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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 101/83

of 17 January 1983

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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee set up by the said Regulation,

Whereas in 1981 the Council, by Regulation (EEC) No 349/81 (3), imposed a definitive anti-dumping duty on imports of urea ammonium nitrate solution fertilizer (UAN) originating in the United States of America the level of duty being 6·5 % ;

Whereas this definitive anti-dumping duty did not apply to UAN exported by *inter alia* Allied Corporation (formerly Allied Chemical Corporation), Kaiser Aluminium Domestic and International Sales Corporation (Kaiser) and Transcontinental Fertilizer Co. (Transcontinental) since price undertakings were offered by these companies and were considered acceptable by the Commission (4) ;

Whereas Allied Corporation, Transcontinental and Kaiser have by correspondence dated 7 June, 2 July and 23 July 1982 respectively informed the Commission of their withdrawal from their individual price undertakings ;

Whereas, in accordance with Article 10 (6) of Regulation (EEC) No 3017/79, the Commission informed the Member States forthwith and reopened the proceedings (5) ; whereas this reopening was also warranted by evidence submitted to the Commission by the EEC producers of changed circumstances as regards imports of UAN falling within subheading ex 31.02 C of the Common Customs Tariff (NIMEXE code ex 31.02-90) to the Community from the United States to justify a need for a review in terms of Article 14 of Regulation (EEC) No 3017/79 ;

Whereas the Commission considers that the companies which withdrew from their undertakings did so in order to export UAN to the Community at price levels below those specified in the undertakings ; whereas according to the information available to the Commission any exports at such price levels would be dumped and would cause injury to the Community industry ;

Whereas the dumping margins determined during the previous investigation were 6·5 % for Allied Corporation and Transcontinental and 5 % for Kaiser ; whereas these levels were those at which duties would have been imposed had these companies' price undertakings not been accepted ;

Whereas the Community's interests therefore called for the immediate application of provisional measures based on the evidence available to the Commission ; whereas the Commission has, accordingly, in terms of Article 10 (6) of Regulation (EEC) No 3017/79 imposed provisional anti-dumping duties at the above-mentioned levels on the three companies concerned by Regulation (EEC) No 1976/82 (6), as amended by Regulation (EEC) No 2302/82 (7) ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 39, 12. 2. 1981, p. 4.
(4) OJ No L 39, 12. 2. 1981, p. 35.
(5) OJ No C 179, 16. 7. 1982, p. 4.
(6) OJ No L 214, 22. 7. 1982, p. 7.
(7) OJ No L 246, 21. 8. 1982, p. 5.

Whereas the Commission at the same time started a further investigation and officially so advised the exporters and importers known to be concerned as well as representatives of the exporting country ;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to request a hearing ; whereas all the exporters concerned and certain importers have made their views known in writing and have requested and been granted a hearing ;

Whereas, in order that a full examination of the available facts could be made by the Commission before definitive measures were taken, the Council, by Regulation (EEC) No 3044/82 (1), prolonged the validity of the provisional anti-dumping duties by two months ;

Whereas the Commission has for the purpose of the further investigation sought and verified information deemed to be necessary at the premises of the following EEC producers :

Azotes et Produits Chimiques SA, Paris,

Compagnie Française de l'Azote, Paris,

Générale des Engrais, Paris,

Société Chimique de la Grande Paroisse, Paris,

Ruhr Stickstoff AG, Bochum,

BASF AG, Ludwigshafen,

Nederlandsche Stikstof Maatschappij, Brussels,

Unie van Kunstmestfabrieken BV, Utrecht ;

and the following importers : Demufert SA, Brussels ; Ferdis SA, Brussels ;

Whereas Allied Corporation did not cooperate in the investigation ; whereas Kaiser informed the Commission that they had not exported to the EEC since offering their undertaking and accordingly no relevant export price existed for comparison purposes ; whereas, however, an investigation took place at the premises of Transcontinental in Philadelphia which revealed that the product exported by it had been produced by Kaiser ;

