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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 March 1990

terminating the anti-dumping proceeding concerning imports of ammonium paratungstate originating in the People's Republic of China and the Republic of Korea

(90/154/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 9 thereof,

After consultation with the Advisory Committee as provided for in Regulation (EEC) No 2423/88,

Whereas :

A. PROCEDURE

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

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

In a notice published in the *Official Journal of the European Communities*⁽²⁾ the Commission accordingly announced the initiation of an anti-dumping proceeding concerning imports into the Community of ammonium paratungstate falling within CN

code 2841 80 00 originating in the People's Republic of China or the Republic of Korea.

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

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

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

(4) None of the three main Chinese export bodies, their 33 regional offices nor any of the eight Chinese producers to which the Commission sent questionnaires returned them completed, even partially. However, the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, hereinafter referred to as 'the China Chamber of Commerce', brought itself to the attention of the Commission and informed it that it intended to reply to the questionnaires on behalf of all the Chinese exporters and producers referred to above. On two occasions the China Chamber of Commerce requested and obtained from the Commission an extension of deadline to prepare a reply to the questionnaires. However, in lieu of a specific reply to the questionnaires all that was received by the Commission was a general position paper.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 322, 15. 12. 1988, p. 4.

The China Chamber of Commerce also requested and was granted a hearing, at which it put forward both general arguments and arguments relating to specific data, the most recent of which were for 1987, and provided the Commission with written evidence in support of its arguments.

None of the nine companies listed in the complaint as importers of ammonium paratungstate originating in China replied to the questionnaires sent out by the Commission. However, an importer not mentioned in the complaint (Cerantungsten Sarl, Differdange, Luxembourg) made itself known to the Commission and sent a complete reply within the time limit allowed.

Cerantungsten also requested and was granted a hearing at which it made known its point of view.

- (5) The Korean producer and exporter Korea Tungsten Mining Co. Ltd (KTMC), of Seoul and Taegu, replied in full to the Commission's questionnaires on its own behalf and that of its sales offices in the Community.

KTMC also requested and was granted a hearing, and made known its views in writing, particularly on the question of its responsibility for the injury alleged by the complainants.

- (6) The Commission sought and verified all the information it deemed necessary for the purposes of making a preliminary determination of dumping and consequent injury. To these ends it carried out inspections at the premises of:

(a) *Community producers:*

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

(b) *Korean producer/exporter:*

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

(c) *Community importers:*

- Cerantungsten Sarl, Differdange, Luxembourg.

The Commission also carried out inspections at the premises of two of the complainant producers, which had either ceased or reduced their production of ammonium paratungstate and had been

importing it during the period of the anti-dumping investigation.

It also sought information from the producer in the reference country suggested by the complainant, Wolfram Bergbau- und Hüttengesellschaft mbH, Vienna, Austria.

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

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

B. THE PRODUCT — COMMUNITY INDUSTRY ; COMPLAINANT BUSINESSES

- (8) Ammonium paratungstate (APT) is a compound of nitrogen and tungsten produced at the final stage of the chemical processing of tungsten ore. It is an intermediate product used to obtain other products in the tungsten chain. At present, some 90 % of the tungsten processed by chemical means around the world passes through the APT stage.

- (9) The product falls within CN code 2841 80 00, as indicated in the notice of initiation referred to above. However, since this code covers all tungstates, of which APT is only one example, the Commission found that it should be considered as falling within CN code ex 2841 80 00. This alteration did not affect the proceeding, since according to the information obtained by the Commission trade flows of the other tungstates could be regarded as statistically negligible.

According to the information gathered by the Commission, the product exported by the People's Republic of China and the Republic of Korea and that manufactured by the Community industry may be considered to be like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

- (10) After the complaint was lodged, and while the preliminary investigations were already under way, one of the complainant Community producers informed the Commission that, having closed its APT shop in July 1987, it no longer wished to be considered a complainant, although it was prepared to be used as a 'reference' for the injury.

The Commission noted this request and took account in the rest of the proceeding of the cessation of activity of that producer.

- (11) It was noted during the investigation that the producer referred to in recital 10 and another Community producer had imported APT originating in China during the reference period. The Commission examined the impact of these imports in relation to the provisions of Article 4 (5) of Regulation (EEC) No 2423/88.

