

COUNCIL REGULATION (EC) No 1006/96

of 3 June 1996

imposing a definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, 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⁽²⁾, and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1984/95⁽³⁾, hereinafter referred to as 'the provisional duty Regulation', imposed a provisional anti-dumping duty on imports into the Community of powdered activated carbon (hereinafter referred to as 'PAC') originating in the People's Republic of China and falling within CN code ex 3802 10 00.

By Regulation (EC) No 2736/95⁽⁴⁾, the Council extended the validity of this duty for a period of two months.

- (2) Subsequent to the imposition of the provisional anti-dumping duty, one Chinese exporter, the complainants and other interested parties presented written submissions, making known their views on the provisional findings. Where requested, hearings were granted by the Commission. In particular, nine importers/distributors who are members of the Community of Activated Carbon Importing Companies in Europe (hereinafter referred to as 'Cacic') presented joint submissions concerning the Commission's findings.

- (3) In addition, following the imposition of the provisional anti-dumping duty, a company based in the United States of America (USA) submitted to the Commission that it started exporting PAC produced in a joint venture in the People's Republic of China on a private-label basis to the Community during 1994 (i.e. after the investigation period) and requested to be exempted from any definitive duty. The company was advised that such an exemption could only be granted after a newcomer review investigation had been requested and carried out under the provisions of Article 11 (4) of Regulation (EC) No 3283/94. Furthermore, as this proceeding relates to exports from a non-market economy country, the company was advised that it would also have to show to the satisfaction of the Community Institutions that, in its particular case, individual treatment should be granted. Nevertheless, certain comments of a general nature which the company made had also been raised by other interested parties and were therefore already taken into account, where appropriate.

- (4) As mentioned in recital 76 of the provisional duty Regulation, at that stage of the investigation, no public utility user or industrial user of PAC had made any submissions to the Commission. Subsequent to the imposition of the provisional anti-dumping measures, however, several such users made their views known to the Commission.

In addition, certain importers/distributors submitted that the Commission should approach 'major' PAC users in order to obtain information on the evolution of their consumption during the last few years and also to find out how they perceived Chinese PAC in comparison to the Community produced product. As the Commission could agree to this request, simple questionnaires were sent to numerous PAC users situated in the Community. In total, 22 users situated in six different Member States were approached by the Commission. Meaningful comments or replies to the questionnaire were only received from 12 of these users, representing approximately 6 % of total Community consumption. Details of the additional information collected are given below in recitals 62 to 66 of this Regulation.

- (5) The Commission continued to seek and verify all other information it deemed to be necessary for its definitive findings and also reviewed certain aspects of the calculations made in the provisional duty Regulation to establish dumping, undercutting and the injury elimination level. The parties were informed of these revised calculations and also of

⁽¹⁾ OJ No L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

⁽³⁾ OJ No L 192, 15. 8. 1995, p. 14.

⁽⁴⁾ OJ No L 285, 29. 11. 1995, p. 2.

the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of the amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure. Their representations were considered and, where appropriate, the Commission's findings were modified to take account of them.

B. PROCEDURAL QUESTIONS RAISED

- (6) As concerns the actual initiation of this investigation, Cacic argued that the complaint lodged by the European Chemical Industry Council (hereinafter referred to as 'Cefic') was 'factually incomplete', contained 'false allegations' and omitted 'a number of relevant facts which would have prevented the Commission from initiating this investigation'. In support of these arguments, Cacic stated that the complainants had omitted the names and addresses of importers known to them in several Member States and, as a consequence, these importers were unable to participate in the investigation. Cacic also argued that the Commission was made aware of many wrong addresses and mistakes in the complaint but did not take sufficient measures to investigate the situation in all Member States.

Cacic also claimed that the Commission had rejected the cooperation of an importer/distributor in Sweden and, because of this, the provisional duty Regulation did not address the situation in all Community markets. In consequence, Cacic considered that the provisional duty Regulation not only infringed the rights of importers in the new Member States but was also defective in its market analysis.

- (7) As concerns the remark made by Cacic concerning the importers omitted from the complaint, it has to be pointed out that when the Commission was made aware of the existence of these companies early in the proceeding, questionnaires requesting information were immediately sent to them. The Commission is not in a position at the initiation stage of an investigation to know all the importers or exporters concerned by the proceeding, as it initially relies on information provided in the complaint. In this particular case, the Commission was satisfied that the complainant had furnished all the relevant information it had in its possession. Furthermore, it should be remembered that one of the purposes of a notice of initiation of an anti-dumping proceeding published in the *Official Journal of the European Communities* is to invite

all interested parties to come forward and participate in such a proceeding.

With regard to Cacic's point concerning the incorrect addresses of certain interested parties in the complaint, it should be noted that the Commission sent out questionnaires for a second time to these companies when it was advised of the errors by one of the known importers.

