

## COMMISSION REGULATION (EC) No 1748/95

of 17 July 1995

imposing a provisional anti-dumping duty on imports of peroxodisulphates (persulphates), originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup>, as last amended by Regulation (EC) No 1251/95<sup>(2)</sup>, and in particular Article 23 thereof,

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>(3)</sup>, as last amended by Regulation (EC) No 522/94<sup>(4)</sup>, and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas :

#### A. PROCEDURE

- (1) In November 1993, the Commission received a complaint lodged by the European Chemical Industry Council (Cefic) representing the totality of the Community production.

The complaint contained evidence of dumping of the said product originating in the People's Republic of China and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

- (2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*<sup>(5)</sup>, the initiation of an anti-dumping proceeding concerning imports of persulphates originating in the People's Republic of China, falling within CN code ex 2833 40 00 and commenced an investigation.
- (3) The Commission officially notified the complainants, the exporters and importers known to be concerned and the representatives of the exporting country of the initiation of the proceeding and gave

the parties concerned the opportunity to make their views known in writing and to request a hearing.

- (4) The three complainant Community producers, represented by CEFIC, replied to the questionnaire.
- (5) Two Chinese exporters, Guangdong Chemicals Import & Export Corporation and Fujian Provincial Chemicals Import & Export Corporation, and two independent importers, replied to the Commission's questionnaire. Representatives of Guangdong Chemicals Imports and Export Corporation and Fujian Provincial Chemicals Import & Export Corporation were granted a hearing and made their views known in writing.
- (6) The Commission sought and verified all the information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following :

(a) Community producers :

- Peroxid Chemie GmbH, Pullach, Germany,
- Degussa AG, Frankfurt am Main, Germany,
- Air Liquide Chimie (Chemoxal), Paris, France ;

(b) Importers in the Community :

- Sinochem Trading Hamburg GmbH, Hamburg, Germany,
- Copci, Paris, France.

- (7) The Commission also sent questionnaires to two producers in Japan which was selected as reference country for the establishment of normal value and verifications were carried out at the premises of these two companies.
- (8) The investigation of dumping covered the period from 1 January to 31 December 1993 (the investigation period).

#### B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

##### 1. Definition of product

- (9) The product concerned is peroxodisulphates (ammonium persulphate ((NH<sub>4</sub>)<sub>2</sub>S<sub>2</sub>O<sub>8</sub>), sodium persulphate (Na<sub>2</sub>S<sub>2</sub>O<sub>8</sub>) and potassium persulphate (K<sub>2</sub>S<sub>2</sub>O<sub>8</sub>)) (hereinafter referred to as 'persulphates').

<sup>(1)</sup> OJ No L 349, 31. 12. 1994, p. 1.

<sup>(2)</sup> OJ No L 122, 2. 6. 1995, p. 1.

<sup>(3)</sup> OJ No L 209, 2. 8. 1988, p. 1.

<sup>(4)</sup> OJ No L 66, 10. 3. 1994, p. 10.

<sup>(5)</sup> OJ No C 64, 2. 3. 1994, p. 4.

Ammonium persulphate is produced by electrochemical synthesis i.e. anodic oxidation of sulphuric acid. Sodium and potassium persulphates are produced by conversion of ammonium persulphates by adding soda or potassium lye. However, some manufacturers produce sodium and potassium persulphates by direct electrolysis of the respective sulphates. The three types of persulphates have the same end uses as an initiator and oxidizing agent in the textile and chemical industries. The three different types of persulphates can be substituted one for another. End-users often have preference for one of the types of persulphate due to environmental reasons or because their facilities have been adapted to suit one specific type of persulphate. However, as the three types of persulphates are perfectly interchangeable they should be treated as one product for the purpose of this proceeding.

- (10) According to the notice of initiation, the product being dumped is persulphate having a content of persulphate of more than 99 %. The preliminary investigation revealed that the content of persulphate does not have substantial impact on prices or market conditions. Persulphates having a content of persulphate of 99 % or less is to a large extent interchangeable with products having a higher degree of purity. In order to cover the entire market segment and to avoid circumvention of any measures, persulphates, having a content of less than 99 %, have been included in the scope of this investigation.

