

COMMISSION REGULATION (EEC) No 762/90

of 26 March 1990

imposing a provisional anti-dumping duty on imports of tungstic oxide and tungstic acid originating in the People's Republic of China

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⁽¹⁾ and in particular Article 11 thereof,

After consultation with the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

- (1) In July 1988 the Commission received a written complaint lodged by the EEC Liaison Committee for the Non-Ferrous Metal Industries on behalf of producers representing most of the Community production of tungstic oxide and tungstic acid.

The complaint contained evidence of dumping and consequent injury which was judged sufficient to justify the initiation of a proceeding.

In a notice published in the *Official Journal of the European Communities*⁽²⁾, the Commission accordingly announced the initiation of an anti-dumping proceeding concerning imports into the Community of tungstic oxide and tungstic acid falling within CN code 2825 90 40 and originating in the People's Republic of China.

- (2) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants.

It called on the parties concerned to reply to the questionnaires sent to them, and gave them the opportunity to make their views known in writing and request a hearing.

- (3) All the Community producers on whose behalf the complaint was lodged replied to the questionnaires, made their views known in writing and requested and were granted hearings by the Commission.

- (4) None of the three main Chinese export bodies, their 28 regional offices nor any of the eight Chinese producers to which the Commission sent the questionnaires returned them completed, even partially.

However, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, henceforward referred to as the 'China Chamber of Commerce', brought itself to the attention of the Commission and informed it that it intended to reply to the questionnaires on behalf of all the Chinese exporters and producers referred to above. On two occasions the China Chamber of Commerce requested and obtained from the Commission an extension of the deadline to prepare a reply to the questionnaires. However, in lieu of a specific reply to the questionnaires all that was received by the Commission was a general position paper.

The China Chamber of Commerce also requested and was granted a hearing, at which it put forward both general arguments and arguments relating to other intermediate tungsten products for which separate anti-dumping proceedings had been instituted.

None of the nine companies listed in the complaint as importers of tungstic oxide and tungstic acid originating in China replied to the questionnaires sent out by the Commission.

- (5) As a result, in the case of the parties which had neither replied nor given any other reaction, findings were made, in accordance with Article 7 (7) (b) of Regulation 2423/88, on the basis of the facts available here, the information provided by the complainant and the Community's official statistics.
- (6) Using as a source the parties which had agreed to cooperate with it, the Commission sought and verified all the information it deemed necessary for the purposes of making a preliminary determination of dumping and consequent injury. To these ends it carried out inspections at the premises of :

a. Community producers

- Hermann C. Stark Berlin GmbH & Co. KG, Düsseldorf and Goslar, Germany,
- Murex Ltd, Rainham, United Kingdom,
- Eurotungstène Poudres SA, Grenoble, France ;

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 322, 15. 12. 1988, p. 5.

b. *Reference country*

- Korea Tungsten Mining Co. Ltd (KTMC), Seoul and Taegu.

The Commission also sought information from the producer in the reference country suggested by the complainant, Wolfram Bergbau- und Hüttengesellschaft GmbH of Vienna, Austria.

- (7) The dumping investigation covered the period 1 January to 30 September 1988.

This proceeding overran the one-year period laid down in Article 7 (9) (a) of Regulation (EEC) No 2423/88 because of the duration of Advisory Committee consultations.

B. THE PRODUCT — COMMUNITY INDUSTRY

- (8) Tungstic oxide is a compound of tungsten and oxygen (WO_3), usually produced by heat treatment (calcination) of ammonium paratungstate.

Tungstic acid (or tungsten hydroxide) is a compound of tungsten, hydrogen and oxygen (H_2WO_4) produced either by precipitation from a sodium tungstate solution or by the decomposition of calcium tungstate. Tungstic acid is marketed either untreated or following thermal decomposition in the form of industrial-quality tungstic oxide.

These are intermediate products used to produce others in the tungsten chain.

- (9) They fall within the CN code indicated in the notice of initiation referred to earlier (2825 90 40). However, since the code covers all tungsten oxides and hydroxides, the Commission noted that tungstic oxide and tungstic acid should be considered as falling within CN code ex 2825 90 40. This change has not affected the course of the proceeding, since according to the Commission's information trade in the other tungsten oxides and hydroxides may be considered statistically negligible.
- (10) The products in question have very similar chemical characteristics:
- they are nearly alike in terms of tungsten content (approximately 99 % of WO_3 in the case of tungstic oxide and 93 % in that of tungstic acid),
 - their industrial uses after specific processing are very similar.