Concerning the allegation that the cooperation of one Swedish importer/distributor had been rejected by the Commission, it should be pointed out that this company made itself known in February 1995 and was informed that due to the advanced stage of the investigation it was not possible for it to complete a questionnaire. The company in question was advised, however, that its comments were most welcome, particularly as far as Community interest was concerned. Subsequent to this, the company only contacted the Commission again after provisional duties were imposed and actually declared that it had not made any imports of PAC from the People's Republic of China during the investigation period.

- (8) In view of the foregoing, it is considered that the rights of defence of all interested parties were respected. As concerns the claim that the Commission's investigation did not address all markets and that its analysis is therefore defective, this question is dealt with below in recital 67 of this Regulation.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (9) Certain parties reiterated arguments that had made previously, namely that Chinese PAC should not be considered as a like product to PAC produced in the Community (or to PAC produced in the USA, the analogue country). These parties submitted that in view of the many different grades of PAC on the market and their different production methods, the different raw materials used and the diverse technical characteristics imparted to the finished product, it was an over-simplification on the part of the Commission to treat them all as one like product.
- (10) One importer/distributor repeated its argument that the Chinese PAC grade 'GA' (which was chemically activated using zinc) is extremely efficient for waste-water treatment, particularly in comparison to Community-produced PAC normally used for this purpose. The company therefore submitted again that this Chinese PAC grade should not be considered as a like product to the Community-produced grades. In this respect, a major user stated that the Chinese PAC grade it had been purchasing for waste-water treatment from the importer/

distributor in question was, in economic terms, preferable to certain Community-produced grades. In other words, the Chinese PAC grade was of a better quality and at a competitive price in comparison to some Community-produced grades. This does not, of course, mean there are no better quality Community-produced grades — it simply means that the Community-produced grades of a similar quality are more expensive and therefore not normally used for waste-water treatment.

The same importer/distributor further argued that this 'GA' grade is also not a like product as it has a lower purity in comparison to the PAC activated chemically in the Community by phosphoric acid. It was claimed, therefore, that it cannot be used in many applications where Community-produced PAC is used.

- (11) In respect of the above observations, it should be noted that the investigation revealed that the 'GA' grade was sold in the Community to many different types of users to which the Community procedures are also selling their PAC grades (e.g. the food industry, the chemical industry as well as for water treatment). In addition, the sole cooperating Chinese exporter itself declared that its 'GA' grade is suitable for many uses including the chemical, pharmaceutical and food industries. This was also confirmed during the course of the investigation by certain importers/distributors.

- (12) Another distributor claimed that the Chinese PAC grade 'GA' is a very efficient grade when used in wine production and, as there is no zinc-activated PAC produced in the Community, it should not be considered as a like product. In this respect, it should be pointed out that while there may be no Community production of chemically activated PAC using zinc (see recitals 11 to 17 of the provisional duty Regulation), the investigation showed that there are equivalent Community-produced grades which have been activated by means of phosphoric acid and developed specifically for the wine industry. This was indirectly admitted by the distributor itself when it claimed that a high anti-dumping duty on Chinese PAC would force it to pull out of the Community market thus leaving only the two main Community producers to compete for this particular PAC sales sector.

- (13) It was also submitted that it was inappropriate to compare chemically activated PAC produced in the

USA to that produced in the People's Republic of China as these countries used different chemical activation agents for their PAC production. In this respect, it is considered that although the activating agents are not always the same, the production method used is similar (see recital 13 of the provisional duty Regulation). In addition, the raw materials used in the USA are identical to those used in the People's Republic of China. This leads to end products which are sufficiently alike for them to be comparable.

- (14) From the above, it is concluded that while there can be certain differences between PAC grades imported from the People's Republic of China and those produced in the Community and the USA, as already explained in recitals 18 and 19 of the provisional duty Regulation, the finished products nevertheless remain sufficiently similar in terms of their physical characteristics for them all to be considered as like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88. Indeed, all of the arguments presented in the previous recitals of this Regulation refer only to potential differences in quality and, furthermore, none of the interested parties has provided evidence that imported Chinese PAC is not in direct competition with PAC produced in the Community and the USA. Accordingly, the provisions of recitals 17, 20 and 21 of the provisional duty Regulation are confirmed.

D. COMMUNITY INDUSTRY

- (15) No new arguments were received in connection with recital 22 of the provisional duty Regulation, therefore these findings are confirmed.

E. DUMPING

1. Normal value — choice of analogue country

- (16) Certain interested parties questioned the suitability of the USA as the analogue country in this particular case. It was argued that the large modern plants in the USA could not be compared to the smaller, traditional production plants in the People's Republic of China and that differences in the cost of investment and depreciation in the USA rendered any such comparison as 'absurd'.

