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# COUNCIL REGULATION (EC) No 1011/2002

## of 10 June 2002

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

(OJ L 155, 14.6.2002, p. 1)

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# COUNCIL REGULATION (EC) No 1011/2002

## of 10 June 2002

## imposing a definitive anti-dumping duty on imports of powdered activated carbon (PAC) 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 11(2) thereof,

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

Whereas:

### A. PREVIOUS INVESTIGATION

(1) By Regulation (EC) No 1006/96 of 3 June 1996 ([2]), the Council imposed a definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China.

### B. PRESENT INVESTIGATION

(2) Following the publication of a notice of impending expiry ([3]) of the anti-dumping measures in force, the Commission received a request for an expiry review lodged by the European Chemical Industry Council (CEFIC) on behalf of two producers, together representing a major proportion (more than 80 %) of the total Community production of powdered activated carbon (PAC). The request alleged that injurious dumping of imports originating in the People's Republic of China (China) would be likely to recur if the measures expired.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation ([4]) pursuant to Article 11(2) of Regulation (EC) No 384/96 (the basic Regulation).

(4) The investigation into the likelihood of a continuation or recurrence of dumping and injury covered the period from 1 June 2000 to 31 May 2001 (IP). The examination of trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1997 up to the end of the IP (analysis period).

(5) The Commission officially advised the applicant Community producers, the exporters and exporting producers in China, importers/traders, users and suppliers, which were known to be concerned, of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the Notice of initiation. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) The Commission sent out 26 questionnaires to unrelated importers/traders and 49 questionnaires to exporters and exporting producers in China. Furthermore, due to the apparent high number of exporters and exporting producers of the product concerned in China, the Commission sent out a questionnaire

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
([2]) OJ L 134, 5.6.1996, p. 20.
([3]) OJ C 349, 6.12.2000, p. 5.
([4]) Notice of initiation: OJ C 163, 6.6.2001, p. 7.

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asking specific information on average sales volume and prices of PAC (sample questionnaire) of each exporter and exporting producer concerned, in order to determine whether sampling was necessary. No answer was received from importers/traders, and one exporter in China replied to the sample questionnaire, but subsequently stopped cooperating.

(7) The Commission also sent questionnaires to all other parties known to be concerned and received replies from the two Community producers on whose behalf the request for review was lodged and from two suppliers of raw materials and two users.

(8) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Community interest. Verification visits were carried out at the premises of the following companies:

Producer in the analogue country United States of America:

— NORIT Americas Inc, Atlanta, Georgia;

Community producers:

— Norit NV, Netherlands,

— Ceca SA, France.

C. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

(9) The product under consideration is the same as in the original investigation, i.e. PAC currently classifiable within CN code ex 3802 10 00. It is a microporous form of carbon, obtained from a variety of raw material such as coal, peat, wood, lignite, olive stones or coconut shells, which are activated by means of steam or chemical process. PAC is a very fine powder. Activated carbons are also sold in granular forms (granulated activated carbon or GAC) which are not covered by the measures in force.

(10) Subsequently to the imposition of definitive measures in 1996, certain difficulties appeared as to the distinction of activated carbon sold in powder from activated carbon sold in granular form. In this regard, it is important to note that both products are made of ensembles of particles of carbon whose size vary and there is no international standard in respect of PAC. Therefore, for the purpose of implementation of the measures, the Community Customs Code Committee defined PAC in the following way: ‘powdered activated carbon consists of at least 90 percent by mass ( % m/m) of particles with a size less than 0,5 mm’. The investigation confirmed the accuracy of this definition.

(11) The general applications of PAC are: water treatment (potable process and waste water), gas and air purification, solvent recovery, decolourisation of sugar, vegetables oils and fats, deodorisation and purification of different products in the chemical (i.e. organic acids) or pharmaceutical (i.e. gastrointestinal capsule) or food industries (i.e. alcoholic and soft drinks).

(12) As shown in the previous investigation, and as confirmed in the present investigation, it has been established that PAC produced and sold by the Community producers and PAC imported from China are in all respects identical and share therefore the same basic physical and chemical characteristics. China is an economy in transition and, as mentioned in recital 18, normal value had to be established on the basis of information obtained in a market economy third country. According to the information available, PAC produced and sold in the market economy third country, the United States of America has the same basic physical and chemical characteristics as PAC produced in China and exported to the Community. Therefore, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

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## D. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

### 1. Preliminary remarks

(13) In accordance with Article 11(2) of the basic Regulation, the purpose of an expiry review is to determine whether the expiry of the measures is likely to lead to a continuation or recurrence of dumping.

