COUNCIL REGULATION (EEC) No 349/81

of 9 February 1981

imposing a definitive anti-dumping duty on certain chemical fertilizer originating in the United States of America

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation with the Advisory Committee set up under Article 6 of Regulation (EEC) No 3017/79,

Whereas in December 1979 the Commission received a complaint lodged by the Comité 'Marché Commun' de l'Industrie des Engrais Azotés et Phosphatés on behalf of manufacturers accounting for a major part of the Community production of urea ammonium nitrate solution fertilizer; whereas the complaint contained evidence of the existence of dumping in respect of the like product originating in the United States of America, and of material injury resulting therefrom, especially in France and the Federal Republic of Germany;

Whereas the said information supplied provided sufficient evidence to justify initiating a proceeding; whereas the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of a proceeding concerning imports of certain chemical fertilizer originating in the United States of America, and commenced an investigation of the matter at Community level;

Whereas during its preliminary investigation, which was based on an investigation period covering the calendar year 1979, the Commission took account of the fact that all US companies known to be concerned which are selling the product in question on the domestic market, with the exception of Allied Chemical Corporation, did not furnish the information deemed necessary to establish normal value and did not agree to on-the-spot investigations at their premises; whereas, therefore, the Commission had to base its determination of normal value on the evidence provided by Allied Chemical Corporation; whereas, in respect of export prices, information was available from Allied Chemical Corporation and a number of brokers; whereas having established, on this basis, that the exports of the product in question were dumped at a weighted average margin of 12·2 % and since there was sufficient evidence of injury resulting from their entry for consumption into the Community and since the interests of the Community called for immediate intervention in order to prevent further injury being caused during the proceeding, the Commission, by Regulation (EEC) No 2182/80 (3), imposed a provisional anti-dumping duty on certain chemical fertilizer originating in the United States of America; whereas Allied Chemical Corporation had offered an acceptable undertaking to increase its export prices and was therefore exempted from the provisional duty; whereas, subsequent to the re-examination of the normal value, Allied Chemical Corporation has renounced this undertaking;

Whereas the period of validity of this provisional duty was extended for a period not exceeding two months by Council Regulation (EEC) No 3144/80 (4);

Whereas, in the course of the subsequent examination of the matter, completed after the imposition of the provisional anti-dumping duty, the interested parties had the opportunity to make known their views in writing, to be heard by the Commission and to develop their views orally, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to make a final determination; whereas the complainants and most of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally;

Whereas a number of producers and exporters from whom the Commission had sought information during the preliminary investigation now came forward and offered to provide the information on normal value and export prices; whereas, therefore

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 47, 26. 2. 1980, p. 2.
(3) OJ No L 212, 15. 8. 1980, p. 43.
(4) OJ No L 330, 6. 12. 1980, p. 1.

the Commission decided to carry out inspections at the premises of Agrico Chemical Company (Tulsa), Kaiser Aluminum Domestic and International Sales Corporation (Savannah), Columbia Nitrogen Corporation (Augusta) and BCM Incorporated (Memphis) and to carry out a further inspection at the premises of Allied Chemical Corporation (Morristown) in order to update the information originally received; whereas the Commission obtained further information from International Ore and Fertilizer Corporation (New York), Transcontinental Fertilizer Corporation (Philadelphia) and from Unifert Europe SA, Comagri SA, Essochem Belgium Unie van Kunstmestfabrieken and Helm Düngemittel GmbH within the EEC;

Whereas, in seeking to determine the existence of dumping the Commission compared the export prices to the Community with the normal value; whereas, for those companies selling nitrogen solution fertilizer on the US domestic market, normal value was established on the basis of their prices on the American market in the period from 1 January to 30 September 1980 excluding sales through company-owned retail outlets because these sales were not considered to be at the same level of trade as export sales to EEC distributors;

Whereas for Columbia Nitrogen Corporation however, whose domestic sales of the product in question were found to have been made at a loss during the abovementioned investigation period the normal value was established on the basis of costs of production including a reasonable margin for overheads and profit for the third quarter of 1980, this being the period during which the company's only 1980 export sale was made and when its new production plant was operating for the first time under normal conditions; whereas, given the particular debt equity ratio of this company, a profit margin of only 1 % was considered reasonable;

Whereas, in the case of export sales made by brokers who neither sell the product on the United States' domestic market nor sell it in any significant quantity to third countries, normal value was established on the basis of the price at which they purchased the quantities destined for export from their suppliers;

Whereas export prices were determined on the basis of prices actually paid or payable for the product concerned sold for export to the Community;

Whereas, in the case of imports made by Essochem Belgium and UKF the export price had to be constructed on the basis of the price at which the imported product was first resold to independent buyers because both importers had associations with their respective exporters; whereas, for the purposes of this construction, allowance was made for a reasonable margin for overheads and profit, a 3 % margin being considered reasonable;

Whereas the comparisons were made transaction by transaction on an ex-factory basis for all of the producers visited; whereas for BCM Inc., a trader selling both for export and on the domestic market, the comparison was made at an ex-shipping point level, this being either ex-factory producer or ex-terminal;

Whereas most of the companies visited claimed that, for the purpose of a fair comparison, account should be taken of differences in distribution and selling costs on domestic and export markets and differences in payment terms;

Whereas the Commission took account of the differences affecting price comparability with respect to variable distribution and selling costs, salesmen's salaries and payment conditions and of cash discounts where claims in these areas could be satisfactorily demonstrated;