- (17) The argument put forward completely overlooks, however, the fact that the People's Republic of China does not have a market economy and that various aspects of a producer's input and output are directly controlled by the State. This intervention impedes the establishment of reliable domestic prices and costs and it is for this reason that an analogue country is sought for the purposes of establishing normal value. In all cases, the Commission will use the most appropriate analogue country, given the circumstances of the case and, if necessary, make due adjustments. In this particular case, for the reasons stated in recital 25 of the provisional duty Regulation, the choice of the USA as the analogue country was not considered unreasonable.
- (18) In connection also with the choice of an analogue country, these parties also made the assumption that the unidentified cooperating parties in the USA were related to Community producers and that this was not conducive to objective results. Despite being requested to do so, the Commission is not in a position to reveal the names of the cooperating US producers as their average domestic sales prices (and technical specifications of the grades taken for normal value comparison purposes) have been disclosed to the importers and the cooperating Chinese exporter. To divulge their names as well would constitute a breach of confidentiality. It should also be remembered that these producers were visited by the Commission and the data provided was the subject of an on-the-spot verification. In addition, the domestic sales which formed the basis for the normal value calculations were at profitable levels, only to unrelated customers and were representative of US domestic market prices. Therefore, the question of whether or not these US producers were related to Community producers is totally irrelevant.
- (19) Another interested party questioned why Malaysia had not been taken as the analogue country instead of the USA since the average Malaysian export price to the Community, as indicated in Eurostat during the investigation period (1 January to 31 December 1993), was lower than the average Chinese export price during the same period. This party also proposed that the average Malaysian export price to the Community (obtained from Eurostat) be used for establishing normal value for Chinese steam-activated PAC. It also submitted that since Malaysia does not produce chemically activated PAC, a theoretical export price for Malaysian chemically activated PAC should be used to establish normal value for Chinese chemically activated PAC.
- (20) This proposal for establishing normal value in Malaysia on the basis of an average export price obtained from Eurostat for many different unknown grades (not all of which may be PAC), contradicts the request of all the other interested parties that all comparisons for dumping and injury purposes should be made on the basis of data referring to comparable individual PAC grades for each of the two activation methods separately. Accordingly, this proposal could not be accepted.
- (21) Another reason for not selecting Malaysia as the analogue country in this particular case is given in recital 25 of the provisional duty Regulation. While the major Malaysian producer of PAC known to the Commission had been approached, this company did not in fact respond to the Commission's request for information. It should also be noted that available information indicates Malaysia produces only steam-activated PAC while, like the People's Republic of China, the USA produces and sells on its domestic market both steam and chemically activated PAC grades.
- (22) Accordingly, the conclusions set out in recital 26 of the provisional duty Regulation concerning the choice of the analogue country are confirmed.
- ## 2. Normal value
- (23) For the purpose of definitive findings, normal value was established on the basis of the methods used in recitals 27 and 28 of the provisional duty Regulation.
- ## 3. Export price
- (24) A duly substantiated request was received from the sole cooperating Chinese exporter concerning the incorrect attribution of a commission to certain export transactions which was made in the export price calculation. An adjustment was made accordingly.
- (25) No other arguments were received in connection with the findings in recitals 29 to 32 of the provisional duty Regulations. Therefore, these findings are confirmed.
- ## 4. Comparison
- (26) The Commission provided to all interested parties, upon request, additional technical specifications as well as basic uses for certain US PAC grades which had been used for product comparison purposes.

- (27) Certain parties argued that the comparisons made between the Chinese export prices and the normal values were based on inadmissible simplifications. They reiterated a previous submission made that independent laboratory analyses should be carried out in order to allow what they considered to be a 'fair comparison' between Chinese and US PAC grades for the dumping calculations as well as between Chinese and Community-produced grades for the undercutting and underselling calculations (see recitals 35, 46 and 47 of the provisional duty Regulation).

- (28) It should be noted that the importer/distributor which first proposed the use of independent laboratory analyses, had itself made comparisons between Chinese and Community-produced PAC grades in its submissions to the Commission during 1994 and even indicated a US PAC grade which it considered to be comparable to the Chinese. Indeed, the Commission used certain of these comparisons where the products appear to have similar commercial specifications and basic uses. It was only in January 1995 that this company came up with the proposal for independent laboratory analyses.

In this respect, it should be recalled that the investigation showed that different PAC grades, irrespective of their origin, are interchangeable to a great extent as far as their basic applications are concerned. Indeed, as explained in recitals 14 and 15 of the provisional duty Regulation, different PAC grades sold for the same applications may have certain differences as far as their precise technical specifications are concerned and it is for the user to select the most cost-effective PAC grade for its particular needs. Such differences can be found in the available specification sheets issued by the producers or the importers/distributors for the general information of users or which accompany sales invoices, purchase contracts, etc. The Commission has used these specification sheets, together with the basic known applications, in order to make comparisons between prices of apparently similar PAC grades thus avoiding, at the request of certain interested parties, the use of overall PAC average prices. It was therefore considered that detailed laboratory analyses would not assist further this particular aspect of the investigation.