In the light of the above and the fact that during the reference period approximately 90 % of imports from China falling within CN code ex 2825 90 40 were of tungstic oxide, the Commission

considered that tungstic oxide and tungstic acid could be considered like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

Moreover, according to the information gathered by the Commission, the products exported by China and those manufactured by Community producers may be considered to be like products within the meaning of the abovementioned Article.

- (11) The Commission observed that during the reference period the Community producers on whose behalf the complaint had been lodged had accounted for the bulk — about 90 % — of Community production of tungstic oxide and tungstic acid.

The Commission therefore considered that the complainant Community producers constituted the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. NORMAL VALUE

- (12) In order to establish that imports of tungstic oxide and tungstic acid from China were being dumped, the Commission had to take account of the fact that China does not have a market economy and it accordingly based its calculations on the normal value of the products in a country with a market economy; to this end, the complainant suggested taking the constructed value calculated on the basis of the cost of production of tungstic oxide in Austria.
- (13) The representatives of the China Chamber of Commerce indicated their opposition to the complainant's suggestion, arguing that Austria's economic structure was different from that of China, but failing to suggest any other reference country.
- (14) The Korean producer of intermediate tungsten products, Korea Tungsten Mining Co. Ltd (KTMC), had agreed before and during on-the-spot enquiries in connection with other proceedings to cooperate with the Commission during this investigation.
- (15) The Commission verified the two production costs being considered (Austrian and Korean) and found that:
- both the South Korean exporter and the Austrian exporter were fully integrated producers, i.e. they owned their own mines and produced all the intermediate products of tungsten,

- the products exported by China and those of the Korean producer could be considered like products within the Meaning of Article 2 (12) of Regulation (EEC) No 2423/88,
- the calculations made it necessary to determine normal value for both Austria and Korea on the basis of a constructed value,
- the Korean producer's manufacturing process was efficient, modern and profitable,
- the cost of production in South Korea was more suitable for the purposes of determining normal value for China since the two countries' economies were less dissimilar; moreover, South Korea's standards for the product were comparable to those of China.

(16) Since KTMC did not sell any of the product concerned on its domestic or export markets during the investigation period, although it had manufactured the product as an intermediate stage in its production of tungsten metal powder, the Commission determined normal value on the basis of the constructed value, calculated by adding together the cost of production and a reasonable margin of profit.

The cost of production was obtained by adding all costs, both fixed and variable, of:

- materials (i.e. the cost of producing the tungsten concentrate or ore which KTMC extracts from its mine at Sang Dong),
- manufacture in the country of origin.

To these costs were added selling, administrative and other general expenses, calculated, in the absence of data on other producers or exporters in the country of origin, by reference to sales of tungsten metal powder by KTMC on its domestic market during the reference period.

The same reference was used for the profit margin, but it was considered reasonable to restrict this to 10 % in the light of the general profit level of the Korean producer and to take account of the very strong pressure on tungstic oxide and tungstic acid prices on the world market. In the Commission's view, the Korean market was subject to the same pressure and profits on the product in question would therefore be below those established for

tungsten metal sold by KTMC on its domestic market during the investigation period.

(17) The Commission accordingly concluded that it was appropriate and not unreasonable to determine the normal value of the Chinese tungstic oxide and tungstic acid on the basis of the South Korean producer's production costs.

D. EXPORT PRICE

(18) In the absence of a reply from the Chinese exporters and producers or Community importers, the export price was determined on the basis of the information available, namely the information on average prices published by Eurostat (cif at Community frontier).

E. COMPARISON

(19) In comparing normal value with export prices the Commission took account of differences affecting the comparability of prices.

The normal value had been calculated ex-works, while the export price obtained from the average prices published by Eurostat (cif at Community frontier) included costs incurred between the time at which the goods left the factories in China and their entry into the Community.

In this connection, given the lack of cooperation from the Chinese exporters and producers and from the Community importers, the necessary adjustments, relating particularly to shipping and insurance, handling and selling costs, were made on the basis of the information on Korea gathered during the investigations relating to ammonium paratungstate and tungsten metal powder.

(20) Comparisons were made at the ex-works stage, globally for the whole of the reference period.

F. DUMPING MARGINS

(21) The preliminary examination of the facts showed that exporters in China were dumping their products, the dumping margin being equal to the difference between the established normal value and the export price to the Community.

(22) On the basis of the cif Community frontier price the dumping margin for tungstic oxide and tungstic acid originating in China was 85,84 %.

