

COMMISSION REGULATION (EC) No 1984/95

of 10 August 1995

imposing a provisional anti-dumping duty on imports of powdered activated carbon 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⁽¹⁾, as last amended by Regulation (EC) No 1251/95⁽²⁾, 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⁽³⁾, as last amended by Council Regulation (EC) No 522/94⁽⁴⁾, and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas :

A. PROCEDURE

- (1) In September 1993, the Commission received a complaint lodged by the Conseil Européen de l'Industrie Chimique (hereinafter referred to as 'Cefic') on behalf of Community producers allegedly representing the vast majority of Community production of powdered activated carbon.

The complain 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 announced by means of a notice published in the *Official Journal of the European Communities*⁽⁵⁾, the initiation of an anti-dumping proceeding concerning imports of powdered activated carbon originating in the People's Republic of China and commenced an investigation.
- (3) The Commission officially notified 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) Representatives of only one Chinese exporter, Shanghai Chemicals Import & Export Corporation, Shanghai, requested and were granted a hearing and made their views known in writing. The representatives of several importers of the product in question were also granted hearings and made their views known in writing.
- (5) Representatives of Cefic requested and were granted a hearing and made their views known in writing.
- (6) One Community producer which was not a signatory to the complaint, VCA Srl Monopoli, Italy, also made its views known in writing but did not reply to the Commission's questionnaire, nor did it request a hearing.
- (7) 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 :

- CECA SA, Paris, France,
- Chemviron Carbon, Brussels, Belgium,
- Norit NV, Amersfoort, Netherlands ;

(b) importers/distributors :

- Germany :
 - Europe Asia International Trade Development GmbH, Hamburg,
 - Lurgi Aktivkohle GmbH, Frankfurt-am-Main ;
- Italy :
 - Camel Chemicals SpA, Milan,
 - Carboclean SpA, Milan,
 - Hydro-line SpA, Milan.

The Commission also received and used information from two other importers in the Community which replied to the relevant questionnaire.

- (8) Questionnaires were sent to six known exporters in the People's Republic of China and to two companies situated in Hong Kong which were known to trade in Chinese activated carbons. Only Shanghai Chemicals Import & Export Corporation replied to the Commission's questionnaire. No cooperation was therefore received from any other Chinese exporters or Hong Kong trading company.

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1.

⁽²⁾ OJ No L 122, 2. 6. 1995, p. 1.

⁽³⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽⁴⁾ OJ No L 66, 10. 3. 1994, p. 10.

⁽⁵⁾ OJ No C 64, 2. 3. 1994, p. 5.

- (9) As the United States of America (hereinafter referred to as 'the USA') has been used as 'analogue country' for the purpose of calculating normal value (see recital 23 *et seq.*), the Commission visited the premises of two producers there of powdered activated carbon. Both of these companies requested, however, that their names should not be divulged.
- (10) The investigation of dumping covered the period from 1 January to 31 December 1993 (hereinafter referred to as 'the investigation period').