- (29) The same company requested a meeting with the complainants and 'possibly with a neutral authority' in order to discuss product comparisons. As the

possibility of such a meeting is provided for in Article 7 (6) of Regulation (EEC) No 2423/88, the Commission approached the complainants with this request. Cefic stated, however, that such a meeting was not necessary in their view since they considered all relevant information and technical expertise at their disposal to make meaningful comparisons had already been provided to the Commission. Therefore, no such meeting was held between the parties directly concerned.

- (30) Although all interested parties and in particular the importers/distributors (which have also sufficient expert knowledge on Chinese, Community and even US-produced PAC) were asked to propose substantiated specific alternative comparisons or even adjustments for differences in physical characteristics between the different PAC grades, only a limited amount of relevant information was supplied. This information did, however, cast doubt upon the appropriateness of the comparison the Commission had made for one Chinese steam-activated PAC grade and, accordingly, the Commission changed the comparison made for this particular Chinese grade.

- (31) It is therefore confirmed that the grade-by-grade comparisons made by the Commission on the basis of available commercial technical specifications and known uses should be maintained.

- (32) It was also submitted that the prices taken in the US market in order to calculate the dumping margin were not at the same level of trade and that adjustments should be made accordingly. In particular, it was argued that an importer/distributor of Chinese PAC in the Community does not perform the same function as a distributor of US origin product in the USA and that costs such as repacking, storage, financing, technical services/development and quality assurance are all elements which are built into the domestic sales prices of the US producers, but not into the Chinese export price. The parties which raised this particular issue did not, however, propose specific levels for such adjustments.

- (33) As a general remark, it should be noted that the Commission established normal value on the basis of US distributor-delivered domestic prices (i.e. at the same level of trade with the Chinese exports to importers/distributors in the Community). As provided for in Article 2 (10) of Regulation (EEC) No 2423/88, only adjustments to take account of differences affecting price comparability (e.g. selling expenses) can be made. In this respect, as is

indicated in recital 34 of the provisional duty Regulation, the Commission adjusted the US domestic prices used in the comparisons so as to take account of all discounts, rebates, commissions and packing costs.

(34) Concerning repacking, the investigation showed the Chinese PAC is always packed in bags which are shipped to the Community in cargo containers. Certain Community importers/distributors claimed, however, that these bags are not of an acceptable quality to their customers and rebagging before resale is therefore necessary. In this respect, it should be noted that, as mentioned in the provisional duty Regulation, the Commission had already adjusted the US domestic price downwards to take account of all packing costs incurred by the US producers, therefore no further adjustment or allowance can be granted.

(35) The argument that there are no storage costs built into the Chinese export prices while such costs are included in the US prices is not considered to be realistic. Indeed, it is considered inevitable that the Chinese export prices also contain a certain element for storage costs as the product would have to be stored until it is of an economically viable quantity for export shipment and/or fulfil the delivery timing clauses of the sales contracts. No differences can therefore be established for the storage costs which are considered to be included in both the US and Chinese prices.

(36) With regard to financing costs built into US domestic prices and not into Chinese export prices, it should be remembered that under free market economy conditions, regardless of their functions as importers, distributors, producers, traders, etc., all such companies incur these type of expenses. This would also be the case for the Chinese exporters and producers if they too had to operate under free market conditions. As this is not the case, this argument is considered irrelevant for the purposes of this proceeding. As far as the payment terms granted by the Chinese exporters for exports to the Community and by the cooperating US producers for their domestic sales, these were found to be similar. No adjustment for this purpose is therefore necessary.

(37) Concerning the question of technical services/development and quality assurance costs, the investigation showed that although the Chinese exporters guarantee the quality of the delivered product in their sales contracts and should therefore incur quality assurance costs, they do not provide technical assistance or product development for their customers. As PAC is a customer (i.e. user)-oriented product and very often producers develop specific qualities for the needs of certain customers, it was found that these types of expenditure constitute a part of the selling costs incurred by the US pro-

ducers, although recorded in their accounts under 'research and development' costs. Accordingly, an adjustment was made to the domestic sales prices of each producer in order to net-back these actual technical assistance and product development costs incurred by each producer.

5. Dumping margins

(38) In the light of the conclusions set out above with regard to the determination of normal value and export price, and the comparison between the two, the definitive examination of the facts showed the existence of dumping in respect of imports of the product concerned originating in the People's Republic of China.