G. INJURY

1. Volume and market share

a. People's Republic of China

- (23) According to the figures published by Eurostat, which are the best available for China, imports from China have risen substantially, from six tonnes in 1984 to 95 tonnes in 1987, and 216 tonnes during the reference period.
- (24) The Commission considered that the share of the Community market held by imports from China of the products concerned should be assessed on the basis of total quantities traded in the Community (i.e. the Community producers' sales plus total imports originating in non-Community countries).

On this basis it appeared that the Chinese exporters' market share had risen substantially, from 5 % in 1984 to 79 % during the reference period.

b. Other third country suppliers

- (25) Imports originating in other non-Community countries fell considerably between 1984 and 1988, from 64 tonnes to 11 tonnes, i.e. a fall in market share from 51 to 4 %, assessed according to the method described in the preceding recital.

The figures show that in the space of less than five years China was able to turn the structure of the Community market in tungstic oxide and tungstic acid to its advantage.

2. Prices

- (26) Between 1984 and 1988 the Chinese exporters, taken as a whole, reduced their prices by over 42 %.
- (27) To determine the price differential in the Community between tungstic oxide and acid from China and that produced by the Community industry, the Commission compared the average price of the imports from China (at the free-at-Community-frontier duty paid stage) and the weighted average selling price, excluding transport, of the products sold by Community producers.

Through this comparison the Commission found that producers in the Community had been unable to match the prices set on the market by the Chinese exporters, since the price differentials during the reference period had been over 40 %.

3. Other economic factors to be taken into consideration

a. Production

- (28) The Commission found that Community output of tungstic oxide and tungstic acid, taking as a basis the index 1984 = 100, was 108 in 1985, 91 in 1986, 93 in 1987 and 107 during the reference period. The figures show a slight recovery of Community production in 1988, but this was not sufficient to restore it to 1985 levels.

b. Capacity utilization

- (29) Viewed as a whole, the Community producers slightly increased their capacity in 1985 and 1986. Calculated on the basis of the capacity actually available each year from 1984 to 1987 and during the reference period, the capacity utilization rate of the Community producers fell between 1985 and 1987 from 67 to 56 %. The rate improved slightly during the first nine months of 1988, but remained below that reached in 1985.

c. Sales

- (30) Community producers' sales on the Community market, taking as basis the index 1984 = 100, were 200 in 1985, 68 in 1986, 84 in 1987 and 107 during the first nine months of 1988 (figures for this latter period having been adjusted for the year). It can therefore be seen that the rise observed in 1987/88 was not large enough to bring about a return to 1985 levels, not themselves exceptionally high in terms of the tonnage sold.

d. Market share

- (31) The market share of the Community producers, calculated in the same way as those of China and the other non-Community countries, fell from 44 % in 1984 to 17 % during the reference period, while the volume of transactions rose in the Community between 1984 and 1988.

Although this figure must be qualified with the observation that the Community producers use most of their output of tungstic oxide and tungstic acid to manufacture products further down the chain of tungsten production, the loss of market share cannot be considered negligible.

e. Prices

- (32) Although they dropped their prices, the Community producers were unable to match those set on the market by China's producers of tungstic oxide and tungstic acid. As a result, their market share decreased and they could no longer resist the price pressure being exerted by the Chinese suppliers.

f. Profits

- (33) The Commission found that the Community industry's financial results worsened in 1985 and 1986 and improved somewhat in 1987 and during the reference period. However, because sales of the products concerned decreased over this period, profits too fell in absolute terms.

4. Cause and effect and other factors

- (34) The Commission examined the volume and price trends of the dumped imports from China side-by-side with the sales and market share of the Community industry. Investigation revealed that the growth of these Chinese imports had coincided with the deterioration of the Community producers' sales and market shares.
- (35) The Commission also checked whether or not the injury to the Community industry had been caused by other factors such as the volume and prices of imports originating in other non-Community countries or by a drop in demand.

The Commission found in this connection that:

- the sales and market shares of the other non-Community countries which traditionally supplied tungstic oxide and tungstic acid to the Community had decreased substantially from 1984 to 1988; they were pushed out of the market in 1987, and their share of imports during the reference period was only 5 %;
 - Community consumption of tungstic oxide and tungstic acid had increased between 1984 and 1988.
- (36) All the above factors indicate that during the reference period the only gainer from dumped imports in terms of sales volume and market share had been China.

5. Conclusion

- (37) On the basis of the detailed figures in recitals 28 to 36, the Commission considered that the impact of dumped Chinese imports had been most pronounced on:
- the Community industry's sales volume and market share,
 - that industry's price and profits.