The Commission considered that the producer referred to in recital 10, having closed down its APT shop and become entirely dependent on external purchases, was excluded *de facto* from the Community industry as defined in Article 4 (5), but that since the undertaking was willing, its particular situation should be regarded as part of the economic context relevant to the assessment of the injury being alleged by the Community industry as a whole.

As regards the other producer, which cut back its production in 1987, the Commission noted that its purchases from China had been accompanied by a proportional drop in the rate of utilization of its production capacity. The Commission therefore considered at this stage that these purchases were not such as to justify the exclusion of this producer from the Community industry.

- (12) Two new facts became apparent after the Commission adopted its provisional conclusions and transmitted them to the various parties concerned:

First, the company referred to in recital 10 informed the Commission that it was no longer willing to be used as a 'reference' with regard to the injury; secondly, the producer which had reduced its production and purchased APT from China informed the Commission that it was withdrawing from the complaint.

The Commission noted these decisions, which meant that only one Community business now remained a complainant and itself constituted the 'Community industry' within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88, and that consequently certain data or constituents of the previously alleged injury had to be amended.

- (13) The Commission noted that during the reference period the Community producer which maintained its complaint accounted for about 94 % of Community production of APT.

The Commission therefore considered that the Community producer which had maintained its APT production and its support for the complaint

constituted the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. NORMAL VALUE

1. Republic of Korea

- (14) Since KTMC did not sell any APT on its domestic market during the investigation period, the Commission determined normal value on the basis of the constructed value, calculated by adding together the cost of production and a reasonable margin of profit.

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

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

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

The same reference was used for the profit margin, but it was considered reasonable to restrict this to 10 % in the light of the general profit level of the Korean producer, to take account of the very strong pressure on APT prices on the world market.

In the Commission's view, the Korean market was subject to the same pressure and profits on APT would therefore be below those established for tungsten metal powder sold by KTMC on its domestic market during the investigation period.

2. People's Republic of China

- (15) In order to establish that imports from China were being dumped, the Commission had to take account of the fact that China does not have a market economy and thus it based its calculations on the normal value of ammonium paratungstate in a market economy country; to that end, the complainant suggested taking the constructed value calculated on the basis of the cost of production of APT in Austria.

- (16) The representatives of the China Chamber of Commerce indicated their opposition to the complainant's suggestion, arguing that Austria's economic structure was different from that of China, but failing to suggest any other reference country.
- (17) The Commission proposed a normal value determined on the basis of the production cost of the Korean producer, since :
- the products exported by China and Korea could be considered like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88,
 - the Austrian producer had not sold any APT on its domestic market during the reference period, which meant that in both Austria and Korea normal value had to be determined on the basis of a constructed value,
 - Korea's technical standards for the product were comparable to those of China.
- (18) One importer of APT into the Community contested the choice of Korea on the grounds that the Korean tungsten market would have been practically closed to foreign companies during the reference period owing to the high rate of duties and charges applicable to imports.
- (19) The Commission verified the two production costs being considered (Austrian and Korean) and found that :
- both the Korean exporter and the Austrian exporter were fully integrated producers, i.e. they owned their own mines and produced all the intermediate products of tungsten,
 - the cost of production of APT by the Korean exporter could not be influenced by the fact that the domestic market was protected by import duties and charges. The manufacturing process was efficient, modern and profitable,
 - the cost of production in Korea was more suitable for the purposes of determining normal value for China since the two countries' economies were less dissimilar.
- (20) The Commission accordingly concluded that it was appropriate and not unreasonable to determine the normal value of the Chinese APT on the basis of the Korean producer's production costs.

D. EXPORT PRICE

1. Republic of Korea

- (21) Although carried out with the assistance of its liaison offices in the Community, all KTMC's exports are direct sales to independent importers in the Community. The sole task of the liaison offices is to carry out commercial surveys and to draw up final invoices on KTMC's behalf; they never operate as importers themselves.

The export price was therefore calculated on the basis of the price actually paid or payable for the APT sold for export to the Community, net of all taxes, discounts and rebates actually granted and directly related to the sales under consideration.

To that end the Commission verified all the transactions carried out during the investigation period.

