

## COMMISSION REGULATION (EEC) No 761/90

of 26 March 1990

imposing a provisional anti-dumping duty on imports of tungsten ores and concentrates originating in the People's Republic of China, and terminating the proceeding concerning imports originating in Hong Kong

THE COMMISSION 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<sup>(1)</sup>, and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for in the above Regulation,

Whereas :

## A. PROCEDURE

- (1) In July 1988, the Commission received a complaint lodged by the Comité de liaison des industries de métaux non ferreux de la Communauté européenne on behalf of Beralt Tin & Wolfram, a company representing the entire Community production of tungsten ores and concentrates. The complaint contained evidence of dumping and of resulting material injury, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*<sup>(2)</sup>, the initiation of an anti-dumping proceeding concerning imports into the Community of tungsten ores and concentrates, falling within CN code 2611 00 00, originating in the People's Republic of China and exported from this country or from Hong Kong, and commenced an investigation.
- (2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainant. It sent questionnaires to the parties directly concerned and also gave them the opportunity to make known their views in writing and to request a hearing.
- (3) The Community producer and two independent importers (who also process the product in question) returned the questionnaire duly completed to the Commission. Neither of the two known Chinese exporting organizations, the China

National Non-Ferrous Metals Import & Export Corporation (CNIEC), and the China National Metals and Minerals Import & Export Corporation (Minmetals) replied to the Commission's questionnaires. Consequently findings with regard to CNIEC, Minmetals, and other parties which failed to reply to the questionnaire, were made on the basis of the facts available (Article 7 (7) (b) of Regulation (EEC) No 2423/88), in this case, invoices obtained from importers, official Community import statistics, and statistics from the complaint.

- (4) The Community producer and one importer (who also processes the product) also made known their views in writing. Minmetals requested and was granted a hearing.
- (5) The Commission verified the information received to the extent it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following companies :
  - (a) *Community producer*  
Beralt Tin & Wolfram Ltd, London, United Kingdom ;
  - (b) *Community importer/processor*  
Hermann C. Starck Berlin GmbH & Co. KG, Düsseldorf, Germany ;
  - (c) *producer in reference country*  
North Broken Hill Peko Ltd, King Island, Australia.
- (6) The investigation of dumping covered the period from 1 January to 31 December 1988.
- (7) The investigation has exceeded the normal time period of one year because of the time spent in consultation within the Advisory Committee.

## B. DESCRIPTION OF THE PRODUCT

- (8) There are two main naturally occurring ores of tungsten — wolframite, based on iron and manganese, and scheelite, based on lime. Various methods of concentration are used, dependent on the particular mineral ore deposit, e.g., flotation, gravity, chemical, magnetic separation, etc., to produce a concentrate usually containing between 65 to 75 % tungsten oxide (WO<sub>3</sub>). The tungsten concentrate is used as the first stage of various manufacturing processes to the final end uses of tungsten metal.

<sup>(1)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(2)</sup> OJ No C 2, 4. 1. 1989, p. 5.

With respect to the physical and technical characteristics, the uses and the markets for these products, the Commission has concluded that the Chinese imports are like products to those produced in the Community, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

### C. EXPORTS FROM HONG KONG

- (9) The complaint had alleged that export of tungsten ores and concentrates were being made from Hong Kong. This allegation was supported by Community statistics, which showed that tungsten ores and concentrates had been imported from Hong Kong during the period 1984 to 1986. As there is no tungsten mine in Hong Kong, the Commission has to conclude that these imports were in reality of Chinese origin. Information available to the Commission, however, has indicated that, in the meantime, the Chinese authorities took appropriate steps to stop the practice of tungsten ores and concentrates originating in the People's Republic of China being exported as if they originated in Hong Kong. Whilst some exports continue to be physically shipped through Hong Kong, the Certificates of Origin indicate Chinese product and Community statistics show no imports from Hong Kong in 1987 and 1988. The Commission, therefore, considers that the allegation of exports originating from Hong Kong is not supported by the evidence available during the reference period.

### D. DUMPING

- (10) In order to establish whether the imports originating in the People's Republic of China were dumped, the Commission had to take account of the fact that this country does not have a market economy and the Commission therefore had to base its determination on the normal value in a market economy country. In this connection, the complainant had suggested the constructed value of the product at King Island, Australia.
- (11) One independent importer, who also processes the product in question, objected to this suggestion arguing that sales of tungsten concentrates are based on prices published in the *London Metal Bulletin*, a specialist non-ferrous metals publication, and these prices were generally accepted as a good guide to the price of tungsten concentrates on the free market and should be taken as a basis for determining normal value.