## 2. Like product

- (11) The Commission found that the three types of persulphates which are produced by producers in the Community, producers in the People's Republic of China and producers in Japan (selected as reference country, see section D.1 Normal value) are identical on a type-by-type basis in their chemical composition and in their applications. Based on these findings, the Commission considered persulphates imported from the People's Republic of China alike to the product manufactured and sold by the Community and Japanese producers, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

## C. COMMUNITY INDUSTRY

- (12) The three producers in the Community of persulphates are Peroxid Chemie GmbH, Germany, Degussa AG, Germany and Air Liquide (Chemoxal SA), France.

- (13) During the investigation period one producer purchased a quantity of sodium persulphates in the People's Republic of China. In accordance with Article 4 (5) of the basic Regulation, the Commission examined whether this particular purchase should have the effect of excluding this Community producer from the Community industry. Information provided by the Community producer in question has substantiated that the purchase of persulphates in the People's Republic of China was carried out exclusively to protect and maintain the position of the company in the domestic market during a start-up phase of the production of sodium persulphates. Based on these findings the Commission decided not to exclude the producer from the Community industry.

## D. DUMPING

### 1. Normal value

- (14) As the People's Republic of China is a non-market economy country, the determination of normal value has to be based on a market economy country. The complainant suggested the USA as reference country. The Commission sent questionnaires to the sole producer in the USA. However, the producer in the USA refused to cooperate with the Commission. The Commission sent questionnaires to other known producers of persulphates i.e. in Taiwan, Turkey, Japan, India and Mexico as alternatives. The producer in India did not reply and the producer in Mexico refused to cooperate with the Commission. The producer in Taiwan did not submit sufficient information and refused on-the-spot verifications.
- (15) Producers in Turkey and Japan agreed to cooperate with the Commission. In order to examine, which of the two countries is the most suitable as reference country, the companies provided further information as requested by the Commission. According to the information submitted the total production of persulphates by the sole producer in Turkey is limited. The company does not produce sodium persulphates and domestic sales of ammonium and potassium persulphates to independent customers are insignificant. The major part of the production of persulphates goes to captive use by related companies in downstream textile production. Imports of persulphates into Turkey is subject

to payment of 12,5 % import tax. On the other hand, Japan is the second largest producer of persulphates in the world and there are two independent producers in Japan, which is likely to ensure competition on the Japanese market. All three types of persulphates are produced in Japan based on the same manufacturing processes as in the People's Republic of China. Persulphates are imported to Japan, however in small quantities. There is no duty on imports of persulphates into Japan. The principal ingredient for the production of persulphates, sulphuric acid, is a world-wide commodity product, and access to this raw material is to a large extent equal to all producers.

- (16) The Chinese exporters opposed the choice of Japan as reference country and requested that at least the determination of normal value for Chinese ammonium persulphate be based on data pertaining to Turkey.
- (17) Examining the arguments submitted by the Chinese exporters and referring to the facts stated above, the advantages of Japan as a suitable reference country, on balance, still outweigh the arguments presented in favour of Turkey. In particular the volume of production in Japan of all three types of persulphates and the fact that there are two competing companies in the Japanese market are important elements in favour of the choice of Japan, whereas the Turkish sales of any of the persulphate types produced in Turkey not destined for captive use are too small to be representative.
- (18) Normal value has been established in accordance with point (a) (i) of Article 2 (5) of the Basic Regulation on the basis of the net selling price at which the like product is sold in Japan, based on information submitted by the two Japanese companies willing to cooperate with the Commission. The producers in Japan sell the product concerned in the domestic market to unrelated purchasers for domestic consumption in representative quantities and at profitable prices.

## 2. Export price

- (19) In accordance with Article 2 (8) of the Basic Regulation, export prices for cooperating exporters were established on the basis of sales to unrelated importers actually paid or payable for the products sold for export to the Community by the cooperating exporters. These exports represent approximately 30 % by volume of the total imports of persulphates during the investigation period according to Eurostat. This percentage is considered too small to be representative for all imports of persulphate from the People's Republic of China. In these circumstances the export prices of the Chinese export sales by non cooperating exporters have to be based on the facts available. According to infor-

mation from Eurostat, the price pattern of all the Chinese export sales, do not differ significantly from export prices of the cooperating exporters which, among themselves, are at the same level. Based on these findings, the Commission decided to establish export prices for the non cooperating exporters on the basis of the export prices of the two cooperating exporters, in accordance with Article 7 (7) (b) of the Basic Regulation.