(39) Taking into account the change made concerning the alternative comparison for one PAC grade, the correct attribution of certain commission and an adjustment granted to normal value for technical assistance and product development costs, the weighted average dumping margin expressed as a percentage of the net, free-at-Community-frontier price, before duty, is 69,9 %.

F. INJURY

1. Community consumption

(40) One party argued that for the purposes of examining trends in Community consumption, the Commission should have considered not only the period 1990 to the investigation period but also previous years as well, since this would have demonstrated a decline in consumption (instead of the small increase of 3,3 % which was observed over the period 1990 to 1993). It is alleged that if such an analysis over a longer period had been carried out, the effects of the closure of a large PAC production plant in Germany before 1990 would have given different trends as regards Community consumption.

(41) It is common practice for the Community institutions to examine trends in consumption, import volumes, market shares, prices, etc. over a period of several years (normally four years including the investigation period). This practice was followed in the present case as it was considered appropriate for giving an objective view of the development of the market situation for all parties concerned. It should, however, be noted that even if the period under analysis were to be extended and the trend in consumption were to change, the trends relating to the Community producers' market share (i.e. declining) as well as those of Chinese imports (i.e. increasing), would anyhow remain the same.

- (42) Certain importers/distributors also claimed that significant quantities of PAC were shipped to the Community from the People's Republic of China but never actually put into 'free circulation' (i.e. by being entered to bonded warehouse and then sold on to third countries outside the Community). It was also submitted that Chinese PAC was put into free circulation within the Community but then re-exported to third countries. In order to clarify this situation, the Commission requested specific data and documentation from the parties concerned. These parties failed, however, to provide the necessary information which would enable the Commission to attribute the actual year of import to these re-exports of Chinese PAC and thus allow their claims that lower quantities of PAC had actually been consumed in the Community than had been found in the Commission's investigation.

2. Volume and market share of dumped imports

- (43) Apart from the arguments presented in the previous recital of this Regulation, no new submissions were made concerning the volume and market share of dumped imports. Therefore, the findings in recitals 37 to 44 of the provisional duty Regulation are confirmed.

3. Prices of the dumped imports and price undercutting

- (44) As with the comparisons made by the Commission in order to establish dumping, it was again submitted by certain interested parties that comparisons for undercutting purposes between Community-produced PAC grades and PAC grades imported from the People's Republic of China should be made on the basis of independent laboratory analyses.

It was also argued that the technical specifications of the different PAC grades used by the Commission for comparison purposes were incomplete.

In recitals 46 and 47 of the provisional duty Regulation, as well as in recitals 27 to 31 of this Regulation, it has been explained why the comparisons made on the basis of available commercial, technical specifications and uses of the PAC concerned were considered sufficient for the purposes of this investigation. The Commission used the commercial, technical specifications issued by the Community producers themselves as well as the Chinese PAC technical specifications normally accompanying the purchase contracts of the importers.

- (45) It should also be noted that although the Commission's comparisons were disclosed to all interested parties well before the imposition of provisional measures, no specific alternative comparisons or even adjustments for any differences in physical

characteristics between different PAC grades were proposed by any interested party. One could have expected that the importers/distributors, which in certain cases are also trading in Community-produced PAC, would have the necessary expertise to provide the abovementioned information, if they cared to do so.

- (46) It was claimed that the market price of Chinese PAC in the Community is at the level of the Community producers or, in some cases, even higher. While it may well be the case that some export transactions for Chinese PAC grades are made at similar or even higher price levels to certain transactions involving some of the Community producers' grades (see recital 48 of the provisional duty Regulation), it should not be forgotten that the Community producers' prices, overall, were significantly undercut by dumped Chinese import prices.

- (47) With regard to the actual level of undercutting found, it should be recalled that on a grade-by-grade basis, the Community producers' weighted average net ex-works sales prices in the Community to users were compared to the weighted average import prices of the equivalent Chinese grades, adjusted to duty-paid net ex-warehouse levels.

It was submitted, however, that in uplifting Chinese import prices to make them ex-warehouse and thus at a comparable level of trade and commercial stage to the Community producers ex-works sales prices, the Commission had not taken into account all costs incurred by the Community importers/distributors, nor an appropriate profit margin. This is incorrect since, as indicated during the course of the investigation to the cooperating parties, an adjustment of 27 % was added to the Chinese cif import prices for this purpose.

- (48) It should be stressed that this percentage represents the weighted average of all costs claimed by the cooperating importers (customs duty which had been paid, transport, warehousing, repacking, financing, depreciation, etc.) and a reasonable profit margin based on the importers'/distributors' profit and loss accounts. Nevertheless, in conformity with the adjustment granted for establishing normal value with regard to technical assistance and customer specific product development costs, which are assumed not to be in the Chinese prices, it has been decided, for the purpose of definitive calculations of undercutting, to make a downwards adjustment to the sales prices of each Community producer to take account of such selling costs incurred by that producer during the investigation period.