B. PRODUCT UNDER INVESTIGATION

1. Description of the product concerned

- (11) The product concerned is activated carbon in powdered form (hereinafter referred to as 'PAC'). It is obtained from a variety of raw materials such as coal, peat, lignite, wood, olive stones or coconut shells which are activated in the Community, the People's Republic of China and the USA, by means of a steam or chemical process.
- (12) Steam activated carbon is produced in two stages. First, the raw material (coal, peat, etc.) is carbonized and a coke is produced. The next stage consists of reacting the semi-finished product with steam, so as to enlarge the inner pore walls. This process allows the pore structure to be easily altered and the carbons can be made to suit different purposes.
- (13) Chemically activated carbon is produced by mixing a chemical with a carbonaceous material (normally wood) and carbonizing the resultant mixture. The chemicals normally used, phosphoric acid and zinc chloride, swell the raw material and open up its internal structure. It should be noted, however, that the use of zinc chloride as an activating agent has ceased in the Community and chemical activation is now by means of phosphoric acid. This development took place mainly for environmental reasons and reasons of cost (zinc chloride activation being more expensive than phosphoric acid activation). Those companies in the USA which cooperated with the Commission's investigation also use phosphoric acid for producing chemically activated PAC. In contrast, however, information received from cooperating importers has shown that chemically activated PAC originating in the People's Republic of China has mainly been activated by zinc chloride (although certain Chinese exporters were found to have exported PAC activated by phosphoric acid to the Community).
- (14) By varying the basic production process, or by mixing together steam and chemically activated PAC into 'blends', different types of PAC can be produced. Various technical characteristics or properties are imparted to the finished product which can make it more suitable for certain applications than others. All these different types of PAC are referred to hereinafter as 'grades'. With regard to its main applications, PAC is used for water purification purposes of treatment of waste water and also by the food, chemical and pharmaceutical industries for the adsorption of colours and impurities.
- (15) It should, however, be noted that the carbon's pore structure does not have to be opened up to the same extent for the removal of small molecules from solutions (e.g. for water purification) as for the removal of colour molecules (e.g. from sugar solutions). It follows that to open up the pore structure is more costly as the yield decreases and extra heat is required. Thus, a water treatment carbon is cheaper to produce than a sugar decolourizing carbon and users are therefore careful to select the most cost effective type of carbon for a particular application.
- (16) Activated carbon also exists in granular and pellet (extruded) form, however, these products are not included in the present proceeding as they have a different production process and different applications. Moreover, no dumping complaint was lodged concerning these other forms of activated carbon.
- (17) The Commission found that whilst PAC can be manufactured from several different raw materials, exists in many different grades and can be used for many different purposes, its essential characteristics remain basically the same and, for the purposes of the present proceeding, it may be regarded as one product.

2. Like product

- (18) It was argued by certain interested parties that chemically activated Chinese PAC which is activated using zinc chloride is a product with particular technical characteristics and porosity properties which make it particularly suitable for certain applications. They contended that it should not, therefore, be considered as a like product to PAC produced in the Community (or chemically activated PAC produced in the USA). It was nevertheless admitted by the same interested parties that chemically activated Chinese PAC is in direct competition with chemically activated PAC produced in the Community and even, in certain cases, with Community produced steam activated PAC.

- (19) Although it is true that the basic activating agent for chemically activated Chinese PAC is different to that used in the Community, the Commission nevertheless considers that the final Chinese product, irrespective of whether it is steam or chemically activated (or a blend of both), is sufficiently similar with regard to its technical characteristics and uses to be considered as a like product to steam or chemically activated PAC produced in the Community. In this regard it should be pointed out that none of the parties involved contest that the respective methods of production are all similar (chemical activating agent apart); that the general physical and technical characteristics of PAC produced by steam or chemical activation in the Community and the People's Republic of China closely resemble each other; and that the products compete with one another. Moreover, the interested parties themselves have stated that different PAC grades are interchangeable to a great extent since they can have the same basic application or perform the same basic function.
- (20) Accordingly, it is the provisional finding of the Commission that PAC produced and sold by the Community industry on the Community market is a like product within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 to the PAC exported to the Community by the People's Republic of China.
- (21) By analogy with recital 19, the Commission also concludes that PAC produced in the USA was alike to the PAC originating in the People's Republic of China exported to the Community.

C. COMMUNITY INDUSTRY

- (22) The Commission's investigation showed that the Community producers which cooperated in the investigation accounted for approximately 92 % of all sales of PAC produced in the Community and can, therefore, in accordance with Article 4 (5) of Regulation (EEC) No 2423/88, be considered as constituting 'the Community industry'. In this context, it should be noted that these producers do not only manufacture PAC, but also activated carbons in other forms (i.e. granules and pellets). Certain of these companies are involved in engineering activities within the activated carbon sector and also manufacture products other than activated carbons.

D. DUMPING

1. Normal value — choice of analogue country

- (23) The People's Republic of China does not have a market economy, therefore, in accordance with Article 2 (5) of Regulation (EEC) No 2423/88, the determination of normal value was based on a market economy country (the 'analogue country').
- (24) With regard to the choice of analogue country, various options were put forward. The complainants considered the USA to be the most appropriate whilst certain importers and cooperating Chinese exporter suggested Malaysia. On the basis of available information, the Commission considered that Japan might also be a suitable choice.
- (25) Questionnaires requesting information were sent to all known producers in these three countries. However, meaningful data was only received from two of the four known producers of PAC in the USA. Consequently, neither Malaysia nor Japan could be used as the analogue country.

