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►**B** **COUNCIL REGULATION (EC) No 1175/2005**

of 18 July 2005

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of barium carbonate originating in the People's Republic of China

(OJ L 189, 21.7.2005, p. 15)

Corrected by:

►**C1** Corrigendum, OJ L 181, 4.7.2006, p. 111 (1175/2005)

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COUNCIL REGULATION (EC) No 1175/2005

of 18 July 2005

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of barium carbonate 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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]) ('the basic Regulation') and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) On 29 January 2005, the Commission, by Regulation (EC) No 145/2005 of 28 January 2005 imposing a provisional anti-dumping duty on imports of barium carbonate originating in the People's Republic of China ([2]) (hereinafter 'the provisional Regulation'), imposed provisional anti-dumping duties on imports into the Community of barium carbonate originating in the People's Republic of China ('the PRC').

B. SUBSEQUENT PROCEDURE

(2) Subsequently to the disclosure of the essential facts and considerations on the basis of which it was decided to impose the said provisional anti-dumping measures, several interested parties made written submissions containing their views on the provisional findings. No parties requested to be heard.

(3) The Commission continued to seek and verify all information it deemed necessary for the definitive findings. Verification visits were carried out at the premises of the following companies:

(a) *unrelated importer:*

— Castle Colours Ltd, UK;

(b) *Community users:*

— Terreal SA, France,

— Torrecid SA, Spain.

(4) All 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 on imports of barium carbonate originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. The parties were also granted a period to make representations, subsequent to the disclosure of the essential facts and considerations.

(5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(6) Since no new comments were received regarding the 'product concerned' and the 'like product', as defined in recitals 11 and 12 of the provisional Regulation, their contents are hereby confirmed.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

([2]) OJ L 27, 29.1.2005, p. 4.

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D. DUMPING

1. Market Economy Treatment ('MET')

(7) In the absence of any comments, the contents of recitals 13 to 23 of the provisional Regulation concerning MET is hereby confirmed.

2. Individual Treatment ('IT')

(8) In the absence of any comments, the contents of recitals 24 to 29 of the provisional Regulation concerning individual treatment is hereby confirmed.

3. Normal value

(a) *Determination of normal value for cooperating producers granted MET*

(9) For one exporting producer, in determining whether domestic sales were in the ordinary course of trade and also when constructing normal value for certain types of the product concerned, incorrect financing costs were used in calculating the provisional dumping margin. Therefore, for the calculation of the definitive dumping margin, the necessary corrections were made.

(10) For the other exporting producer, the sales value of waste was provisionally deducted from the cost of production. However, after having reviewed the appropriate information, it was not certain whether the amount could be considered as deductible as waste. In this regard, and on the basis of the information available, it appeared that the 'waste' had actually a significant separate commercial value. Moreover, in the absence of any inventories kept, it was not possible to properly quantify the amount under consideration. Finally, even in the event that this amount had to be deducted, the company attributed the whole amount to the product concerned whereas it also affected other products produced by this company. Therefore, at the definitive stage, the deduction for waste was reversed. For the same exporting producer the value of the by-product was adjusted.

(11) The exporting producer concerned contested the approach taken and argued that waste, in the form of slag and lime, is disposed through synergy with an adjacent plant in a manner that reduced its total cost. It has to be noted that the said producer also claimed in its questionnaire that these sales should be considered as sales of a 'by-product'. In this regard, it is reiterated that the quantity of the product in question that was sold could not be established during the investigation. Furthermore, this revealed that sales to the neighbouring factory were of the by-product H_2S only. In this regard, it was considered that contradictory information was submitted, which could not be clarified after definitive disclosure. Secondly, this same producer claimed that the value of the by-product H_2S, deducted from the cost of production, should have been higher. However, the evidence collected during the investigation showed that this claim was overstated and had therefore to be rejected.

(12) Apart from the adjustments made, as set out in recitals 9 and 10 of this Regulation, and in the absence of any further comments, the contents of recitals 43 to 59 of the provisional Regulation concerning normal value is hereby confirmed.

