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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1531/88

of 31 May 1988

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community, [1] as amended by Regulation (EEC) No 1761/87 [2], and in particular Article 12 thereof,

Having regard to the proposal from the Commission, submitted after consultation within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

A. Previous procedure

(1) Following a complaint lodged by the European Council of Chemical Manufacturers' Federations (ECCMF) on behalf of a Community producer whose output represents the entire Community production of potassium permanganate, the Commission published a notice in the *Official Journal of the European Communities* [3] announcing the initiation of an anti-dumping proceeding concerning imports into the Community of potassium permanganate falling within Common Customs Tariff subheading ex 28.47 C and corresponding from 1 January 1988 to CN code ex 2841 60 00, originating in Czechoslovakia, the German Democratic Republic or the People's Republic of China, and opened an investigation.

(2) Following the investigation, which established the existence of dumping and injury [4], the Chinese exporter — China National Chemicals Import and Export Corporation (Sinochem) — and the exporters from Czechoslovakia and the German Democratic Republic offered price undertakings.

(3) Under the terms of the undertaking by the Chinese exporter, the abovementioned firm undertook to increase its export price by an amount considered sufficient to eliminate the injury caused by dumping. This undertaking was accepted by the Commission [5]. By Regulation (EEC) No 3661/86 [6], the Council had imposed a definitive anti-dumping duty on imports of the product not exported by Sinochem.

B. Breach of the undertaking and reopening of the proceeding

(4) The Commission, having received a complaint from the Community producer alleging that potassium permanganate produced and/or exported by Sinochem was again being imported into the Community market at very low prices, which indicated that the price undertaking was being breached and resulted in material injury to the Community producer, withdrew its acceptance of the abovementioned undertaking by the Chinese exporter, reimposed a provisional anti-dumping duty by Regulation (EEC) No 360/88 [7] and decided [8] to reopen the anti-dumping proceeding concerning imports of potassium permanganate originating in the People's Republic of China.

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No C 63, 18. 3. 1986, p. 5.
[4] Commission Regulation (EEC) No 2495/86, (OJ No L 217, 5. 8. 1986, p. 12).
[5] Decision 86/589/EEC, (OJ No L 339, 2. 12. 1986, p. 32).
[6] OJ No L 339, 2. 12. 1986, p. 1.
[7] OJ No L 35, 9. 2. 1988, p. 13.
[8] OJ No C 37, 9. 2. 1988, p. 3.

C. Investigation

(5) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country and the Community producer of the reopening of the proceeding.

The Commission gave the parties directly concerned the opportunity to answer the questionnaires addressed to them, to make known their views in writing and to request a hearing.

(6) The Community producer and two importers returned the duly completed questionnaire to the Commission and made known their views in writing. Two importers answered that they no longer marketed the product in question.

(7) The Chinese exporter did not reply to the questionnaire, although the Commission repeated in writing its request for it to be returned, duly completed, within the period laid down. However, the exporter proposed to the Commission that the previous undertaking which had been breached and acceptance of which had been withdrawn by Commission Regulation (EEC) No 360/88, should be adapted.

Therefore, as regards parties which did not reply to the questionnaire or make their views known in any other way, findings ware made on the basis of the available facts (Article 7 (7) (b) of Regulation (EEC) No 2176/84), in this case the invoices presented by the national customs authorities or obtained from the Community producers and/or importers and official national and Community statistics.

(8) The Commission collected and verified all the information it deemed necessary and carried out investigations at the premises of the Community producer — Asturquímica SA, Oviedo, Spain — and at the Carus Chemical Company, La Salle, Illinois, USA, which had been chosen for reference purposes in calculating normal value.

The Commission requested detailed written comments from the Community producer, the Chinese exporters and the importers known to be concerned, and verified the information thus obtained as it considered necessary.

(9) The Commission's investigation covered the calendar year 1987.

D. Dumping

(10) In establishing the existence of dumped imports from the People's Republic of China, the Commission had to take account of the fact that China is not a market economy country and therefore had to base its calculations on the normal value of the product in a market economy country. Since for the previous proceeding the United States had been chosen as reference country, the Commission, in agreement with the Community industry, considered that the basis for comparison should once again be the selling price of the product on the United States market. The Chinese exporter did not oppose this choice.

(11) The Commission verified that there is no quality difference between the product manufactured in the United States and that produced by the exporting country concerned; there are no price controls in the United States and there is sufficient competition as a result of substantial imports from third countries; in addition, it was verified that the US manufacturer's prices allow a reasonable and not excessive profit margin.

(12) As a result, normal value was calculated on the basis of the prices charged on the United States domestic market, as determined by the Commission.

(13) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

(14) In comparing normal value with export prices the Commission took account, where circumstances permitted and where there was sufficient evidence, of differences affecting price comparability, in particular differences in delivery and payment terms. All comparisons were made at ex-works level.

(15) This comparison shows the existence of dumped exports to the Community during the reference period. The dumping margin, calculated cif at Community frontier, before duty, varies according to the importing Member State, and has a weighted average of 30 %.

E. Injury

(16) The evidence available to the Commission shows that imports into the Community of potassium permanganate originating in the People's Republic of China rose from 1 550 tonnes in 1986 to 1 850 tonnes in 1987, increasing the exporting country's share of the Community market from 43 % to 47 % over the same period. These imports were concentrated in particular on the markets of the Federal Republic of Germany, France and the Benelux countries, which alone account for almost 75 % of the volume of imports from China.