- (49) On this basis, revised undercutting margins of up to 35 % have been calculated. The weighted average, however, of these revised undercutting margins is 21 %.

4. Situation of the Community industry

- (50) As no new arguments were presented concerning production, production capacity, stocks, sales and market share, profitability and employment (recitals 51 to 59 of the provisional duty Regulation), these findings are confirmed.

5. Conclusions concerning injury

- (51) In the light of the above and in the absence of any other substantiated arguments, the conclusions set out in recitals 60 and 61 of the provisional duty Regulation that the Community industry concerned suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88 are confirmed.

G. CAUSATION

1. General remarks

- (52) A number of interested parties reiterated claims made previously concerning causation of injury. These parties claimed that the Commission, when arriving at its provisional findings and disclosing the essential facts and considerations upon which it had the intention to propose definitive measures, had not sufficiently taken account of the arguments raised by them. As shown below, this contention is not correct since the points in question were explicitly addressed by the Commission in recitals 62 to 71 of the provisional duty Regulation.
- (53) The importers continued to argue that there was a downturn in demand in the Community for PAC between 1990 and the investigation period caused by developments in technology and increasing use of recyclable activated carbons. The Commission acknowledged in recital 70 of the provisional duty Regulation that there may have been an increasing demand for these alternative products, however, this does not necessarily mean that the demand for PAC has dropped. As stated in recitals 42, 62 and 70 of the provisional duty Regulation, demand (i.e. Community consumption) actually increased by 3,3 % between 1990 and the investigation period. However, the most important factor to be considered is that sales of the Community producers decreased while imports (and particularly dumped imports from China) rose significantly.
- (54) It was also argued that the closure of a large German PAC production plant before 1990 (referred to in recital 40 of this Regulation) caused an increase in Chinese imports since the marketing partner of this producer claimed that it was 'obliged' to replace the Community-produced

product with Chinese PAC, even though this company was also acting as a distributor of PAC produced by other Community producers as well as an importer/distributor of PAC from several third countries. While it is accepted that this marketing partner had to look elsewhere for its PAC purchases, such a justification for increased imports of Chinese PAC does not, however, alter the fact that such imports were made at dumped prices which significantly undercut the Community producers' prices and thereby caused material injury.

- (55) Referring to recitals 45 and 56 of the provisional duty Regulation, one party argued that Chinese PAC imports could not have caused injury to the Community industry as the average prices of such imports increased by 10,6 % between 1990 and 1993 and, moreover, the average PAC sales prices of the Community producers as a whole also increased during the same period. In this respect, it should also be recalled that the overall increase in the Community-producers' prices was only 1,4 % over this period and that in certain cases, the prices of Community-produced PAC even decreased. Taking into account the significant price undercutting of 21,0 % established for 1993, the conclusion must therefore be drawn that there was even higher undercutting in 1990 (when Chinese imports started to penetrate the Community market) and not that there is an absence of causation between Chinese dumped imports and the injury suffered by the Community industry.
- (56) Arguments were put forward that the financial difficulties of the Community producers were caused not by Chinese imports but, instead, mainly by significant increases in the cost of production of the producers and, in the case of one of them, by particularly high raw material costs.

Although Community producers should be able to expect to sell their products at prices which cover all costs in a market where fair competition is prevailing, in the light of comments made by several interested parties the Commission re-examined the overall situation concerning the evolution of the cost of production of the cooperating Community producers. The conclusion was drawn that in order to reflect costs normally incurred, certain additional raw material costs of an exceptional nature incurred during the investigation period by one Community producer should not be taken into account when establishing the injury elimination level. This approach is confirmed.

- (57) Certain interested parties also continued to argue concerning the impact on the Community market of apparently low priced imports of PAC from Malaysia. No new arguments of substance were,

however, presented by these parties and it is considered that the reasoning given in recitals 67 and 68 of the provisional duty Regulation adequately answers the points already raised.