(b) *Determination of normal value for all cooperating producers not granted MET*

(13) One user-organisation objected to the use of the United States of America ('USA') as analogue country, in the meaning of recital 12 of the provisional Regulation. This interested party did not substantiate its claim or provide any evidence, but referred rather generally to an alleged lack of competition on the USA market, due to anti-dumping measures in force there. However, it is noted that the level of competition in the domestic market of the USA

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was investigated for the provisional determination. As mentioned in recital 37 of the provisional Regulation, it was found that there was indeed a fair level of competition on the USA domestic market.

(14) One unrelated importer objected to the use of the USA as analogue country since the producer in the USA, whose data have been used for the determination of normal value, was related to a Community producer. It should be noted that during the investigation period ('IP'), no such relationship existed. Furthermore, this importer did not submit any information or evidence that this relationship which started only after the IP had an influence on the domestic costs and prices in the USA during the IP. The unrelated importer's argument had therefore to be rejected.

(15) Given the above, the choice of the USA as an analogue country is hereby confirmed.

4. **Export price**

(16) In the absence of any comments, the contents of recital 60 of the provisional Regulation, concerning the determination of the export price, is hereby confirmed.

5. **Comparison**

(17) The exporting producers noted that for the calculation of the provisional dumping margin, ocean freight and insurance costs were erroneously deducted from the export sales transactions made on a free on board (fob) or cost and freight (cfr) basis, whereas the sales price of these transactions did not include such costs. These export sales transactions were corrected accordingly.

(18) Furthermore, it was found that one exporting producer did not report commissions paid to traders for export sales of the product concerned to the Community. The export prices were therefore adjusted accordingly.

(19) Apart from the adjustments made, as set out in recitals 9, 10 and 18 of this Regulation, and in the absence of any further comments, the contents of recitals 61 to 66 of the provisional Regulation in relation to the comparison of normal value and export prices, is hereby confirmed.

6. **Dumping margins**

(20) In the light of the above corrections, the dumping margins finally determined, expressed as a percentage of the cost, insurance and freight (cif) Community frontier price, duty unpaid, are:

Hubei Jingshan Chutian Barium Salt Corp. Ltd	3,4 %
►C1 Zaozhuang Yongli Chemical Co. Ltd. ◄	4,6 %
All other companies	31,7 %

E. **INJURY**

1. **Community industry and Community consumption**

(21) In the absence of any comments in this particular respect, the contents of recitals 72 to 74 of the provisional Regulation are hereby confirmed.

2. **Imports from the country concerned**

(22) Following the provisional disclosure, one cooperating exporting producer reiterated its claim that the higher prices charged by the Community industry are due to the higher reactivity of its products. This request for an adjustment to the prices of the Community industry in respect of differences in reactivity had been rejected at the provisional stage, as indicated in recital 80 of the provisional Regulation.

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(23) Although the claim was not sufficiently substantiated by the submission of new information, the issue was further examined, since the exporting producer claimed that differences in reactivity, alleged to be a characteristic present in all grades of the barium carbonate, should not have been assessed only in respect of the most reactive grades sold by the Community industry, as was done at the provisional stage.

(24) Since reactivity is a property of barium carbonate which is not shown as such on the producers' production specification sheets, but can be inferred on the basis of the particle size and density of the 'product concerned', it is normal practice in the different end-use sectors to carry out control tests upon the delivery of the product to verify its properties. The fact that end-users in a sector such as the bricks and tiles industry, where reactivity is crucial, increase the quantity of barium carbonate they would normally need for their production process when they are using the product imported from the PRC, as opposed to that sourced from the Community industry, indicates that end-users attribute higher reactivity to the barium carbonate produced by the Community industry. Moreover, a further analysis of the products sold in the Community market has shown that, in addition to the most reactive grades which represent less than 5 % of its sales in the EC, as referred to in recital 80 of the provisional Regulation, the Community industry in fact sold additional grades with considerably high reactivity, which accounted for about a further 20 % of its total sales in the Community. The balance of the Community industry's sales are accounted for by sales of lower reactivity grades. It was therefore concluded that, under these circumstances and contrary to the contents of recital 80 of the provisional Regulation, an adjustment for differences in reactivity was warranted.

