumping proceeding.

Furthermore, as noted in the provisional duty Regulation, in the absence of measures, the existence of the Community industry as a whole would ultimately be at risk. Moreover, given the price sensitivity of the product, it is likely that the measure would, to a large extent, equally help the German producer to obtain a more favourable market position. In any event, anti-dumping measures are not designed to prevent competition on the Community market. Rather, their purpose is to allow Community producers to compete on a level playing field with imports in the Community.

2. Conclusion on Community interest

(30) It is therefore confirmed that there are no compelling reasons not to take action against the injurious dumping found. Accordingly, the findings concerning Community interest, as set out in recitals 73 to 86 of the provisional duty Regulation, are hereby confirmed.

I. DEFINITIVE MEASURES

1. Injury elimination level

(31) As no comments, other than those concerning the need for adjustment to the export price, requested by the Ukrainian exporting producer in order to take into account its special relationship with its sole importer in the Community (see recital 17 of the present Regulation), were received with regard to the methodology used in calculating the injury elimination level, the findings, as set out in recitals 88 to 90 of the provisional duty Regulation, are hereby confirmed.

2. Form of duty

(32) The provisional measures were imposed in the form of a variable duty based on minimum prices. The Ukrainian exporting producer requested that the minimum price concerning the Ukraine should be set at the same level as the minimum price applicable to imports from India.

As indicated in recitals 11, 14 and 93 of the provisional duty Regulation, this situation arose from the following:

Although both minimum prices were based on the domestic prices of the Indian producer, the Indian minimum price was the weighted average of the lower price for potassium permanganate with a purity below 99 % and the higher price for potassium permanganate with a minimum purity of 99 % while the Ukrainian minimum price equalled the price for potassium permanganate with a minimum purity of 99 % since this country only exports this grade.

Given this factual background, the request made by the Ukrainian exporting producer could not be granted as the difference in minimum prices reflected a difference in the exported product types concerned. However, in view of the different existing product types it was examined whether the use of different minimum prices for India and the Ukraine might result in a discriminatory treatment. It was also examined whether the use of this form of anti-dumping measure was appropriate with a view to removing the injurious effect of dumping for all the different types in which the product concerned exists.

In this respect it is clear that if in the future both countries were to export potassium permanganate with a minimum purity of 99 % exclusively, the Indian exporting producer would benefit without justification from a lower minimum price compared to the minimum price established for the Ukrainian exporting producer and that the anti-dumping measure imposed would not ensure that the effect of dumping would be removed.

Such non desirable potential effects outweigh the arguments which motivated at the provisional stage the decision to depart from the usual form of anti-dumping duties. Accordingly, the definitive anti-dumping duty should take the form of an ad valorem duty.

3. **Level of duty**

(33) Since, for each country concerned, the injury elimination margin established is higher than the dumping margin, the definitive anti-dumping duty should be based on the respective dumping margins, namely 5,6 % and 36,2 % for India and the Ukraine respectively.

J. **COLLECTION OF THE PROVISIONAL DUTY**

(34) Given the magnitude of the injury suffered, the amounts secured by way of provisional anti-dumping duty, under Regulation (EC) No 178/98, should be definitively collected to the extent of the amount of the definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium permanganate falling within CN code 2841 61 00 originating in India and the Ukraine.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be:

— 5,6 % for potassium permanganate originating in India,

— 36,2 % for potassium permanganate originating in the Ukraine.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EC) No 178/98 shall be definitively collected at the level of the duties definitively imposed on imports of potassium permanganate originating in India and the Ukraine.

The collection shall be limited to the amounts secured. In addition, the amounts secured in excess of the definitive anti-dumping duties shall be released.

Article 3

This Regulation shall enter into force on the day following that of 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, 13 July 1998.

For the Council
The President
W. SCHÜSSEL