

COUNCIL REGULATION (EC) No 1786/97

of 15 September 1997

amending Regulation (EC) No 821/94 imposing a definitive anti-dumping duty on imports of silicon carbide originating, *inter alia*, in the Ukraine

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 11 (3) thereof,

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

Whereas:

I. PREVIOUS PROCEDURE

- (1) By Regulation (EC) No 821/94⁽²⁾, the Council imposed, *inter alia*, a definitive anti-dumping duty of 23,3 % on imports of silicon carbide, falling within CN code 2849 20 00, originating in the Ukraine.

II. REVIEW

- (2) The Commission subsequently received an application from the Ukrainian producer Zaporozhsky Abrazivny Combinat (hereinafter referred to as 'ZAC'), formerly called Concern Zaporozhabrasive, for a review of the measures currently in force.

The application alleged that, because of the new political situation in the Ukraine which has led to the privatization of the applicant and because its export prices, now determined autonomously, are substantially higher than those established originally, dumping has disappeared.

The evidence of changed circumstances contained in the application was considered sufficient to justify the opening of a review investigation.

- (3) By a notice published in the *Official Journal of the European Communities*⁽³⁾, the Commission, after consulting the Advisory Committee and in accordance with Article 11 (3) of Regulation (EC)

No 384/96 (hereinafter referred to as the 'Basic Regulation'), initiated a review of the anti-dumping measures in force and commenced an investigation. Since no request concerning changed circumstances with regard to injury to the Community industry was submitted, the review was limited to the question of dumping.

- (4) The Commission officially advised ZAC and the representatives of the exporting country. Furthermore, it gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. The representatives of the Community industry made their views known in writing. ZAC requested and was granted a hearing.
- (5) The Commission sent questionnaires to the parties known to be concerned and received detailed information from ZAC, from one independent importer located in the Community and from one related importer in the Community.

- (6) The Commission sought and verified all information it deemed necessary for the purposes of a determination and carried out investigations at the premises of the following producer located in Brazil, which, as explained in recital 12 below, is the market economy third country chosen in the present review for the establishment of normal value for the Ukraine:

— Casil SA — Carureto de Silicio — São Paulo.

- (7) The investigation of dumping covered the period from 1 April 1995 to 31 March 1996 (hereinafter referred to as 'the investigation period').

III. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(i) Product under consideration

- (8) The product under consideration is the same as that described in the Regulation subject to review.

The product is silicon carbide falling within CN code 2849 20 00.

- (9) The production process of silicon carbide is such that output automatically comprises a variety of qualities of silicon carbide. These qualities can be segregated into two main grades: crystalline and metallurgical. The crystalline grade is normally

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ L 94, 13. 4. 1994, p. 21.

⁽³⁾ OJ C 135, 7. 5. 1996, p. 4.

used, depending on the quality, in the manufacture of abrasive tools, grinding wheels, high quality refractory products, ceramics, plastic materials, etc., while the metallurgical grade is normally used in foundry and blast furnace operations as a silicon carrier.

Given that both main grades result from the same production process (one cannot be produced without the other), that they have the same basic physical characteristics and that the metallurgical grade can technically be replaced by the crystalline grade, both grades of silicon carbide and their different qualities should be considered as forming one product for the purpose of this proceeding. The various grades of silicon carbide do not entail any significant differences in basic physical characteristics, general application or use.

(ii) Like product

- (10) The investigation showed that the silicon carbide produced in Brazil and sold on the Brazilian market is identical in its particular characteristics to the silicon carbide exported to the Community by ZAC and the silicon carbide produced by the Community industry. It should therefore be considered as a like product within the meaning of Article 1 (4) of the Basic Regulation.

IV. DUMPING

(a) Normal value

(i) Analogue country

- (11) Since the Ukraine is considered to be a non-market economy country, normal value had to be determined on the basis of information obtained in a market economy third country (the so-called analogue country), in accordance with Article 2 (7) of the Basic Regulation. For this purpose the applicant suggested that the United States of America be used as the analogue country, as in the original investigation, and contact was made with the two United States producers that had cooperated in the said investigation. The two producers concerned, however, informed the Commission that they were not willing to cooperate with the investigation.

Consequently the Commission had to seek the cooperation of producers in another appropriate analogue country.

- (12) After careful examination of the silicon carbide market worldwide, the Commission concluded that Brazil would be an appropriate choice of analogue country for the following reasons:
- the size of its domestic market makes Brazil a representative country for the establishment of normal value for the Ukraine and there are, to a

large extent, similarities between the production process and access to raw materials in Brazil and the Ukraine,

- domestic prices in Brazil are governed by normal market forces given the level of demand in the market and the number of producers in competition,
- in terms of the range of qualities of silicon carbide and basic physical characteristics, the product manufactured in Brazil can be considered identical to the product exported from the Ukraine.