In determining whether the USA was an appropriate choice of analogue country, the Commission took account of the following:

- imports into the USA from third countries account for approximately 18 % of domestic consumption of all activated carbons,
- production of PAC in the USA was 67 087 tonnes during the investigation period (whilst that of the People's Republic of China was estimated to be 50 000 tonnes),
- the USA applies moderate customs duties of 4 % to imports of PAC from 'Most Favoured Nations',
- no quotas or anti-dumping measures are applied to imports into the USA of PAC,
- access to raw materials and the production methods (steam/chemical activation) for PAC in the USA are basically the same as in the People's Republic of China and the Community,
- PAC production in the USA is undertaken by a limited number of large producers which benefit from economies of scale, whilst the production in the People's Republic of China is undertaken by several small producers. Given that PAC production is not particularly labour intensive, it is considered that any Chinese comparative advantage of cheap labour is counteracted largely by the economies of scale in the USA.

- the PAC produced by the cooperating companies in the USA (which account for approximately 50 % of the total PAC production there), was considered to be a like product to that exported to the Community by the Chinese producers.

- (26) It is evident from the above that the USA is neither an isolated market nor a closed market and in terms of access to raw materials, production volume and the product itself, it is comparable to the People's Republic of China. In conformity with Article 2 (5) of Regulation (EEC) No 2423/88, the USA is considered to be an appropriate and not unreasonable choice of analogue country for establishing normal value in this particular case.

2. Normal value — calculation of normal value

- (27) Normal value has been calculated for each of the grades of PAC originating in the People's Republic of China and exported to the Community during the investigation period on the basis of data relating to equivalent grades of PAC produced by the cooperating producers in the USA. In this respect, for every Chinese grade exported to the Community, a weighted average customer-delivered domestic sales price to distributors of the equivalent grades produced in the USA was established.
- (28) When compared to the overall cost of production for each of the two production methods (steam/chemical aviation), it was found that these domestic customer-delivered prices in the USA yielded a profit. In accordance with Article 2 (5) (a) (i) of Regulation (EEC) No 2423/88, normal value was therefore established on a grade-by-grade basis using the PAC selling price in the USA at a customer-delivered commercial stage and at distributor level, during the investigation period.

3. Export price

- (29) In view of the lack of cooperation from the majority of Chinese exporters and the often significant variances in prices between the many different grades of PAC imported into the Community, the Commission carefully considered the fairest and most appropriate method of establishing export prices in this particular proceeding.
- (30) As already mentioned in recital 16, activated carbon also exists in granular and pellet form and, for statistical purposes, all types of activated carbon are grouped together under the same Combined

Nomenclature code. It is therefore not possible to differentiate from Eurostat data between imports of activated carbon in powdered form and activated carbon in other forms. This means that Eurostat data cannot be used to establish export prices for PAC.

- (31) However, in view of the high level of cooperation from importers/distributors (which are considered to account for the vast majority of purchases from the People's Republic of China), the Commission concluded that the most reasonable basis for establishing export prices was to take the declared cif Community frontier import prices of these cooperating companies and adjust them to fob Chinese frontier prices. This was achieved by deducting known freight and insurance costs.

- (32) It should be noted that one interested party situated in the Community was found to be related to a Chinese exporter and acted as its import agent. For this exporter, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88, it was necessary to construct the export price on the basis of the price at which the product was sold by its related agent to independent importers in the Community. For this purpose, an adjustment was made for all costs incurred by the related agent and profit achieved.

4. Comparison

- (33) To calculate the dumping margin, the Commission made a comparison at the same level of trade between normal value and export price (i.e. at the level of sales of Chinese exporters to importers/distributors in the Community and of producers in the USA to their domestic distributors). This comparison was on a transaction-by-transaction basis for each PAC grade originating in the People's Republic of China and exported to the Community during the investigation period. In this respect, the Commission considered that the prices used were at a similar commercial stage for the purposes of the present investigation (i.e. the customer-delivered price in the USA is regarded as a similar commercial stage to the fob Chinese frontier price).
- (34) Where appropriate (and where adequate information was available), normal values and export prices were adjusted to take account of certain of the selling expenses specified in Article 2 (9) of Regulation (EEC) No 2423/88. These adjustments for differences affecting price comparability comprised transport, insurance, packing costs and commissions.