(17) The Commission studied the selling prices in the Community of potassium permanganate imported from the People's Republic of China, and established that their weighted average was 20 % lower than that of the Community industry during the period covered by the investigation, and was insufficient to allow the Community producer to make a reasonable profit. It should be added that Chinese exports are all the more likely to go to the Community since they are subject to an anti-dumping duty of almost 40 % on import into the United States.

(18) The investigation did indeed show an increase in the volume of sales by the Spanish producer on the Community market from 1986 to 1987. However, this increase is only relative, since from 1985 to 1986 the same producer had lost a considerable part of its market share in the Community. Thus, compared with 1985, the Community producer's market share increased only moderately in 1987. In addition, the increase in its sales resulted solely from a considerable reduction in the stocks which the Spanish Producer had been forced to build up previously as a result of dumped imports into the Community. The Community producer, disinclined to maintain such a high level of stocks, which attract substantial storage costs, and forced to defend its market share in order to maintain the undertaking's efficiency, was obliged by the imports of potassium parmanganate into the Community at very low prices to sell its stocks on the Community market at prices lower than those needed to provide a reasonable profit. The defence of the Community producer's market share therefore involved considerable financial sacrifice.

(19) As stock had to be disposed of, the slight rise in the Spanish producer's market share did not affect the level of Community production, which continued to fall (from 1 760 tonnes in 1986 to 1 360 tonnes in 1987), leading to lower capacity utilization (static at about 35 % in 1987) and a total halt to production for several months in 1987.

(20) The investigation also showed that the Community producer made substantial investments in 1983, 1985 and 1987 to modernize its plant, which is now considered one of the most efficient worldwide. This investment has not brought financial results due to the increase in overheads following the continual drop in production.

(21) The combined effects of lower selling prices, lower production and resultant higher costs have continued to place the Community producer in a precarious financial position.

(22) The Commission investigated whether the injury had been caused by other factors such as changes in demand, a fall in Community exports or an increase in imports from other non-member countries.

Demand rose substantially from 1986 to 1987; however, this allowed the Community industry to dispose of no more than about 500 tonnes of the considerable stocks which it had accumulated over the previous two years, without halting the decline in its production.

Following the decline in the value of the US dollar exports by the Community manufacturer to third-country markets, and in particular to the United States, fall by about 500 tonnes and also led to foreign exchange losses. In determining the injury caused by Chinese exports, no allowance was made either for the financial losses suffered by the Community manufacturer as a result of the fall of the dollar or for the Community producer's loss of market share.

Apart from the potassium permanganate originating in the People's Republic of China, the Community imports the product from other non-member countries, in particular Czechoslovakia, the German Democratic Republic and the United States of America. Market penetration by potassium permanganate originating in China, which alone made up 63 % of imports into the Community in 1987, has been principally at the expense of other third-country manufacturers, whose overall share of the Community market fell from 38 % in 1986 to 26 % in 1987. Not only is the volume of Community imports from other third-country producers still far below that of imports originating in China but, in general, the prices for these imports are far higher than those for the Chinese product.

Although one or other of the above factors may have had some effect on the Community industry, they explain only a minor part of the injury to it. The dumped imports, taken in isolation, therefore constitute the main cause of the material injury suffered by the Community industry concerned.

F. Community interest

(23) In view of the serious difficulties facing the Community industry directly concerned, failure to adopt measures to eliminate the injurious effects of the dumping would put the industry's survival in doubt, with all the resulting adverse effects on employment in the regions concerned. In addition, the measures envisaged would have a negligible effect on prices for users of potassium permanganate. The conclusion is therefore unavoidable that it is in the Community's interest that action should be taken to eliminate the injury caused to the manufacturer concerned, and this action should take the form of a definitive anti-dumping duty. Given the breach of the previous undertaking, a renewal of the undertaking would not afford the Community producer sufficient protection.

G. Rate of duty

(24) To eliminate this injury, it is considered necessary to impose a variable duty based on a minimum price which, while remaining substantially below the dumping margin, corresponds to the minimum price needed to guarantee the Community producer an adequate profit on its sales. Since the previous undertaking was breached, it is also considered necessary to introduce, in addition to the variable duty, an *ad valorem* duty of 20 % based on price undercutting in order to ensure the effectiveness of the anti-dumping measures and prevent any evasion. The duty imposed shall therefore be the higher of these two alternatives, with a minimum rate of 20 % of that price.

For the same reason, it is also considered necessary to collect definitively the amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 360/88.

Accordingly, the amount of the definitive duty shall be either the amount by which the free-at-Community-frontier price per kilogram net, before duty, paid by the first importer in the Community is less than 2,25 ECU or 20 % of that price, whichever is higher.

HAS ADOPTED THIS REGULATION :

Article 1

The duty imposed by Regulation (EEC) No 3661/86 is hereby revoked.

Article 2

1. A definitive anti-dumping duty is hereby imposed on imports of potassium permanganate falling within CN code ex 2841 60 00, originating in the People's Republic of China.

2. The amount of the duty shall be equal to either the amount by which the free-at-Community-frontier price per kilogram net, before duty, is less than 2,25 ECU or 20 % of that price per kilogram net, free-at-Community-frontier, before duty, whichever is higher.

3. The provisions in force concerning customs duties shall apply.

Article 3

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 360/88 shall be definitively collected.

Article 4

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, 31 May 1988.

For the Council

The President

H. KLEIN