The Commission services received cooperation from one Brazilian producer of the like product.

(ii) Normal value

- (13) As explained in recital 6, the Commission sought and verified from one producer in the analogue country all the information they deemed necessary for the determination of normal value.

For the purpose of this investigation, the product was classified by grade, i.e. crystalline and metallurgical.

- (14) As far as this determination is concerned, the investigation established that the total domestic sales of the cooperating Brazilian producer were representative of ZAC's export sales in accordance with Article 2 (2) of the Basic Regulation. Domestic sales per grade were also representative.
- (15) In accordance with Article 2 (4) of the Basic Regulation the Commission had to determine whether domestic sales per grade (crystalline and metallurgical) were made in the ordinary course of trade by looking at the proportion of profitable sales. The investigation showed that more than 20 % of sales in volume were made below the average cost and were thus excluded in order to establish normal value. As the remaining profitable transactions accounted for a sufficient proportion of the domestic sales volume, normal value for each grade was determined on the basis of the weighted average domestic price of the profitable sales.

(b) Export price

- (16) ZAC's exports of the product concerned to the Community accounted for almost all exports from the Ukraine to the Community.

In accordance with Article 2 (8) of the Basic Regulation, where exports were made to unrelated importers in the Community, the export prices for the Ukrainian exporter were established on the basis of the prices actually paid or payable by unrelated importers.

Almost the totality of exports was made to a related importer in the Community. The export prices were therefore established, in accordance with Article 2 (9) of the Basic Regulation, on the basis of resale prices to the first independent buyer adjusted to take account of all costs incurred between importation and resale, including custom duties and a 5 % profit on turnover, which was considered reasonable in the circumstances of this case. In this respect it should be noted that this profit margin was achieved by the importer before it became related to the exporter in question.

- (17) A large number of export sales by the Ukrainian producer were invoiced to an unrelated trader outside the Community but were alleged to have as final destination the Community. These sales had to be excluded from the scope of this investigation because no evidence was given that these sales were export sales to the Community, and the examination of Eurostat data confirms this.

(c) Comparison

- (18) In accordance with Articles 2 (10) and 2 (11) of the Basic Regulation, the weighted average normal value by grade was compared with the weighted average export price by grade. For the purpose of a fair comparison between normal value and export price, account was taken of differences affecting price comparability, namely transport costs, packaging, discounts and credit terms. The comparison was made at an ex-works level.

ZAC claimed, pursuant to Article 2 (10) (d) of the Basic Regulation, that normal value should be adjusted to take into account a difference in level of trade, since all of its export sales were made to distributors while the Brazilian domestic sales were predominantly made to end-users. Further investigation into this claim showed that price comparability had indeed been affected by consistent and distinct differences in prices for the different levels of trade in the Brazilian domestic market. The Commission therefore considered this claim warranted, and an appropriate allowance was granted.

(d) Dumping margin

- (19) The comparison showed the existence of dumping. The dumping margin expressed as a percentage of the cif Community frontier value of the imports was found to be 24 %.

V. AMENDMENT OF THE MEASURES BEING REVIEWED

- (20) No request for a review of the findings on injury was made and there is no reason to believe that the level of injury found in the original investigation has decreased. Since the injury margin established in the original investigation was higher than the dumping margin in the present investigation, the amended duty should be based on the dumping margin found. Regulation (EC) No 821/94 should therefore be amended accordingly.
- (21) ZAC was informed of the facts and considerations on the basis of which it was intended to propose the amendment of Regulation (EC) No 821/94 and was given every opportunity to comment. The Commission also officially advised the complainants mentioned in the initial investigation.
- (22) After this disclosure ZAC offered a quantitative undertaking. The proposed undertaking however, consisted of a duty-free quota set at a level equivalent to a market share significantly higher than that held by the exporter concerned in the years prior to this investigation. The acceptance of such an undertaking would thus mean that the injury caused by ZAC's exports to the Community would not be eliminated. In these circumstances, the Commission considered that the undertaking offered by ZAC was not acceptable. The exporter has been informed accordingly.
- (23) Given the above, the Council concludes that Regulation (EC) No 821/94 should be amended in respect of the Ukraine.
- (24) This review does not affect the date on which Regulation No 821/94 will expire, pursuant to Article 11 (2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (2) of Regulation (EC) No 821/94 is hereby amended as follows:

the figure in the Rate of duty column of '23,3 %' relating to Ukraine shall be replaced by '24 %'.

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 Brussels, 15 September 1997.

For the Council

The President

J. POOS