The Commission was unable to accept this proposal, in the case of exports from a country which does not have a market economy, normal value is to be determined on the basis of the market price or constructed value in a market economy third country, in accordance with the

provisions of Article 2 (5) of Regulation (EEC) No 2423/88. The Commission also had reason to believe the price quotations in the *London Metal Bulletin* did not cover production costs in market economy countries.

- (12) The same importer also objected to the suggested use of the Australian mine on the grounds that the mine in question produced concentrate from scheelite ore whereas the majority of Chinese exports to the Community, and the Community production, is based on concentrates from wolframite ore.

The Commission was also unable to accept this objection. Firstly, tungsten concentrate is traded on the basis of tungsten oxide (WO<sub>3</sub>) content, which is contained in both scheelite and wolframite. Secondly, whereas there are constantly fluctuating price differences between the concentrates from the two mineral ores, scheelite and wolframite concentrates are sufficiently chemically similar as to be interchangeable for the majority of end use applications and, as such, the prices of concentrates from scheelite and wolframite are closely related. Finally, the costs of mining and producing a concentrate are very similar between scheelite and wolframite as only a small proportion of the costs of mining and processing of these ores are dependent on the mineralogy.

- (13) Furthermore, the Commission on-the-spot investigation in Australia showed that the selling prices of the mine were less than the production costs since the mine was forced to sell, in order to continue its business operations, at prices which did not permit recovery of all production costs in 1988. As the mine in question can be considered as being one of the most efficient in market economy producing countries, the Commission therefore concluded that it would be appropriate and reasonable to determine normal value on the basis of the constructed value in Australia for the purposes of the preliminary determination.
- (14) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.
- (15) In comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting prices comparability, such as payment terms, transport and insurance costs. All comparisons were made at an ex-works level.
- (16) The preliminary examination of the facts shows that imports of tungsten ores and concentrates originating in the People's Republic of China were being dumped, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the

Community. The margins of dumping varied according to the exporter, and the weighted average margins, as a percentage of the cif price of the product at the Community frontier were as follows:

CNIEC	47,4 %
Minmetals	53,2 %.

- (17) For those exporters that did not make themselves known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this connection, the Commission considered that the results of its investigation provide the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty to hold that the dumping margin for these exporters was any lower than the highest dumping margin of 53,2 % determined above. For this reason it is considered appropriate to use this latter dumping margin for this group of exporters.

#### E. INJURY

##### (a) Volume and price of imports

- (18) With regard to the injury caused by the dumped imports, the Commission has established that imports into the Community from China of tungsten ores and concentrates, after falling from 2 268 tonnes tungsten content in 1984 to 477 tonnes tungsten content in 1986, have subsequently increased to 1 414 tonnes tungsten content in 1988. In terms of market share, these imports fell from 37 % in 1984 to 13 % in 1986 and have now risen to reach 47 % in 1988.
- (19) An examination of the development of prices in 1984 to 1986 showed a sharp decline in prices in the Community market. China is the major world supplier of tungsten and thus has a considerable influence on selling prices. The Commission considers that the price decreases can be largely attributed to the decentralization of export sales in China, where numerous organizations and agencies at national and provincial level began to market tungsten concentrates to earn foreign currency and this strong internal price competition between suppliers in China led to a resultant sharp prices fall in the tungsten market. The prices of the Chinese product during this period were well below the level required to cover the costs of Community producers and several Community mines were forced to discontinue production. Whilst actions taken by the Chinese authorities towards the end of 1986 to make sales on a more centralized basis through CNIEC and Minmetals has caused some price recovery in the Community

marketplace, the prices of the Chinese imports in 1987 and 1988 were still well below the level required by the sole remaining Community producer to cover its costs and provide a reasonable profit.