In the light of these considerations, the Commission concluded that imports of tungstic oxide and tungstic acid originating in the People's Republic of China had inflicted material injury on the Community industry in question.

H. COMMUNITY INTEREST

- (38) Some manufacturing industries which use intermediate tungsten products, largely in the form of carbides, to produce hard metal components (sintered carbide cutting tools, high-wear components and drills, for the most part), argued that it would not be in the Community's interest to institute protective measures.

The representatives of these industries claimed that by increasing the cost of tungstic oxide and tungstic acid in the Community, and therefore the cost of products further down the chain of tungsten production, the measures would make them less competitive.

- (39) The Commission did not dispute the validity of this argument from a short-term point of view, but considered that it failed to take account of the medium- and long-term prospects of the Community tungsten industry as a whole.

If no steps are taken to counter the effects of dumped Chinese imports Community producers will be obliged to cut back their output of tungstic oxide and tungstic acid, the second stage in the chain of production of intermediate tungsten products. Such a reduction in their range of activity will place the whole of the industry and therefore its own long-term viability under threat.

At the same time, the Chinese exporters would assume an ever more dominant position in this particular segment of the market, with predictably damaging effects for the competitiveness of Community producers further down the chain (especially producers of hard metal components).

It should be emphasized in this connection that the imports from China have already affected the structure of the Community market for tungstic oxide and tungstic acid, having all but eliminated the use of other non-Community countries as a source of supply.

- (40) The Commission noted that the the general aim of anti-dumping measures was to remedy the distortions in competition brought about by unfair trading practices, and thus restore open and fair competition to the Community market, which is fundamentally in the Community's overall interest.

In the case under examination, measures against imports of tungstic oxide and tungstic acid from China would do just that. The short-term drawbacks for the industries further down the chain,

which are not disputed by the Commission, should be offset by the benefits brought by the continued existence of a viable tungstic oxide and tungstic acid industry in the Community and sufficiently diverse outside sources of supply.

- (41) The Commission also considers it necessary to bear in mind that the low prices hitherto available to buyers are the result of unfair trading practices, and there are no grounds for allowing them to continue.
- (42) In the light of the above, the Commission concluded that it was in the Community's interest to take steps to remove the material injury to the Community industry caused by imports of tungstic oxide and tungstic acid originating in the People's Republic of China.

In order to prevent further injury being caused during the remainder of the proceeding, these steps should take the form of a provisional anti-dumping duty.

I. PROVISIONAL ANTI-DUMPING DUTY ON IMPORTS FROM THE PEOPLE'S REPUBLIC OF CHINA

- (43) To determine the rate of the provisional duty, the Commission took into account the size of the dumping margins and the level of duty needed to remove the injury caused.

To this end it compared the import prices of tungstic oxide and tungstic acid originating in the People's Republic of China with the production cost of the most representative Community producer plus a reasonable profit margin.

The Community producer was chosen with regard to the size of the firm, the efficiency of its production facilities and its overall production costs.

Production costs were calculated by adding together the cost of the tungsten ore or concentrate bought by the producer during the reference period and the producer's processing costs for the same period.

It was considered reasonable to set the profit margin at 10 % of the cost of production. This appeared to be the minimum level needed to enable a producer of tungstic oxide and tungstic acid to keep a plant running under acceptable operating conditions and give him a return on invested capital which was approaching that generally required in the sector.

The cost of production plus the profit margin was compared with the free-at-Community-frontier export price plus customs clearance charges. This gave an injury threshold of 35 % of the net free-at-Community-frontier price calculated for tungstic

oxide and tungstic acid originating in the People's Republic of China.

The amount of anti-dumping duty to be levied must therefore be high enough to remove the injury caused. This would be less than the dumping margin calculated.

J. FINAL PROVISIONS

- (44) In the interests of proper management a reasonable deadline should be allowed for the parties concerned to make their views known in writing and request a hearing from the Commission,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of tungstic oxide (Taric code 2825 90 40 * 10) and tungstic acid (hydroxide) (Taric code 2825 90 40 * 20), corresponding to CN code ex 2825 90 40 and originating in the People's Republic of China.

2. The duty shall be 35 % of the net free-at-Community-frontier price of the product before duty.

The free-at-Community-frontier price shall be net if the actual conditions of payment provide for payment within 30 days of the arrival of the goods on the customs territory of the Community. It shall be increased by 1 % for each further month by which the period for payment is extended.

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

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

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 3

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 14 of Regulation (EEC) No 2423/88, it shall apply for a period of four months, unless the Council adopts definitive measures before that period has elapsed.

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