## E. COMPARISON

- (20) Normal values for each type of persulphate have been compared with the export prices on a transaction-by-transaction basis of the corresponding types of persulphates. The comparison was made at ex-factory level. To this end, costs for inland freight have been deducted from both normal value and export prices. In accordance with Article 2 (9) and (10) of the Basic Regulation, adjustments were made to take account of differences affecting price comparability, in particular with regard to packing and other selling expenses.

## F. DUMPING MARGIN

- (21) Following price comparison, a single weighted average dumping margin for all the three types of persulphates has been established. As the People's Republic of China is a non-market economy country, this margin applies to all exporters of persulphates originating in China. The margin expressed as a percentage of the cif Community frontier import price is 110,1 %.

## G. INJURY

### 1. Consumption

- (22) In order to calculate total consumption of persulphates in the Community the Commission added Community producers' sales in the Community to the total imports into the Community falling within CN code ex 2833 40 00. Total consumption is estimated as being 19 700 tonnes in 1989, 19 900 tonnes in 1990, 19 800 tonnes in 1991, 19 800 tonnes in 1992 and 18 500 in 1993.

### 2. Factors relating to dumped imports

#### (a) Volume of dumped imports

- (23) According to Eurostat the dumped imports of the products in question have increased from 1 454 tonnes in 1989 to 3 367 tonnes in 1993, making the People's Republic of China the largest exporter of persulphates to the Community having obtained in 1993 a share of 52,8 % of total imports into the Community.

*(b) Market share*

- (24) The imports from the People's Republic of China during this period correspond to an increase of the Chinese exporters' market share from 7,4 % in 1989 to 18,1 % in 1993. The market share of the Chinese exporters has continuously increased during this period.

*(c) Prices*

- (25) During the investigation period persulphates from the People's Republic of China were imported at prices which undercut those of the Community producers by a weighted average of 41,8 % for all three types of persulphates. To establish price undercutting, CIF Community frontier export prices of the Chinese products have been adjusted by an estimated margin of independent importers and compared to Community producers' prices ex-works considered to be at a comparable level of trade.

### 3. Factors relating to the state of the Community industry

*(a) Total production*

- (26) The production of the Community producers of persulphates decreased from 20 249 tonnes in 1989 to 16 159 tonnes in 1993, i.e. by 20,2 %. Community production has decreased continuously during this period.

*(b) Capacity utilization*

- (27) In the period 1989 to 1993 capacity utilization decreased continuously by 21 %.

*(c) Stocks*

- (28) The stocks of the Community producers decreased from 1989 to 1993 on average by 32,2 %. The decrease in stocks can be attributed exclusively to one of the producers, who, in a contracting market with price depression, opted for a scale down in production in order to reduce stocks.

*(d) Sales and market shares*

- (29) Community producers' sales on the Community market show a decrease from 15 081 tonnes in 1989 to 12 287 tonnes in 1993 while market shares of these producers dropped from 76,7 % in 1989 to 66,2 % in 1993 (1990 : 70,1 % ; 1991 : 65,4 % ; 1992 : 65,3 %).

*(e) Prices*

- (30) Average domestic sales prices of the Community industry dropped by 18 % from 1989 to 1993. As persulphates to a large extent have homogeneous

characteristics irrespective of origin, prices are decisive for the purchasing decisions of the operators in the market.

*(f) Profitability*

- (31) The decline in sales volume from 1989 to 1993, at the same time as a substantial drop in prices, affected the profitability of the Community industry. Profitability for all Community producers decreased substantially, while one of them suffered heavy financial losses.

*(g) Employment*

- (32) The development in employment from 1989 to 1993 shows a decrease of 13,4 % in the number of employees involved in the production of persulphates.

### 4. Conclusion on injury

- (33) In view of the elements stated above, in particular the substantial decline in production, sales and employment of the Community producers, during a period when consumption only decreased by 5,6 %, combined with the fall in profitability, the Commission concluded, for the purpose of its preliminary findings, that the Community industry had suffered material injury within the meaning of Article 4 (1) of the basic Regulation.