(25) For the purpose of analysing price undercutting, the selling price of the Community industry's grades of barium carbonate with high reactivity was reduced by 14 %. This adjustment was based on the price difference between higher and lower reactivity grades sold by the Community industry. The comparison showed that, during the IP, the product concerned originating in the PRC was sold in the Community at prices which undercut those of the Community industry by 20 to 26 %, when expressed as a percentage of the latter.

(26) Apart from the adjustments made as set out in recital 25 of this Regulation, and in the absence of any other comments, the contents of recitals 75 to 81 of the provisional Regulation concerning imports from the country concerned is confirmed.

3. **Situation of the Community industry and conclusion on injury**

(27) It was submitted by one cooperating exporter that the economic indicators analysed in recitals 84 to 94 of the provisional Regulation did not show material injury. However, no substantially new element or evidence was submitted which would necessitate a reassessment of such indicators and, consequently, a change in the conclusion reached at the provisional stage.

(28) This claim was reiterated after definitive disclosure, especially as regards the evolution of production, capacity utilisation, market share, stocks and employment. As already explained in recitals 84 to 88 of the provisional Regulation, these indicators clearly showed a negative evolution, which contributed to deteriorate the situation of the Community industry. Thus, the claim was rejected.

(29) Therefore, the contents of recitals 82 to 97 of the provisional Regulation concerning the situation of the Community industry and the conclusion on injury is hereby confirmed.

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F. CAUSALITY

1. Effect of the dumped imports

(30) In the absence of any substantially new information or argument, the contents of recital 100 of the provisional Regulation are hereby confirmed.

2. Effect of other factors

(31) One cooperating exporter reiterated that injury could have also been caused by imports from other third countries which increased significantly before the IP, including imports from India and Brazil, in particular. As regards India, it cannot be considered a relevant source of supply during the period of analysis 2000 to 2003, given the negligible quantities imported. As a matter of fact, the market share of Indian imports was below 1 % in the IP and practically non-existent before. As far as Brazil is concerned, imports were limited both in comparison to imports from the PRC and total imports during the whole period considered. Therefore, it is concluded that these imports did not break the causal link as set out in recital 103 of the provisional Regulation.

(32) One exporter and a number of importers and users claimed that the Community industry has enjoyed a dominant position in the Community market for barium carbonate and that this factor has allowed the industry to increase its prices in the Community. The exporter stressed the fact that the group, to which the sole Community producer belongs, had been investigated for abuse of dominant position in the past.

(33) First of all, it should be noted that during the period 2000 to 2003, the market share of the Community industry was, on average, around 10 percentage points higher than that of the Chinese exporting producers, whilst during the IP it was comparable to that of imports from the PRC. It cannot therefore be concluded that the Community industry has enjoyed a dominant position over the period considered, given the reduction of its market share against imports from the PRC and the equal market share of imports from the PRC in the IP. In any case, no evidence has been provided by any interested party to substantiate a possible abuse of dominant position of the Community industry as regards the 'like product'. Even in cases where a company is the sole producer in a given market, this fact alone cannot be taken as an indication that such producer has abused its market position by way of artificially increasing the prices on such market. Moreover, should the Community industry have indeed enjoyed a dominant position, let alone abused it, it would be difficult to understand how the Community industry's prices could have dropped by 7 % as indicated in recital 86 of the provisional Regulation, while the Chinese exporters have increased their market share so substantially. Furthermore, it cannot be inferred that the Community producer abused a possible dominant position merely on the basis of the existence of an investigation not covering the like product, or investigations in the past in respect of some company of the group to which it belongs. Therefore, the claim is rejected.