(14) In this respect, the volumes exported to the Community during the IP were examined. It should be noted that since none of the Chinese exporters nor any importer in the Community cooperated during the present investigation, export data were established in accordance with Article 18 of the basic Regulation, i.e. on the basis of information available. Since the imposition of definitive anti-dumping duties in 1996, Community statistics are available for imports of PAC. These statistics have been confirmed by market research information submitted by the complainant Community producers. On this basis, and in the absence of any other more reliable information, these statistics were used. They showed that during the IP 993 tonnes of PAC were imported from China into the Community.

(15) During the original IP, the import volume of Chinese PAC into the Community amounted to 4 008 tonnes, i.e. approximately 10 % of Community consumption. Imports dropped in 1996 after the imposition of the anti-dumping duty to 960 tonnes and remained relatively stable in the following years, reaching 842 tonnes in 1999, and 811 tonnes in 2000.

(16) The market share of Chinese imports of PAC in the Community as recorded in Eurostat is less than 3 % but nonetheless significant, i.e. above the *de minimis* threshold of the basic Regulation ([1]).

### 2. Likelihood of continuation of dumping

(17) In the context of the likelihood of a continuation of dumping, it was investigated whether dumping of exports from China was currently taking place. This was on the grounds that, if dumping was taking place now, this could be an important indication that dumping would be likely to continue in future, should the measures be allowed to expire.

(a) *Analogue country*

(18) Since China is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country selected in accordance with Article 2(7) of the basic Regulation.

(19) The United States of America were selected as an appropriate analogue country in the original proceeding. As indicated in the Notice of initiation, the Commission envisaged to use the United States of America as an appropriate analogue country also in the present proceeding. In this respect, the investigation revealed that the United States of America were the most appropriate analogue country for the following reasons:

The United States of America is one of the largest producing countries of PAC worldwide. Figures submitted by the cooperating producer in the United States of America and the Community producers behind the request for review showed that the production volume of both countries is comparable. Furthermore, as mentioned in recital 12 PAC produced and sold in the United States of America was found to be a like product to PAC produced in China and exported to the Community. Domestic sales made by the cooperating United States producer

([1]) Article 5(7) and Article 9(3).

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(in terms of volume) were representative when compared to the imports of PAC from China into the Community. Finally, the level of competition in the United States of America was found to be very high. In addition to the competition amongst several producers in the United States of America, there was also competition from imported PAC (mainly from China, Philippines and Sri Lanka), which could be imported without quantitative restrictions or import duties. The main United States producer of PAC was furthermore willing to cooperate.

(20) Given the above, and as no comments were received on the choice of the analogue country by any of the interested parties, the United States of America was consequently selected as the most appropriate analogue country.

(b) *Normal value*

(21) In accordance with Article 2(1) of the basic Regulation, it was considered whether domestic sales of PAC in the United States of America could, considering the price charged, be seen to be made in the ordinary course of trade. For so doing the Commission examined whether domestic sales were profitable. For this purpose the full cost of production per unit of each grade during the IP was compared to the average unit price of the sales transactions of each grade made during the same period. It was found that all sales were made at a profit. The investigation also revealed that all sales were made to independent customers. As a result the prices paid or payable for PAC by independent customers on the United States domestic market in the ordinary course of trade were used to determine the normal value in accordance with Article 2(1) of the basic Regulation.

(c) *Export price*

(22) As already mentioned, neither the Chinese exporters nor exporting producers, nor any importer of PAC in the Community cooperated in this proceeding. Therefore, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. As already mentioned in recital 14 of the present Regulation, and in the absence of any other more reliable information, this was done by reference to Eurostat.

(23) Data in Eurostat are recorded on a cif European Community frontier basis. These prices were brought to a fob basis by deducting ocean freight and insurance cost. The necessary information on these costs has been submitted by the Community industry and used in the calculations, in the absence of any other more reliable information.

(d) *Comparison*

(24) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors, which were found to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. In this regard, adjustments for differences in the level of trade, commissions, packing and inland transport costs were made.

(25) As far as the normal value is concerned, the weighted average inland transport cost and packing cost per unit were deducted from the domestic sales price. Inland transport cost included insurance, loading and unloading costs. Given the non cooperation of the Chinese exporters or exporting producers, and in the absence of any more reliable information, the same amount for inland transport and packing was deducted from the fob export price.

(26) As far as packing costs are concerned, evidence was submitted to the Commission by the complainant Community industry, which showed that at least some of the product exported to the Community was packed in bags while the normal value was