##### (b) Impact on the Community industry

- (20) The Commission examined whether the dumped imports had affected production, capacity utilization and market share of the sole Community producer and found that, for these factors, the situation had improved from 1984 to 1986, before declining so that, in 1988, production, capacity utilization, and market share were virtually identical to the 1984 levels. The Commission, however, found that the impact of the dumped imports had depressed the levels of prices on the Community market, where the Community producer was forced to align its prices to those of the Chinese exporters. As a result, to maintain its market share, the Community producer had suffered substantial financial losses during the period 1986 to 1988 and had been forced to reduce the level of employment by over 40 % or some 500 employees. These heavy financial losses were also incurred despite the fact that the ore at the Community producer is a high grade deposit and that unit costs of production have been reduced by over 25 % from 1984 to 1988.

##### (c) Causality

- (21) Given the development of the volume of the dumped imports and the relationship between the prices of the dumped imports and those of the Community industry (recital 19), the Commission has concluded that the injury suffered by the Community industry, principally its heavy financial losses, was caused by the effect of dumped imports, originating in the People's Republic of China, into the Community.
- (22) The Commission examined whether other factors might have been responsible for the injury to the Community industry.

Consumption in the Community of tungsten ores and concentrates has in fact substantially fallen during the period 1984 to 1988, in which injury was examined, due to substitution effects of other tungsten source products and reduced demand for certain end uses. The reduction in consumption has caused both a fall in the level of sales of the Community producer and a fall in the level of Chinese imports from 1984 to 1988. The Community producer, however, had maintained its market share in 1988 compared to that in 1984, whilst the Chinese imports had increased their relative share of the Community market from 37 % to 47 % during the same period.

The Commission also examined the impact of imports originating in other third countries. It found that imports from these countries had steadily decreased during the period 1984 to 1988, from 2 428 tonnes tungsten content to 514 tonnes tungsten content, representing a fall in market share from 40 % to 17 %. The prices at which these other imports have been sold were in line with those of the Chinese imports, as other suppliers have aligned their prices to those of the Chinese in view of the dominant role of the Chinese exporters in determining prices.

Although these factors may have had some effect on the Community industry, the Commission considers that their impact could only explain a minor part of the injury suffered by the Community industry.

#### (d) Conclusion

- (23) In these circumstances, the Commission has concluded that the volume of Chinese dumped imports, and the prices at which they are offered for sale in the Community, taken in isolation, have to be considered as causing material injury to the Community industry concerned.

### F. COMMUNITY INTEREST

#### (a) General considerations

- (24) The purpose of anti-dumping measures is to eliminate dumping which is causing injury to the Community industry and thus re-establish a situation of open and fair competition on the Community market which is fundamentally in the general Community interest.

While the Commission recognizes that the imposition of anti-dumping measures will affect price levels for the Chinese exporters concerned and consequently may have some influence on the relative competitiveness of their products, it does not expect competition amongst companies selling tungsten ores and concentrates on the Community market to be substantially reduced, as there are currently other alternative exporting countries, besides the sole Community producer, supplying the product in question to the Community. The only effect on competition on the Community market will be the removal of the unfair advantages gained by the dumping practices of the Chinese exporters.

- (25) The Commission has also considered the effects of anti-dumping measures on tungsten ores and concentrates imported from the People's Republic of China in relation to the specific interests of the Community industry and other interested parties including processors.

#### (b) Interests of Community industry

- (26) In 1985, there were 11 mines (two in France, two in Spain and seven in Portugal) producing tungsten

ores and concentrates in the Community and sales by these Community producers inside the Community represented 25 % of the market share in 1985 and 50 % of the market share in 1986. 10 of these mines have been closed down because of the impact of Chinese imports at depressed prices. Only one mine in Portugal continues in production and this mine continues to have losses despite significantly lowering its operating costs and reducing the level of employment by some 500 employees. The market share in the Community held by this one remaining producer was equal to 6,5 % in 1988, but this low market share is a result of the injury caused to the tungsten mining industry by Chinese imports over the last five years.

In the absence of any protection against the injurious effects of the Chinese dumped imports, the viability of the sole Community producer would be jeopardized and the Community would become entirely dependent on outside sources of tungsten concentrates.

- (27) An importer has claimed that it would be difficult for the sole Community producer to satisfy consumption in the Community in the event that supply from the People's Republic of China might decrease.

Evidence available to the Commission, however, shows that the Community industry has the ability to respond to an eventual increase in demand arising from the re-establishment of normal competitive conditions, and that the remaining Community mine has sufficient production capacity and could divert existing export sales to sales within the Community to replace the existing level of Chinese imports into the Community.