- (35) It was argued by certain interested parties that no comparison between PAC grades produced in the People's Republic of China and the USA could be made without detailed laboratory analyses and uniform testing of the various grades under consideration. It is nevertheless the provisional finding of the Commission that for every Chinese PAC grade there are equivalent PAC grades produced in the USA and that the basis for the grade-by-grade comparisons made by the Commission (i.e. available technical specifications and known uses), is both adequate and reasonable in this particular case. This conclusion is supported by the fact that no justified specific adjustments have been claimed by the interested parties for any physical or technical differences between PAC grades produced in the People's Republic of China and the USA. Furthermore, no alternative comparisons have been proposed.

5. Dumping margin

- (36) On a transaction-by-transaction basis, the comparison showed the existence of dumping for PAC originating in the People's Republic of China exported to the Community during the investigation period. The dumping margin was equal to the amount by which the normal value, as established, exceeded the prices for export to the Community. The weighted average dumping margin of all transactions, expressed as a percentage of the cif free-at-Community frontier price, was 71,5 %.

E. INJURY

1. Community consumption, volume and market share of imports

(a) General remarks

- (37) In calculating the total consumption of PAC in the Community (in tonnes), the Commission added together the total sales in the Community of PAC produced in the Community by the cooperating producers, the total estimated sales in the Community of the non-cooperating producers, the known imports into the Community of PAC originating in the People's Republic of China and the estimated imports into the Community of PAC originating in third countries other than the People's Republic of China (referred to hereinafter as 'other third countries'). Details of the sources of this data are given below.

- (38) Data used by the Commission concerning non-cooperating producers in the Community has been derived from two sources, namely Cefic and certain importers/distributors. In the absence of any information to the contrary, the assumption has been made that the total estimated production of these non-cooperating producers was sold inside and outside the Community in the same proportions as the sales of the cooperating Community producers.

- (39) With regard to the volume of imports originating in the People's Republic of China, as mentioned in recital 30, no official import statistics were available separately for PAC. However, the data furnished to the Commission by the cooperating Chinese exporter, together with information supplied by the cooperating importers/distributors appeared to represent the quasi-totality of such imports into the Community and, therefore, forms the basis for the Commission's provisional findings concerning the volume of Chinese imports.

- (40) As concerns imports from other third countries, it was claimed by certain importers/distributors that the available Eurostat data for the Combined Nomenclature code covering activated carbons also, incorrectly, included products other than activated carbons. It was also claimed that many of the countries shown in Eurostat as having exported activated carbons to the Community did not in fact have production of these products.

- (41) Being satisfied as to the accuracy of these claims and the information provided, the Commission first excluded from its calculations concerning imports, consumption etc., those countries which, although listed in Eurostat as having exported activated carbons to the Community, were thought by Cefic and the importers/distributors not to have any production of these products. With regard to the remaining countries listed in Eurostat which were known to have production of activated carbons (and were also known to export to the Community), an estimate was made of the quantity of such exports of PAC using data provided by Cefic and the importers/distributors.

(b) Community consumption

- (42) On this basis, the Commission found that Community consumption of PAC had risen from approximately 34 100 tonnes in 1990 to approximately 36 100 tonnes in 1991 and to approximately 37 300 tonnes in 1992. During the investigation period the level of consumption dropped to around 35 250 tonnes. There was, nevertheless, an overall rise in consumption of 3,3 % between 1990 and the investigation period.

(c) Volume and market share of dumped imports

- (43) With regard to the volume of dumped imports originating in the People's Republic of China, this increased from 1 395 tonnes in 1990 to 2 895 tonnes in 1991 and to 4 439 tonnes in 1992. During the investigation period, the volume of dumped imports dropped to 4 008 tonnes. This nevertheless represents an overall rise in import volume of 187 % between 1990 and the investigation period.
- (44) The share of the Community market held by these dumped imports of PAC originating in the People's Republic of China was 4,1 % in 1990, 8,0 % in 1991, 11,9 % in 1992 and 11,4 % during the investigation period.