(34) As regards the information contained in recitals 110 and 111 of the provisional Regulation, several users and importers claimed that the imposition of definitive measures would penalise the bricks and tiles manufacturers, which prefer to use the water suspended barium carbonate (slurry) made out of the barium carbonate imported from the PRC, rather than using the barium carbonate in powder form, supplied by the Community industry. These parties alleged that the Community industry does not sell slurry and refuses to supply barium carbonate powder to importers producing the slurry. Contrary to this claim, it has been confirmed that the Community industry supplies barium carbonate to at least one importer producing slurry out of it. Therefore, there is indeed an alternative source of supply of slurry produced out of the Community industry's barium carbonate. Furthermore,

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as stated in recital 43 of this Regulation, the purpose of the imposition of anti-dumping measures is by no means to stop access to the Community market for products from the PRC, but rather to restore fair competition and to maintain alternative sources of supply in the Community.

(35) In view of the above and in the absence of any supporting evidence provided by the users and importers to substantiate their preference for the slurry or for the barium carbonate imported from the PRC to the competitive product offered by the Community industry, the claim is rejected.

3. **Conclusion on causation**

(36) Based on the above considerations and other elements contained in recitals 98 to 111 of the provisional Regulation, it is concluded that imports from the PRC have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

G. **COMMUNITY INTEREST**

(37) Two associations representing end-users, some importers and end-users themselves, reiterated their main concern that the imposition of any measures would reduce the overall competition on the Community market for this particular product and therefore inevitably lead to an increase in prices, which would reduce their level of competitiveness. These parties did not provide any additional evidence to substantiate their claim.

(38) In addition, 20 users which had not made themselves known to the Commission before the imposition of the provisional measures, petitioned against the imposition of definitive anti-dumping duties. These parties were given the opportunity to substantiate their claims, but failed to do so. Nevertheless, their arguments were further examined through verification of the data already submitted before the imposition of provisional measures by one cooperating importer and two cooperating users.

(39) Indeed, following the additional verification, visits to a company operating in the ceramics (frits) industry and another one operating in the bricks and tiles industry (the two companies representing together over 20 % of the imports of barium carbonate from the PRC as reported by cooperating users), it is confirmed, as mentioned in recital 127 of the provisional Regulation, that the share of barium carbonate in the total cost of production of users is, on average, below 8 %.

(40) In line with the findings in recital 128 of the provisional Regulation, it was therefore concluded that, given the level of the measures, and the existence of alternative sources of supply from exporters not subject to duties, the impact of any increase in the price of the ‘like product’ for users appears to be minimal.

(41) Further to definitive disclosure, two associations of users and one exporting producer claimed that the possible impact of the definitive measures on users would be higher than mentioned in recitals 39 and 40 of this Regulation. In this respect, it should be noted that the findings therein are based on verified data of cooperating users. The said claims referred to information on companies which did not cooperate in the investigation and could not be verified. The claim was therefore rejected.

(42) The exporting producer mentioned above claimed that only a limited number of users, not representative of the whole market, had served as the basis for the findings. In this respect, it should be noted that the users verified at both provisional and definitive stage represent over 90 % of the imports of barium carbonate from the PRC made by cooperating users during the IP. Therefore, the validity of the findings is considered appropriate and the claim is rejected.

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(43) It is further recalled that the purpose of any anti-dumping measure is by no means to stop access to the Community market for products from the PRC, but rather to restore a level playing field that had been distorted by unfair trade practices. Thus, measures would enable the continuation of activity of the sole Community producer, and would promote overall competition in the Community market.

(44) In the absence of any substantially new information or argument in this particular respect, the contents of recitals 114 to 132 of the provisional Regulation is hereby confirmed.

H. INJURY ELIMINATION LEVEL

(45) Further to the disclosure of provisional findings, an exporter claimed that the profit level of 7,2 % deemed to represent the profit that could be achieved by the Community industry in the absence of injurious dumping from the PRC, is not realistic, since, due to the alleged dominant position of the sole Community producer, its profitability in the past was artificially high.