- (58) As explained in recital 68 of the provisional duty Regulation, the Commission had no evidence that exports from Malaysia were at dumped price levels during the investigation period. While certain evidence was submitted to the Commission concerning allegedly dumped Malaysian exports, this in fact referred to the year 1994 (one year after the investigation period) and, therefore, no link between any possible Malaysian dumping in 1994 and injury suffered by the Community industry during the investigation period could be established on the basis of the evidence provided.
- (59) Certain interested parties put forward a calculation which attempted to show that even if Community-produced PAC equivalent to all the Chinese imports had been sold instead by the Community producers during the investigation period, these Community producers would still have made significant losses. This calculation overlooks, however, the fact that the actual sales volumes and values achieved by the Community producers during that period were, in reality, influenced by the low priced dumped Chinese imports and for this reason could not form the basis of such a theoretical calculation. Therefore, this calculation is considered to be flawed and cannot demonstrate the hypothetical financial situation of the Community producers if Chinese PAC imports were not present on the Community market.
- (60) It was also alleged by certain parties that the Community producers were selling PAC outside the Community at much lower prices than in the Community and, therefore, the price level on the Community market was not the only reason for their actual 'economic' situation. As indicated in recital 69 of the provisional duty Regulation, the Commission found that the Community producers' sales outside the Community were made at profitable levels and therefore at much higher prices than the PAC sold inside the Community at a loss. In fact, the weighted average selling price of all grades of PAC sold outside the Community by the cooperating Community producers increased from ECU 1 792 per tonne in 1990, to ECU 1 839 per tonne in the investigation period. The allegation, as put forward, is therefore based on incorrect assumptions. Nevertheless, the impact of the declining sales volumes of Community producers outside the Community is acknowledged in recitals 69 and 71 of the provisional duty Regulation.

2. Conclusions concerning cause of injury

- (61) In the light of the above and in the absence of any other meaningful, substantiated arguments, the conclusions set out in recital 71 of the provisional duty Regulation are confirmed.

H. COMMUNITY INTEREST

- (62) As mentioned in recital 4 of this Regulation, 22 companies, most of them put forward by certain importers/distributors as 'major' users of PAC situated in six different Member States, were approached by the Commission after the imposition of provisional measures. Meaningful comments or replies to a simple questionnaire were received from only 12 users, representing approximately 6 % of total Community consumption.
- (63) As concerns the PAC purchases of these 12 users, five declared that their PAC consumption was stable, four declared they had decreasing consumption and three declared they had increasing consumption.
- (64) Of the users which replied to the questionnaire or submitted comments, seven indicated that Community and Chinese PAC prices were comparable, but only two of them gave the trade names of the grades they had compared. Examination of the specifications of the Community-produced grades compared by these two users showed, however, that the Chinese product was technically superior to that produced in the Community and, therefore, not comparable for the purposes of this investigation. Two other users also indicated that Chinese PAC is much less expensive than the same quality of PAC produced in the Community. Three users indicated that they had chosen Chinese PAC because of its quality in direct relation to its price. On the other hand, another user stated it had chosen the Community product for exactly the same reason. Two other users had changed from Chinese PAC to that produced in the Community. In view of the conflicting nature of the information received from the users, no decisive conclusion can be drawn from this data.
- (65) Furthermore, despite being so requested, no substantiated comments were made by the users concerning the impact that anti-dumping measures on Chinese PAC would have on their operating budgets. Most of the users did, however, argue that a high anti-dumping duty might mean Chinese imports being excluded from the Community market, thus, perhaps, reducing the level of competition.

- (66) In this respect, it should be repeated that the purpose of trade defence measures is to eliminate the trade distorting effects of the injurious dumping and to restore effective competition. Accordingly, no different conclusions other than those established in recitals 75 and 76 of the provisional duty Regulation could be reached.
- (67) One Swedish importer/distributor argued that the imposition of anti-dumping measures on Chinese PAC would have a profoundly detrimental effect on its business. However, this company declared that there were no imports of Chinese PAC into its Scandinavian sales territory (Sweden, Finland, Denmark) during the investigation period. This importer also argued that the Commission should have taken Sweden and Finland into consideration in its investigation even though they were not members of the Community during the investigation period. In this respect, the Commission notes that the total PAC consumption in Sweden and Finland is estimated to be approximately 700 tonnes per annum, or about 2 % of total Community consumption. Given also that there were no imports of Chinese PAC there during the investigation period, it is considered that even if data for these two new Member States concerning imports, sales, consumption had been included in the findings, the impact would have been insignificant.
- (68) In the light of the above, it is considered that the conclusions drawn by the Commission in the provisional duty Regulation concerning Community interest should be confirmed. Indeed, no compelling reasons have come to light which would lead to the conclusion that adopting definitive measures would not be in the interest of the Community.

I. UNDERTAKING

- (69) An undertaking based on a combination of one minimum price and a quantitative limit for exports of chemically activated PAC was proposed by the sole cooperating Chinese exporter. It was suggested by this exporter that the Chinese authorities could guarantee the monitoring of the execution of such an undertaking. However, the Chinese authorities

themselves made no such commitment. This suggestion did not, moreover, contain any specific price or quantity level, nor refer to the company's steam-activated PAC exports to the Community. In this respect, it should be remembered that PAC exists in many different grades which have different prices. Therefore, an undertaking with one average minimum price could not be accepted. Furthermore, if an undertaking on a grade-by-grade basis had been offered, the monitoring of such an undertaking would have been virtually impossible as the exact grades this company will export to the Community could not be controlled against official statistics (which do not refer to import data on a grade-by-grade basis).