2. Prices of the dumped imports and undercutting

- (45) The Commission's investigation showed that the weighted average cif import price of Chinese PAC at the Community frontier was ECU 755 per tonne in 1990, ECU 830 per tonne in 1991, ECU 784 per tonne in 1992 and ECU 835 per tonne during the investigation period. This represents an increase of 10,6 % between 1990 and the investigation period.
- (46) In order to calculate whether undercutting had occurred, the Commission first considered it appropriate to establish which of the Community-produced grades of PAC were equivalent in terms of technical specifications and uses to the imported Chinese grades. As with the comparison made for dumping mentioned in recital 35, it was argued by certain interested parties that no price comparison between PAC grades produced in the Community and the People's Republic of China could be made without independent laboratory analyses based on uniform test methods.
- (47) In this respect, the Commission found that for any given grade of PAC originating in the People's Republic of China and sold in the Community, there are several grades of Community-produced PAC in direct competition with it. For most grades, the competing products were found to be technically similar. Accordingly, the Commission considers that the comparisons it made between Community and Chinese-produced grades of PAC

based on objective criteria, namely technical data and uses provided by the cooperating parties, constitutes, for the purposes of these provisional findings, the fairest and most appropriate basis for determining whether undercutting had occurred.

- (48) On a grade-by-grade basis, the Community producers' weighted average net ex-works sales prices in the Community were compared to the weighted average import prices of the equivalent Chinese grades, adjusted to duty-paid net ex-warehouse levels. This comparison was considered to be at the same level of trade as both sets of prices taken were for sales to end users. On a grade-by-grade basis, this comparison showed that only one Chinese grade, representing 1,3 % of total Chinese PAC imports, was not undercutting the ex-works Community producers' prices. For all the other Chinese grades examined, the undercutting margins, expressed as percentages of the ex-works Community producers' prices, ranged from 6,2 % to 37,2 %. On a weighted average basis for all Chinese PAC grades, the Commission found that the overall level of undercutting was 23,5 %.

3. Situation of the Community industry*(a) Preliminary remarks*

- (49) By way of a preliminary remark, it should be noted that unless otherwise specified, all data contained in recitals 50 to 59 relate only to those Community producers which cooperated fully with the Commission's investigation. As mentioned in recital 22, the cooperating Community producers represent approximately 92 % of the total sales of all Community producers during the investigation period.
- (50) It should also be pointed out that between 1990 and the investigation period, very small quantities of PAC were imported into the Community from third countries other than the People's Republic of China by certain cooperating Community producers. Although such quantities represented only approximately 0,7 % of their total annual sales in the Community, all data relating to such purchases have nevertheless been excluded from the data given in recitals 51 to 58 below. Information contained in these recitals therefore relates only to PAC produced in the Community.

(b) Production

- (51) The Commission investigation established that production in the Community declined continuously from 38 663 tonnes in 1990 to 32 581 tonnes during the investigation period, a fall of 15,7 %.

(c) Production capacity and capacity utilization

- (52) The Commission found that the Community producers' production capacity remained relatively stable at around 51 000 tonnes between 1990 and the investigation period. However, as a consequence of the continuous fall in production, capacity utilization declined from 76,3 % in 1990 to 64,2 % during the investigation period.

(d) Stocks

- (53) The investigation showed that the Community producers' stocks of PAC declined by 27 % between 1990 and the investigation period.

(e) Sales and market share

- (54) The volume of sales in the Community by the cooperating Community producers fell continuously from 28 240 tonnes in 1990 to 24 510 tonnes during the investigation period, a drop of 13,2 %. With regard to the cooperating Community producers' sales made outside the Community, the Commission's investigation showed that there was also an overall decline of 9,3 % from 10 166 tonnes in 1990 to 9 220 tonnes during the investigation period. With regard to the sales of the non-cooperating Community producers over the same period, these were estimated to have remained stable at around 2 000 tonnes.
- (55) The market share in the Community of the cooperating Community producers declined from 82,8 % in 1990 to 69,5 % during the investigation period. The market share in the Community of the non-cooperating Community producers was estimated to have remained stable at around 5,7 % over the same period.