2. People's Republic of China

- (22) In the absence of a reply from the Chinese exporters, the export price was determined on the basis of the information available, viz. a reply to the questionnaire received from one importer and information gathered during inspections at the premises of the two Community importers which imported APT from China during the investigation period.

Taken together this information covers over 50 % of the imports in question, spread over the whole of the reference period, and was selected in preference to information on average prices published by Eurostat, which were in fact slightly lower.

E. COMPARISON

1. Republic of Korea

- (23) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting the comparability of prices, such as credit conditions, transport, insurance and handling costs and other ancillary costs.
- (24) An appropriate adjustment was made to selling costs to take account of the expense incurred by KTMC on account of its liaison offices in the Community.
- (25) All the adjustments made in the case of the Korean exporter were based on statistical data verified during inspection at the premises.

2. People's Republic of China

- (26) As regards imports from China, given the lack of cooperation from the Chinese exporters and the inability of the importer which did cooperate to provide information on costs incurred before the goods entered the Community, the necessary adjustments, relating particularly to shipping and insurance, handling and selling costs, were made on the basis of the information on Korea gathered during the investigation.
- (27) All comparisons were made at the ex works stage, on a transaction-by-transaction basis in the case of Korea and globally in the case of China (on the basis of the weighted average unit price resulting from the calculations referred to in recital 22).

F. DUMPING MARGINS

- (28) The preliminary examination of the facts showed that imports from China and Korea were being dumped, the dumping margin being equal to the difference between the established normal value and the export price to the Community.
- (29) On the basis of the cif Community frontier price the weighted average margins were as follows:
- 75,74 % for APT originating in China, and
 - 62,16 % for APT originating in Korea exported by KTMC.

G. INJURY

1. Volume and market share

(a) Republic of Korea

- (30) In its reply to the questionnaire, KTMC gave figures for the volume of its sales of APT in the Community which were different from those for imports originating in Korea as published by Eurostat, particularly with regard to 1984 and 1985.

In view of possible uncertainty at the time as to how APT should be classified in the statistical nomenclature, and taking into account:

- the fact that there seems to be no doubt that during the period in question (January 1984 to September 1988) KTMC was responsible for all exports of APT from the Republic of Korea to the Community, and
- the evidence relating to its sales of APT in the Community which KTMC provided during the inspection at its premises,

the Commission considered that, for the purposes of this investigation, the figures for KTMC's actual deliveries to the Community between 1984 and 1987 and in the first nine months of 1988 should be used in lieu of the figures published by Eurostat which were cited in the complaint.

- (31) On that basis, it appeared that imports of APT originating in Korea, which totalled 336 tonnes in 1987, fell to 157 tonnes during the reference period, i.e. a level below that of 1984, taken on an annual basis.

The Commission considered that the share of the Community market held by the Korean imports should be assessed on the basis of total quantities traded in the Community (i.e. the Community industry's sales plus total imports originating in non-Community countries).

On that basis it appeared that the Korean exporter's market share, which had stood at 20 % in 1984, has now fallen to 4 %.

(b) People's Republic of China

- (32) According to the figures published by Eurostat, which are the best available for China, imports from China have risen substantially, from 167 tonnes in 1984 to 819 tonnes in 1987, and 3 402 tonnes during the reference period.

In terms of market share, these imports, which represented 12 % of the total volume of APT traded in 1984, rose to 47 % in 1987 and reached 89 % during the reference period.

However, these figures should be set against the fact that the growth of imports and the corresponding increase in their market share result very largely from the decision by two Community producers to halt or curb production of APT and to obtain supplies from China.

(c) Other third country suppliers

- (33) Imports originating in other non-Community countries fell considerably between 1984 and 1988, from 587 tonnes to 178 tonnes, i.e. a fall in market share from 43 to 5 %.

2. Prices

- (34) Between 1984 and 1988 the Korean exporter reduced its selling price in the Community by 29 %, while the Chinese exporters, taken as a whole, reduced their prices by over 55 %.

- (35) To determine the price differential in the Community between APT from China or Korea and that produced by the Community industry, the Commission compared the weighted average selling prices of the imports from China and Korea (at the free-at-Community-frontier duty-paid stage) and the weighted average selling price, excluding transport, of the products sold by the Community producer which maintained its complaint.

Through this comparison the Commission found that the price differentials during the reference period were:

- 41,69 % in the case of the Chinese exporters, and
- 26,37 % in the case of the Korean exporter, KTMC.