Whereas this examination showed that exports made by Agrico Chemical Company during the investigation period were not dumped; whereas for the other companies visited the dumping margins found were for Allied Chemical Corporation 6·5 %, for Kaiser Aluminum Domestic and International Sales Corporation 5·0 %, for Columbia Nitrogen Corporation 10·0 % and for BCM Incorporated 7·6 %;

Whereas for brokers who may buy the product from various United States' producers for export to the EEC, and for all other exporters not known to the Commission, the dumping margin was determined as being the weighted average dumping margin of those companies investigated which were found to have been dumping; whereas the dumping margin thus established was 6·5 %;

Whereas, as regards the injury caused by the dumped imports to the Community and in particular to the French industry, the considerations which led to the imposition of the provisional duty remain valid; whereas further information received by the Commission after the imposition of the provisional duty showed that dumped imports into France of the product in question originating in the United States of America for the four-month period from June to September 1980 amounted to 206 835 tonnes, excluding 21 600 tonnes of the product exported by Agrico Chemical Company and deemed not to have been dumped, compared to 137 950 tonnes for the same period in 1979, representing an increase of at least 50 %;

Whereas, although there was a considerable increase in the price of United States' exports during 1980, the resale price of imported nitrogen solution fertilizer in France still does not permit French producers to sell their product at above cost, owing to a further increase in feedstock prices in August 1980;

Whereas the Commission also followed up the contention of various exporters and importers that the French industry was working at full capacity but was concentrating primarily on solid nitrogen fertilizer and was, therefore, unable to produce more nitrogen solution; whereas the facts as established by the Commission show that the French industry could significantly increase its production of solution even if present output of solid nitrogen fertilizer was maintained;

Whereas the Commission has considered whether there is injury caused by other factors which, individually or in combination are also affecting the Community industry;

Whereas it has established in this context that the level of consumption of nitrogen solution fertilizer in Germany and especially in France, the main outlets for US exports in the Community, has considerably increased in recent years; whereas, moreover, the volume of non-dumped imports from Agrico Chemical Company was relatively small compared to total imports, and represented less than 17 % thereof in 1980; whereas the influence of these non-dumped imports on the nitrogen solution fertilizer market has been isolated from the dumped imports; whereas the substantial and sudden increase of imports of dumped nitrogen solution fertilizer since 1978 and the prices at which they were offered for sale in the Community led the Commission to determine that the US exports of dumped nitrogen solution fertilizer have caused material injury to the Community industry concerned;

Whereas, in these circumstances, protection of the Community's interests calls for the imposition of a definitive anti-dumping duty on nitrogen solution fertilizer originating in the United States of America which, having regard to the extent of injury caused, should be equal to the dumping margins found, and for the definitive collection of the amounts secured by way of provisional duty in respect of the product concerned up to the rate of the dumping margins found on transactions made by those companies from which undertakings have been accepted by the Commission and at the rate of the definitive duty on all other imports;

Whereas it is appropriate to exclude imports of the product exported by Agrico Chemical Company from the application of the duty and the definitive collection of the amounts secured by way of provisional duty because these exports were not found to have been dumped;

Whereas Allied Chemical Corporation, Kaiser Aluminum Domestic and International Sales Corporation, Columbia Nitrogen Corporation, BCM Incorporated, International Ore and Fertilizer Corporation, Interore Corporation Inc., and Transcontinental Fertilizer Corporation have voluntarily undertaken to increase their prices to a level eliminating but not exceeding the dumping margins found; whereas the Commission has accepted these undertakings;

Whereas it is consequently appropriate to exclude the imports of the product concerned exported by these companies from the application of the duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on urea ammonium nitrate solution fertilizer, falling within Common Customs Tariff subheading ex 31.02 C and corresponding to NIMEXE code ex 31.02-90, originating in the United States of America.

2. The rate of the duty shall be 6·5 % on the basis of the customs value determined in accordance with Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes [1].

3. The provisions in force for the application of customs duties shall apply to this duty.

Article 2

The definitive anti-dumping duty imposed by Article 1 shall not apply to urea ammonium nitrate solution fertilizer exported by the following United States' companies: Agrico Chemical Company, BCM Incorporated, Kaiser Aluminum Domestic and International Sales Corporation, Columbia Nitrogen Corporation, Allied Chemical Corporation, International Ore and Fertilizer Corporation, Interore Corporation Inc. and Transcontinental Fertilizer Corporation.

Article 3

The amounts secured by way of provisional duty pursuant to Regulation (EEC) No 2182/80 shall be definitively collected at a rate of:

— 10 % for imports made by Unie van Kunstmestfabrieken, from Columbia Nitrogen Corporation,

— 7·6 % for imports made by Essochem Belgium from Exxon Chemical International Supply Company,

[1] OJ No L 134, 31. 5. 1980, p. 1.

— 5 % for imports of Kaiser product made by Comagri SA, from Transcontinental Fertilizer Corporation,

— 6·5 % for all other imports with the exception of imports of Agrico product made by Helm Düngemittel GmbH, from Intsel Corporation, New York and all imports of urea ammonium nitrate solution fertilizer exported by Agrico Chemical Company on which the amounts secured shall not be definitively collected.

Article 4

This Regulation shall enter into force on the day of 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, 9 February 1981.

For the Council

The President

G. BRAKS