(f) Prices and costs

- (56) The weighted average selling price of all grades of PAC sold in the Community by the Community producers rose from ECU 1 531 per tonne in 1990 to ECU 1 605 per tonne in 1991. In 1992 and the investigation period, the prices dropped to ECU 1 589 per tonne and ECU 1 552 per tonne respectively.

vely. Between 1990 and the investigation period, the weighted average selling price in the Community of all grades of PAC therefore rose, but only by 1,4 %.

- (57) The Commission found that the weighted average production cost of these Community producers had risen continuously from ECU 1 384 per tonne in 1990 to ECU 1 720 per tonne during the investigation period, an increase of 24,3 %. This rising cost of production was found to have been caused mainly by increasing raw material costs, higher fixed costs resulting from falling capacity utilization and costs incurred for environmental protection.

(g) Profitability

- (58) During 1990 the Community producers were found to have made an overall weighted average profit of 9,6 % (on turnover) on their sales in the Community of all grades of PAC produced in the Community. In 1991 their financial situation deteriorated and they were marking an overall weighted average profit of only 2,4 %. By 1992 the position had deteriorated further and a weighted average loss of 5,4 % occurred. By the investigation period, the overall weighted average loss on all grades of PAC sold in the Community stood at 10,8 %.

(h) Employment

- (59) The investigation showed that the number of people employed in the Community PAC sector fell by 16,3 % from 734 to 614 between 1990 and the investigation period.

(i) Conclusions concerning injury

- (60) Most of the economic factors mentioned above which have been examined by the Commission, e.g. production, capacity utilization, sales volumes, profitability and employment, clearly show that the Community producers' position has deteriorated between 1990 and the investigation period. As can be seen, these producers have been unable to raise their prices in line with increased production costs and this has consequently led to significant losses during the investigation period. An important loss of market share also took place between 1990 and the investigation period.
- (61) On the basis of all these factors, the Commission has concluded, for the purpose of its preliminary findings, that the Community producers of PAC

have suffered injury within the meaning of Article 4 (2) of Regulation (EEC) No 2423/88, as concerns their production of PAC.

F. CAUSATION

1. Effect of dumped imports

- (62) As has been shown in recital 43, the volume of dumped imports originating in the People's Republic of China increased by 187 % between 1990 and the investigation period. The share of the Community PAC market of dumped Chinese imports also rose significantly from 4,1 % to 11,4 % over this period and it is evident that this increase in market share has been at the expense of the Community producers whose market share dropped from 82,8 % to 69,5 %. It is also clear that this rise in dumped imports coincided with the decline in the sales volume and production levels of the Community producers, even though Community consumption was increasing by 3,3 % between 1990 and the investigation period. In addition, the significant undercutting of the Community producers' sales prices by dumped Chinese PAC imports (by margin of up to 37,2 %) must also have contributed to the inability of the Community producers to raise their prices to profitable levels.
- (63) Whilst the Commission accepts that the Chinese exporters raised their selling prices by 10,6 % overall between 1990 and the investigation period, exports of PAC during the investigation period were nevertheless being made at highly dumped prices which seriously undercut the Community producers' prices and thus contributed to the injury being suffered by them.
- (64) The Commission therefore considers that dumped imports of PAC originating in the People's Republic of China have contributed to the injury suffered by the Community industry.

2. Other factors

- (65) The Commission also took into account the effect of factors other than imports of Chinese origin when examining the cause of the injury suffered by the Community producers of PAC. In this respect, the Commission first examined the level of imports into the Community from other third countries. Using the methodology referred to in recitals 40 and 41, it was found that imports from these other

third countries had increased from approximately 2 600 tonnes in 1990 to approximately 5 500 tonnes during 1992. However the volume of imports dropped to around 4 700 tonnes during the investigation period. Although this represents an overall increase of approximately 80 % in such imports between 1990 and the investigation period, it is nevertheless a much lower rate than has been observed for imports of Chinese origin. The market share in the Community of these imports from other third countries rose from 7,6 % in 1990 to 13,3 % during the investigation period.