#### (c) Interests of other parties

- (28) An importer, who also processes the product in question, has argued that the imposition of anti-dumping measures on Chinese imports of ores and concentrates would increase the costs of the processing industry for tungsten intermediate products, mainly ammonium paratungstate, and that this will affect their competitive position compared to producers and exporters of tungsten intermediate products to the Community of third countries, who will continue to have access to Chinese ores and concentrates at low prices.

Whilst this might appear to be an attractive argument for the processing industry in the short term, it cannot justify the total elimination of the Community industry for the production of tungsten ores and concentrates, where the continued existence of the sole remaining producer is currently at stake. Community processors cannot also expect to continue to benefit from price advantages resulting from unfair competition

Furthermore, there is no guarantee for processors that they will continue to benefit from dumped prices as, in the event of the discontinuation of Community production, the position of the Chinese exporters concerned would become even more dominant with all its possible negative affects on the situation regarding the supply of tungsten ores and concentrate in the Community. The Commission considers that the limited disadvantages to processors of possible price increases are outweighed by the medium and long-term benefits of safeguarding the Community tungsten ore and concentrate industry against unfair trading practices and maintaining a Community source of supply to the tungsten processing industry.

- (29) Concerning other possible interested parties, for example, eventual end users of the processed products, mainly tungsten carbides and hard metals, the proposed measures for tungsten ores and concentrates are expected to have a limited increase on the purchase costs of the final processed product. The Commission also considers that the price advantages which these end users have previously enjoyed have originated from unfair trading practices and that there is no justification for allowing these unfair low prices to continue.

#### (d) Conclusions

- (30) Having considered the various arguments of interested parties and the general Community interest, and in view of the serious difficulties facing the Community industry with the economic and strategic importance of this activity, the Commission has come to the conclusion that it is in the Community's interest that action be taken. In order to prevent further injury being caused during the remainder of the proceeding, the action should take the form of provisional anti-dumping duties.

#### G. RATE OF DUTY

- (31) Having regard to the extent of the injury caused, the rate of such duty should be less than the dumping margins provisionally established but adequate to remove the injury caused. The rate of duty should enable the Community producer to cover its total costs of production and to provide it with a reasonable margin for profit. In view of the level of capital invested by the Community producer, the normal rate of return and the risk involved for mining projects, the Commission considered that a return of 15 % on sales was an appropriate and reasonable profit margin.
- (32) Production costs, plus this profit margin, were compared with free-at-Community-frontier export

prices and the difference between the two was taken as the level of injury to be removed. The Commission considered that, to ensure the effectiveness of the protective measures and to facilitate customs clearance, the provisional duty should take the form of an *ad valorem* duty.

#### H. TERMINATION

- (33) With regard to imports originating from Hong Kong, and taking into account the conclusion set out at 9 above, the Commission considered that it was appropriate to terminate the proceeding without adopting protective measures. The complainant was informed of the main facts and consideration on the basis of which the Commission intended to terminate the proceeding and raised no objections. This solution also met with no objection within the Advisory Committee.

#### I. TIME-LIMIT

- (34) Following the imposition of the provisional anti-dumping duty, a period should be fixed within which the interested parties may make their views known and apply to be heard orally by the Commission,

HAS ADOPTED THIS REGULATION :

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of tungsten ores and concentrates falling within CN code 2611 00 00 and originating in the People's Republic of China.

2. The rate of duty shall be 42,4 % of the net free-at-Community-frontier price, before duty (Taric additional code: 8433), with the exception of imports of the products specified in paragraph 1 which are sold for export to the Community by the following organization, the rate of duty applicable to which is set out below :

— China National Non-Ferrous Metals Import & Export Corporation (CNIEC) 37,0 %  
(Taric additional code : 8432).

3. The provisions in force with regard to customs duties shall apply.

4. The release for free circulation in the Community of the products originating in the People's Republic of China referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

*Article 2*

The proceeding is terminated with regard to imports of tungsten ores and concentrates falling within CN code 2611 00 00 and originating in Hong Kong.

*Article 3*

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make their views known in writing and request a hearing from the

Commission within one month from the entry into force of this Regulation.

*Article 4*

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*. Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

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

Done at Brussels, 26 March 1990.

*For the Commission*

Frans ANDRIESEN

*Vice-President*

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