- (70) It should also be noted that although this Chinese exporter, which is in reality a trading company, may be the largest exporter of Chinese PAC to the Community, it does not represent the totality or even the majority of Chinese PAC exports to the Community. Given that there are several other exporters and that the Chinese authorities themselves have not indicated their willingness to guarantee the execution of such an undertaking, this course of action is not considered appropriate for this case.
- (71) The exporter was advised accordingly that an undertaking could not be accepted. This approach is confirmed.

J. DUTY

- (72) As concerns the detailed calculations used to establish the injury elimination level in the provisional duty Regulation, the actual weighted average net ex-works sales prices of those Community-produced PAC grades considered to be comparable to the imported Chinese grades were uplifted on an individual basis by the weighted average loss of all the Community producers, to levels which yielded a reasonable profit margin of 5 %. In this regard, Cefic argued that the reasonable profit margin to be added on to the break-even PAC sales prices of the Community producers in order to establish the injury elimination level should be based only on profitable sales realized by the Community producers in their activated carbon activities and not on

an average profit which also includes loss-making PAC sales. Furthermore, it was submitted that the 5 % pre-tax profit is too low to secure a reasonable return on investments particularly as in 1990, before major market penetration by Chinese imports, the Community producers were achieving on average a 9,6 % profit on their PAC sales in the Community.

(73) In this respect, it should be made clear that the average profit margins earned by each of the three cooperating Community producers on their total turnover of all activities relating to activated carbon, excluding PAC sold in the Community at a loss, ranged from 4,1 % to 5,4 % during the investigation period. It should also be noted that as only 70 % of the lost PAC sales volumes of the Community producers between 1990 and the investigation period have been taken over by dumped Chinese imports, it is unreasonable for the purposes of this exercise to uplift the break-even prices of the Community producers by the full profit margin of 9,6 % which they enjoyed in 1990.

(74) In the light, however, of all the above comments made by interested parties, certain aspects of the methodology used for the provisional measures have been reviewed and an alternative method is now considered to be the most appropriate to calculate break-even (i.e. full cost of production) and reasonable profit-yielding price levels for the different grades of the Community producers which were compared to each Chinese grade.

(75) In this respect, the full cost of production per grade for each Community producer, adjusted where appropriate (see recital 56 of this Regulation), was taken and to this a 5 % profit was added. In order to make correct comparisons, a downwards adjustment was then made to these theoretical, profit-yielding prices to take account of technical assistance and product development selling costs incurred during the investigation period by each one of these producers (see recital 48 of this Regulation).

(76) The average ex-warehouse selling price (i.e. cif import price plus 27 % for importers'/distributors' mark-up) for each imported Chinese grade was then compared to a single weighted-average profit-yielding Community producers' price. This single

Community producers' price for each Chinese grade was calculated for injury elimination purposes using the individual grade prices by Community producer as established in the previous recital (weighted according to quantities sold by each Community producer).

(77) Any difference resulting from the abovementioned comparison (weighted according to the quantities imported) was the injury elimination amount. The total injury elimination amount was then expressed as a percentage of the total Chinese cif import value.

(78) The above methodology is confirmed and the revised injury elimination amount, expressed as a percentage of the net, free-at-Community-frontier price, before duty, is 38,6 %.

Given that this revised injury elimination level is still lower than the revised dumping margin established (see recital 39 of the present Regulation), definitive anti-dumping duties should be imposed on the basis of the injury elimination level. As far as the form of the definitive duty is concerned, it is considered that the structure of a State-controlled economy gives the Chinese exporters considerable room for manoeuvre to decrease their export prices. Therefore, in order to diminish the risk of absorption of the duty by the Chinese exporters a specific duty (i.e. a fixed amount per tonne) is more appropriate in this case than an *ad valorem* duty or a variable duty.

The amount of such a duty has been calculated on the basis of the injury elimination level mentioned above and is ECU 323 per tonne (net weight). This is confirmed by the Council.

(79) The Commission will examine the situation of the market following the imposition of anti-dumping measures and, should circumstances, in particular as regards price evolution, warrant a review, this shall be initiated two years after the adoption of definitive measures.

K. COLLECTION OF PROVISIONAL DUTIES

(80) In view of the change in the form of the duty, the Council considers that it is not appropriate in this particular case to collect definitively the provisional anti-dumping duty,

HAS ADOPTED THIS REGULATION:

Article 1

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

2. The amount of the definitive anti-dumping duty shall be ECU 323 per tonne (net weight).

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

Article 2

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 Luxembourg, 3 June 1996.

For the Council

The President

C. A. CIAMPI