- (66) Examination of all available data indicates that only imports from Malaysia increased at a similar rate to imports from the People's Republic of China between 1990 and the investigation period, that is to say from an estimated 600 tonnes to approximately 1 750 tonnes. The volume of these Malaysian imports was significantly less than that of the Chinese imports and consequently they held a much lower market share within the Community (i.e. 4,9 % as opposed to 11,4 % for the People's Republic of China during the investigation period).
- (67) However, on the basis of available Eurostat data, the cooperating Chinese exporter argued that these Malaysian imports must have been made at dumped prices. Moreover, it was claimed that as the price in Eurostat for these imports was lower than the Chinese import price, any injury suffered by the Community producers should be attributed to the Malaysian imports and not those from the People's Republic of China.

In response to these arguments, Cefic stated that the Community producers had no evidence of dumping for PAC imports from Malaysia. Furthermore, prior to the abovementioned claim from the Chinese exporter, a major importer of Chinese and Malaysian PAC had provided price data to the Commission which indicated that imports from Malaysia were not dumped.

As mentioned in recital 30, it should also be remembered that the Eurostat data for CN code 3802 10 00 includes not only PAC but also activated carbons in granular and pellet form (which, generally speaking, are more expensive products than PAC). Since, according to available market information, the data concerning Malaysian import prices do not relate purely to the product under investigation, any such prices derived from Eurostat are not comparable with actual PAC prices concerning the Community producers or the People's Republic of China obtained during the course of the investigation.

(68) In view of the foregoing (and particularly the conflicting nature of the allegations made by the interested parties), the Commission considers that there is insufficient reliable data available to enable conclusions to be drawn as to whether or not Malaysian imports were at dumped prices. It follows also that at the present time there is no justification for extending the current investigation to Malaysia. In addition, the information available concerning Malaysian import prices makes it impossible for the Commission to draw conclusions on the effect of such imports on the Community market.

(69) The Commission also examined the volume of sales of PAC of all grades exported outside the Community by the Community producers. It was found that such sales accounted for approximately 27 % of the Community producers' total sales volume between 1990 and the investigation period. In terms of weight, these sales amounted to 10 166 tonnes in 1990, 10 127 tonnes in 1991, 8 430 tonnes in 1992 and 9 220 tonnes during the investigation period. Between 1990 and the investigation period, this represents a decline of 9,3 %. It is evident that this loss of export sales outside the Community has contributed further to the Community producers' poor overall economic situation concerning PAC even though, taken in isolation, such sales were found to have been made at profitable levels.

(70) Certain interested parties argued that any injury suffered by the Community producers was caused by PAC production overcapacity in the Community. They submitted that this overcapacity was due to declining demand, resulting from developments in technology and increasing use of recyclable activated carbons (i.e. granules and pellets). It has, however, been clearly established that, irrespective of any possible increase in demand for recyclable activated carbons, consumption of PAC in the Community actually increased by 3,3 % between 1990 and the investigation period. Moreover, given that this overcapacity was present even in 1990 when the Community producers achieved adequate profits (see recitals 52 and 58), the injury suffered by these producers during the investigation period cannot be attributed to this factor.

3. Conclusions concerning cause of injury

(71) It can be argued that the increased volume of imports from third countries other than the People's Republic of China (and in particular Malaysia) may have contributed to the losses suffered by the Community industry. It can also be argued that the loss of sales outside the Community market has not helped the situation of the Community producers. Neither of these arguments,

however, detract from the fact that imports of PAC originating in the People's Republic of China, taken in isolation, by virtue of their dumped low prices, significant undercutting, increasing volume and growing market penetration have, within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. General considerations

(72) A determination as to whether the Community interest calls for intervention in the form of anti-dumping measures must be based on an appreciation of all the various interests taken as a whole, including the interests of the Community industry, users and consumers. In making such an appreciation, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition must be given special consideration.

(73) Against this background, the Commission has considered the effect anti-dumping measures on PAC originating in the People's Republic of China would have in relation to the interests of these different parties.

2. Interest of the Community producers

(74) Given the increasingly large financial losses which are occurring, the Commission considers that without measures to correct the effect of the dumped Chinese imports, the viability of the Community PAC industry may be at risk. It follows that with fewer producers present in the Community market, the amount of competition is also reduced. Indeed, the Commission has been informed that a PAC production facility in the Community is in the process of being run down with a view to final closure at the end of 1995. This will lead to further loss of jobs in an industry with already declining employment and, if dumped imports were allowed to continue, could mean other production sites in the Community closing.