(46) As already mentioned in recital 33 of this Regulation, the fact that, during a certain period of time, there is only one Community producer, does not imply that this producer has a dominant position in the market and abuses this situation, for example, by making use of its position in order to obtain abnormally high profit margins from its activity. As explained in recital 135 of the provisional Regulation, the profit margin of 7,2 % was calculated as the weighted average profit margin of the 'like product' during the years 1996 to 1998. Account was taken of the Community industry's profit levels when it was not suffering from injurious dumping, that is to say, before the period of analysis for the assessment of injury. As the exporter in question has not provided any evidence showing that the said profit is to be considered as abnormally high, the claim is rejected and the contents of recital 135 as regards the calculation of the injury margin is hereby confirmed.

I. DEFINITIVE MEASURES

(47) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping duties should be imposed on imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the 'lesser duty' rule. In this case, the individual duty rates, as well as the country-wide duty, should accordingly be set at the level of the dumping margins found.

On the basis of the above, the definitive duties are as follows:

Hubei Jingshan Chutian Barium Salt Corp. Ltd	3,4 %
►C1 Zaozhuang Yongli Chemical Co. Ltd. ◄	4,6 %
All others	31,7 %

(48) Regarding the form of the measures, no comments were received and therefore the imposition of the duty in the form of a specific amount per tonne, as contained in recital 138 of the provisional Regulation, is confirmed.

J. UNDERTAKINGS

(49) Following the disclosure of the definitive findings, two exporting producers expressed an interest in offering a price undertaking. However, for one which was not granted either MET or IT, it is the Commission's practice not to accept undertakings in such a case, since no individual determination of dumping can be estab-

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lished. On this basis, the offer could not be taken into consideration. The other exporting producer which received market economy treatment, withdrew its offer subsequently.

K. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(50) In view of the magnitude of the dumping margins found for the exporting producers in the PRC and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed. As definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released.

(51) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all others') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in Article 1 of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all others'.

(52) Any claim requesting the application of these individual company anti-dumping duty rates (for instance, following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic sales and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, this Regulation will accordingly be amended by updating the list of companies benefiting from individual duties.

(53) The 'product concerned' is fungible, as explained above, and not branded. The variance of the individual duty rates is significant and there are a number of exporting producers. All these elements may facilitate attempts to re-channel the export flows through the traditional exporters benefiting from the lowest duty rates.

(54) Consequently, should the exports by one of the companies benefiting from lower individual duty rates increase by more than 30 % in volume, the individual measures concerned might be considered as being likely to be insufficient to counteract the injurious dumping found. Consequently, and provided that the requisite elements are met, an investigation may be initiated in order to correct appropriately the measures in their form or level,

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of barium carbonate with a strontium content of more than 0,07 % by weight and a sulphur content of more than 0,0015 % by weight, whether in powder, pressed granular or calcined granular form, falling within CN code ex 2836 60 00 (TARIC code 2836 60 00 10), originating in the People's Republic of China.

2. The amount of the definitive anti-dumping duty shall be equal to a fixed amount as specified below for products produced by the following manufacturers:

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Country	Manufacturer	Rate of duty (EUR/t)	TARIC additional code
People's Republic of China	Hubei Jingshan Chutian Barium Salt Corp. Ltd, 62, Qinglong Road, Songhe Town, Jingshan County, Hubei Province, PRC	6,3	A606
	►**C1** Zaozhuang Yongli Chemical Co. Ltd. ◄, South Zhuzibukuang Qichun, Zaozhuang City Center District, Shangdong Province, PRC	8,1	A607
	All other companies	56,4	A999

3. In cases where the goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Customs Community Code ([1]), the amount of the anti-dumping duty, calculated on the basis of the fixed amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 145/2005 on imports of barium carbonate falling within CN code ex 2836 60 00 and originating in the People's Republic of China, shall be definitively collected in accordance with the following rules:

(a) the amounts secured in excess of the amount of the definitive anti-dumping duties shall be released;

(b) where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

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

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5).