

COUNCIL REGULATION (EEC) No 2200/90

of 27 July 1990

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 12 thereof,

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

Whereas :

A. Provisional Measures

- (1) The Commission, by Regulation (EEC) No 720/90⁽²⁾ imposed a provisional anti-dumping duty on imports into the Community of silicon metal falling within CN code 2804 69 00 and originating in the People's Republic of China.

B. Subsequent Procedure

- (2) Following the imposition of the provisional anti-dumping duty, the representatives of the complainants, as well as representatives of the British and German user industry and one of the British importers, requested, and were granted, an opportunity to be heard by the Commission. They also made written submissions making known their views on the provisional findings.

C. Dumping

- (3) For the purpose of definitive findings, normal value was established on the basis of the same method as that used for the provisional determination of dumping. This method has been criticized by one of the importers as not being justified, given the fact that the production conditions in the Community and the People's Republic of China are not comparable. However, in the case of imports from non-market economy countries, Article 2 (5) of Regulation (EEC) No 2423/88 provides that normal value shall be determined in an appropriate and not unreasonable manner, whenever possible, on the basis of prices or costs of manufacturers in a

market economy third country. For this purpose the Commission contacted producers in four different countries, as described in the 10th recital of Regulation (EEC) No 720/90.

- (4) The Council confirms that, in the absence of satisfactory cooperation from these companies, there is no other possibility but to establish normal value on the basis of the price payable in the Community for the like product, duly adjusted to include a reasonable profit margin in accordance with Article 2 (5) (c) of Regulation (EEC) No 2423/88. However adjustments have been made when comparing normal value and export price as set out under recitals (5) and (6) below.

D. Export Price

- (5) Since the Commission had no other findings, the export prices have been definitively established in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88 on the basis of the information available, i.e. the import prices published by Eurostat.
- (6) The Commission found that this information was very similar to the information supplied by the exporters which had given partial replies to the Commission's questionnaire.
- (7) The Council confirms the Commission's findings and conclusions set out in the 11th and 12th recitals of Commission Regulation (EEC) No 720/90.

E. Comparison

- (8) One of the importers and a major part of the user industry alleged that the Commission, in comparing normal value, had not sufficiently taken into account the differences affecting the comparability of prices and, in particular, differences in the physical characteristics of the products and in the costs of transport from China to the Community.
- (9) However, the Commission, in comparing normal value with export prices, had adjusted the export price by the costs incurred by the importer as a result of checks on differences in volume and quality. Allowance was also made for differences in packaging and for the transport costs from China to the Community, as referred to in the thirteenth recital of Regulation (EEC) No 720/90.

The Council confirms the Commission's conclusions.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 80, 27. 3. 1990, p. 9.

F. Dumping margins

- (10) The Commission found the existence of dumping, the weighted average dumping margin expressed as a percentage of the total cif value of imports of the product concerned for the investigation period being 38,73 %.

The Council confirms the findings in the 16th recital of Regulation (EEC) No 720/90.

G. Injury

- (11) The Commission concluded, in its provisional findings, that the Community producers of silicon metal had suffered material injury. It based these findings principally on the Chinese exporters' rapid increase in the volume of exports and in market share, the price undercutting practised by these exporters in the Community market and the fact that the Community industry, by offering silicon metal at prices competitive with the dumped imports, had to sell their material at prices equal to, or below, cost of production.
- (12) The Community producers submitted evidence to the Commission showing that, since the beginning of 1989, the export prices of the Chinese producers/exporters had further decreased by approximately 10 %. However, it is considered inappropriate in the present case, in conformity with standard practice, to take account of facts which have occurred after the investigation period.
- (13) The user industry and one of the importers maintained that the data presented in Regulation (EEC) No 720/90 showed only the existence of a normal, competitive situation and that the negative evolution of the Community industry was simply due to a lack of cost efficiency. However, these allegations were not supported by any evidence. The Council confirms the findings of the Commission as set out in recitals (18) to (27) of Regulation (EEC) No 720/90.

H. Causation of injury

- (14) In recitals (28) and (31) of Regulation (EEC) No 720/90 the Commission found that the growth in imports from China coincided with the loss of market share by the Community producers and a loss of profitability.
- (15) One of the importers challenged the causal link between the imports of the Chinese material and the injury suffered by the Community industry by alleging that cheap imports from other third coun-

tries had taken place during the period of investigation.

- (16) This argument has already been raised during the preliminary investigation. The Commission has dealt with this question in the 30th recital of Regulation (EEC) No 720/90 and stresses once more that prices for imports from other non-member countries were remarkably higher than the prices for the Chinese material during the period of investigation.

- (17) The Council confirms the Commission's findings and conclusions in recitals (28) to (31) of Regulation (EEC) No 720/90 that the imports under consideration taken in isolation have caused material injury.

I. Community interest

- (18) Part of the user industry of the imported product claimed that the Commission had not sufficiently taken into account the interests of the user industry to have the possibility of buying low-priced material from outside the EEC. The industry representatives further claimed that were a definitive duty to be imposed, the final product of their major clients, the automobile industry, would experience a substantial price increase.
- (19) However, the possible impact of the definitive duty on the costs of the finished products, in which silicon metal is included, was acknowledged by the user industry to be below one per cent. The Commission therefore considers, as already stated in the 33rd and 34th recitals of Regulation (EEC) No 720/90, that the Community's interest that fair competition be re-established on the Community market and the Community producers' interest in the continuation of their own production and in fair prices outweighed the interests of the user industry to take advantage of the unfair practices.
- (20) In addition it was alleged that, after the imposition of a definitive duty, imports from other third countries would take over the market share of the Chinese material rather than removing the injury suffered by the Community industry.
- (21) As regards the possible replacement of Chinese imports by imports from other third countries, the Commission considers that imports at fair prices from other third countries are not against the interest of the Community and therefore cannot be an argument against measures to be taken against imports of dumped products.
- (22) The Council confirms these conclusions.

J. Duty

- (23) Provisional measures took the form of an *ad valorem* anti-dumping duty, the amount of which was calculated at a level which would increase the prices of the imported product to a theoretical selling price allowing the Community industry to realize a profit margin of 6,5 %, which was considered to be a minimum profit margin in order to guarantee a producer a reasonable return on investment.
- (24) In order to remedy the continuous price decrease of the Chinese imports, the Commission considers it more appropriate to impose a definitive anti-dumping duty in the form of a specific duty rather than an *ad valorem* duty. In taking account of the considerations given in the 36th and 37th recitals of Regulation (EEC) No 720/90, it is considered that the amount of the definitive duty should be calculated on the basis of the provisional duty of 18,7 % on the weighted average cif price of the Chinese material during the investigation period and amounts to ECU 198 per tonne.

The Council confirms this conclusion.

K. Collection of provisional duties

- (25) In view of the dumping margins established and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts collected by way of provisional anti-

dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of silicon metal falling within CN code 2804 69 00 originating in the People's Republic of China.
2. The duty shall be ECU 198 per tonne of the imported product.
3. The provisions in force concerning customs duties shall apply.

Article 2

The amounts collected or secured by way of provisional anti-dumping duty under Regulation (EEC) No 720/90 shall be collected at the rates of duty definitively imposed where the definitive rate of duty is lower than the provisional antidumping and at the rates of provisional duty in all other cases. Secured amounts which are not covered by the rates of duty definitively imposed shall be released.

Article 3

This Regulation shall enter into force on the day 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, 27 July 1990.

For the Council

The President

E. RUBBI