3. Interest of users

(75) One interested party argued that the market demand for PAC in the Community cannot be covered without imports, due to the high export levels of the Community producers. However, it is clear from the data given in recitals 42, 52 and 69 that the production capacity of the Community industry remaining after the deduction of its export sales still exceeds the yearly consumption of the

Community market. Furthermore, imports from all third countries excluding the People's Republic of China cover almost 14 % of the Community market. The Commission therefore considers that there would be no shortage of supply of PAC if anti-dumping measures were to be taken against the People's Republic of China. In this respect, the purpose of trade defence measures is not to exclude from the Community market exporters found to have dumped injuriously, but simply to restore fair competition.

- (76) The consequences of a possible price increase of Chinese PAC following the imposition of any anti-dumping measures should also be seen in the context of the proportion of the value of purchases of PAC by users in relation to their total inputs. It can be argued that the public utilities which use PAC for water purification and the industrial users which use it for waste water treatment, decolourisation and adsorption of impurities have benefited in the short term from the low prices of dumped Chinese imports. However, on the basis of information available, the Commission considers that for these provisional findings, PAC is a secondary material and purchases by users account for a small percentage of their total inputs. Dumping measures are therefore unlikely to have a major impact on users' overall budgets, a view which would tend to be supported by the fact that no public or industrial user of PAC has made any submission to the Commission thus far during the course of the investigation.

4. Conclusion

- (77) On the basis of the foregoing, the Commission concludes that the precarious situation of the Community producers makes action against dumping necessary. The possible impact of such action on users of PAC is not, on balance, considered sufficient to deny legitimate protection to the Community producers of PAC against unfair trading practices. Accordingly, the Commission considers that provisional anti-dumping measures should be imposed against imports of PAC originating in the People's Republic of China.

H. PROVISIONAL DUTY

- (78) In order to establish a level of duty adequate to remove the injury caused by dumping, it is first

necessary to consider the minimum pre-tax profit required for Community producers to remain competitive. In this regard, one such producer claimed that 15 % was necessary, whilst another submitted 10 % was the minimum. Given, however, that PAC is a long-established product and that demand has only increased slightly in recent years, the Commission considers that both of these figures are high. In addition, it should be noted that the overall level of net profit before tax achieved by the Community producers on all their activities relating to activated carbon ranged from 1 % to 5 % during the investigation period. These figures include not only the loss-making PAC sales but also sales of activated carbon in granular and pellet form, plant installation and engineering. Accordingly, the Commission is of the opinion that, for the purposes of the present proceeding, a 5 % pre-tax profit on the break-even PAC sales price in the Community is reasonable.

- (79) The Commission then calculated for each Chinese grade imported into the Community during the investigation period, a weighted average net ex-works selling price for the equivalent grades produced by the Community industry. As has been set out in recital 58, the Community producers suffered an overall loss on PAC sales in the Community during the investigation period. It was therefore necessary to uplift these weighted average net ex-works selling prices to a level which not only allowed the Community industry to cover its cost of production but also achieve a reasonable profit of 5 %.

- (80) The Community producers' profit-yielding price, as established for each Chinese grade, was then compared to the Chinese cif import price, adjusted to a duty paid ex-warehouse level in the Community. The difference between these two prices (which is the injury elimination amount), expressed on a weighted average basis as a percentage of the cif import price, free-at-Community frontier is 66,8 %.

- (81) As the dumping margin established of 71,5 % in this proceeding exceeds this injury elimination percentage, the anti-dumping duty should be based on the lower figure in accordance with Article 13 (3) of Regulation (EEC) No 2423/88.

I. FINAL PROVISIONS

- (82) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Community may propose,

2. The rate of anti-dumping duty applicable to net free-at-Community frontier price before duty shall be 66,8 %.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

HAS ADOPTED THIS REGULATION :

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 ask to be heard orally by the Commission within one month of the date of entry into force of the Regulation.

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of powdered activated carbon falling within CN code ex 3802 10 00 (Taric code 3802 10 00 * 91) and originating in the People's Republic of China.

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, 10 August 1995.

For the Commission

Martin BANGEMANN

Member of the Commission