3. Other economic factors to be taken into consideration

(a) Production

- (36) The Commission found that Community output reached its lowest level in 1987. Production rose during the reference period, exceeding the 1984 level.

(b) Capacity utilization

- (37) The capacity of the Community producer which maintained its complaint remained stable between 1984 and 1988. Calculated on the basis of the capacity actually available each year from 1984 to 1987 and during the reference period, the capacity utilization rate of the Community producer concerned fell between 1985 and 1987 and rose during the first nine months of 1988 to a level higher than that reached in 1985.

(c) Sales

- (38) Sales on the Community market by the Community producer which maintained its complaint fell considerably. Taking as a basis the index 1984 = 100, sales fell to 73 in 1987 then to 36 during the first nine months of 1988 (figures for this latter period having been adjusted on an annual basis). However, it was not established that this loss was attributable to the dumping of imports.

(d) Market share

- (39) The market share of the Community producer which maintained its complaint, calculated in the same way as those of China, Korea and the other

non-Community countries, fell from 24 % in 1984 to 2 % during the reference period.

- (40) As shown in recital 32, the figures for trends in market share have, however, to be seen in their true light. To a large extent they reflect the decision of two Community producers which initially supported the complaint to obtain their supplies of APT from China.

A further decisive factor is the importance of internal consumption in the production of APT. About 85 % of Community production is consumed in the production chain (transformation into tungstic oxide), leaving only 15 % for sale.

(e) Prices

- (41) The Commission established that the prices charged by the Community producer which maintained its complaint fell sharply between 1984 and 1988, owing mainly to the falling cost of raw materials. If average 1984 prices are compared with those of the reference period, the price of APT is found to have fallen by 45 %, at a time when the fall in the price of tungsten ore/concentrate over the same period would automatically have entailed a fall of about 40 % in the price of APT.

(f) Profits

- (42) The Commission found that the Community industry's financial results deteriorated between 1985 and 1987 and improved during the reference period.

(g) Employment

- (43) Leaving aside the effects of the closing of the APT shop of the Community producer which refused to be used as a 'reference' for the injury, between 1984 and 1988 the workforce was reduced by 10 %. However, owing to certain employment fluctuations during the period, the significance of this figure has not been established, any more than a causal link with the dumping of imports. The Commission therefore considered that this reduction in the workforce should not be considered in assessing the injury.

4. Conclusion

- (44) In the light of all the abovementioned economic factors, the Commission reached the conclusion that during the investigation period imports of APT originating in the Republic of Korea and the People's Republic of China, taken individually or together, did not cause material injury to the Community industry as defined subsequent to the new facts set out in recital 12.

- (45) Since the Community producer which maintained its complaint indicated in its reply to the questionnaire that the clear improvement in its situation during the reference period was due to a temporary increase in its own 'conversion' activity, the Commission examined this claim with particular regard to a possible threat of injury.

The conversion work is carried out on commission under contracts whereby the producer processes a customer's tungsten ore/concentrate to produce APT.

The Commission found that the increase in this activity did indeed account for the stocks of ore/concentrate, generally Chinese, purchased and cleared through customs by certain operators, but that such activity itself was not new and that nothing suggested that it would soon cease.

Moreover, the Commission considers that account should be taken of the level of internal consumption of APT by the Community producer in question, since the direct negative effect of dumping is thereby limited to merely a relatively small proportion of production.

- (46) In these circumstances, the Commission considers that a change in the situation whereby Chinese imports would cause injury is neither imminent nor, at this stage, a likely prospect.

H. TERMINATION OF THE PROCEEDING

- (47) Accordingly, the anti-dumping proceeding concerning imports of ammonium paratungstate origin-

ating in the People's Republic of China or the Republic of Korea should be terminated without protective measures being imposed.

- (48) No objections to this conclusion were raised in the Advisory Committee.

- (49) The complainant was informed of the facts and principal considerations on the basis of which the Commission intended to terminate the proceeding and did not dispute them in detail, merely voicing its concern in general terms,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of ammonium paratungstate originating in the People's Republic of China or the Republic of Korea is hereby terminated.

Done at Brussels, 26 March 1990.

For the Commission

Frans ANDRIESEN

Vice-President