### H. CAUSAL LINK BETWEEN THE DUMPED IMPORTS AND THE INJURY

- (34) The Commission examined whether there was a causal link between the dumped imports and the injury suffered by the Community industry and whether other factors caused or contributed to that injury.

*(a) Effect of the dumped imports*

- (35) The Commission found that the increase in volume and market share of the dumped imports was reflected in an almost identical decrease in the volume and market share of the Community industry. The Community industry's endeavours to reduce prices and maintain the sales volume led to a fall in profit and for one producer financial losses.

*(b) Effect of other factors*

- (36) The Commission considered the possible effect of other factors regarding the situation of the Community industry. In particular the Commission examined the extent to which the contraction in

consumption had affected the industry. However, since the fall in consumption was only 5,6 % from 1989 to 1993, compared with a decrease in sales volume of the Community industry of 18,5 %, the situation of the industry could not have been caused exclusively by a contraction in demand.

- (37) As far as imports from other third countries are concerned, Eurostat figures show that the volume of imports of these countries was practically unchanged from 1989 to 1993 and their average prices were higher than those of Chinese imports.

(c) *Conclusion*

- (38) Under the circumstances stated above the Commission concluded, for the purpose of its provisional findings, that imports originating in the People's Republic of China sold at dumped prices in increasing volumes leading to a decline in profitability of the Community industry, have caused material injury to this industry.

#### I. COMMUNITY INTEREST

- (39) The purpose of anti-dumping measures is in particular to eliminate the trade-distorting effects of injurious dumping and to restore effective competition.
- (40) Reduced profit or even annual losses have been major problems for the Community industry and without measures the industry could suffer a further deterioration in its financial situation with a possibility of a total shutdown of the production of persulphates in the Community. On the other hand, end-users benefit from supplies at low dumped prices. However, the cost of persulphates as an oxidizing agent forms an extremely small part of the overall cost of the end-users. Under these circumstances it would, on balance, not be in the interest of the Community to expose itself to the risk of total shutdown of an entire industry for the benefit of short term advantages for end-users of persulphates. Imports in considerable quantities from other third countries ensure that no adverse consequence on the competitive situation on the Community market is to be expected from the imposition of anti-dumping measures.
- (41) In view of these considerations the Commission concluded that it is in the interest of the Community to adopt measures to eliminate the injury caused to the Community industry by dumped imports of persulphates from the People's Republic of China.

#### J. PROVISIONAL DUTY

- (42) In accordance with Article 13 (3) of the Basic Regulation, the Commission examined whether a lower duty than the dumping margin would be adequate to remove the injury sustained by the Community industry. As demonstrated in recital 25 prices of the Community producers have been undercut by the dumped imports. Moreover, as one producer has incurred financial losses and the two other producers have experienced a decline in profits, the removal of injury requires that the industry be put in a position in which its prices on average could be increased to a level which would include a reasonable profit. In order to achieve this, export prices should be increased accordingly.
- (43) For calculating the level of duty required to eliminate the injury, cif Community frontier prices of the imports sold by the co-operating exporters and adjusted (see recital 25) have been compared with the cost of production of the Community producers to which has been added a margin of profit of 5 % deemed sufficient to ensure the viability of the Community industry. The injury margin on a weighted average basis for all the three types of persulphate expressed as a percentage of the cif Community frontier price corresponds to 83,3 %.
- (44) The injury margin established being below the dumping margin found, the provisional duty to be imposed should correspond to the injury threshold established in accordance with Article 13 (3) of the Basic Regulation.

#### K. FINAL PROVISION

- (45) In the interests of sound administration a reasonable period should be allowed for interested parties to make known their views in writing on the findings contained in this Regulation and to request to be heard by the Commission,

HAS ADOPTED THIS REGULATION :

#### *Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of peroxodisulphates (persulphates), originating in the People's Republic of China falling within CN code ex 2833 40 00 (Taric code : 2833 40 00\*10).
2. The rate of provisional duty shall be 83,3 % of the net, free-at-Community frontier price, before duty.

3. The release for free circulation in the Community of the product 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) and (c) 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 date of 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*.

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

Done at Brussels, 17 July 1995.

*For the Commission*

Leon BRITTAN

*Vice-President*

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