Whereas the Commission, as a result of this further investigation, has established updated normal values for the companies concerned ; whereas, because of the lack of cooperation from Allied Corporation, the Commission had to establish whether there was dumping in the case of Allied Corporation in conformity with Article 7 (7) (b) of Regulation (EEC) No 3017/79 on the basis of the facts available ; whereas, of the facts available, published data on US domestic prices had to be rejected by the Commission, since the exporters and importers concerned disputed their accuracy and since the Commission had reason to believe that even if these prices accurately reflected conditions on the US market they were not sufficient to cover the producer's fixed and variable costs ; whereas consequently the Commission took account of the fact that in 1981 Allied Corporation had given a price undertaking in order to keep its export prices in line with normal value and that in order to avoid future discrepancy between normal value and export prices the undertaking included an indexation formula requiring the six-monthly adjustment of export prices ;

Whereas, since Allied Corporation had made two large shipments to the Community since withdrawing from their price undertaking, the reference period for the purposes of establishing dumping was taken from the date of the first shipment (July 1982) to the end of 1982 ; whereas the Commission has applied in the indexation formula for the reference period and since the resulting price is that at which Allied would have had to export in accordance with the terms of the price undertaking, has used this price to establish the normal value for the reference period ;

Whereas Kaiser and Transcontinental were requested to apply the same indexation formula as Allied Corporation to adjust their export prices at six-monthly intervals ;

Whereas although Kaiser made no direct shipments during the period of validity of its price undertaking, the investigation revealed that the single shipment made by Transcontinental during this period was of products manufactured by Kaiser ; whereas, consequently, a normal value was established for Kaiser by applying the formula for adjusting Kaiser's export price for the six-month period during which the single shipment took place, i.e. the first six months of 1982 ;

Whereas since Transcontinental made no sales of the product on the US domestic market and since the only shipment made by this company to the Community during the relevant period was of products manufactured by Kaiser, the Commission considered it appropriate to take the normal value established for Kaiser as the basis for Transcontinental's normal value ; whereas adjustment of Kaiser's normal value was made to take account of a reasonable profit margin for Transcontinental ; whereas for this purpose 5 % before taxation was considered reasonable ;

Whereas, for Allied Corporation and Transcontinental, export prices were determined on the basis of the prices actually paid for the products exported to the Community ;

Whereas, since Kaiser made no direct shipments to the Community during the relevant period but exported via Transcontinental and since during the investigation Transcontinental would not reveal the price it paid to Kaiser for the product, the Commis-

(1) OJ No L 322, 18. 11. 1982, p. 4.

sion determined Kaiser's export price by reducing that of Transcontinental by the amount of a reasonable profit margin for the resale of such product to the Community, namely 5 % ; whereas, in addition, the price agreed in the undertaking entered into by Kaiser was significantly higher than that of Transcontinental ; whereas Kaiser was required by the terms of its undertaking to take all possible steps to ensure that the undertaking was not evaded by resales made for export to the Community of products sold in countries not members of the Community ; whereas the Commission therefore has reason to believe that Kaiser's undertaking has been breached ;

Whereas all comparisons of normal values with export prices were made at a fob US port level ;

Whereas such comparisons show the existence of dumping in respect of the three companies concerned, the margins of dumping being equal to the amounts by which the normal values as established exceed the prices for export to the Community ;

Whereas since Allied Corporation made shipments at different price levels a weighted average dumping margin for that company was determined ;

Whereas the margins varied according to each exporter and were as follows :

Allied Corporation : 19·05 %,

Kaiser Aluminium Domestic and International Sales Corporation : 12·13 %,

Transcontinental Fertilizer Company : 12·01 % ;

Whereas the Commission considered that the results of its investigation provided as accurate a basis for determination of the level of dumping as possible and that lower levels would constitute a bonus for Allied Corporation's withdrawal from its undertaking and subsequent non-cooperation and the withdrawal from their undertakings by Kaiser and Transcontinental ;

Whereas, with regard to the injury caused by the dumped imports, the evidence available to the Commission shows that for the companies concerned the quantity of these imports for the first eight months of 1982 amounted to 118 850 tonnes which, if taken on an annual basis, would account for some 12 % of total Community consumption of UAN ;

Whereas the prices paid in the Community for the dumped products in question significantly undercut the prices of the Community producers ;

Whereas the impact on this Community industry has been that losses continue to be made on UAN sales ;

Whereas, in considering whether injury has been caused by other factors, the evidence available to the Commission shows that certain other Community producers situated in other Member States have entered the market and increased their sales of UAN, particularly in France ; whereas, however, the investigation has shown that the low level of these producers' prices resulting in considerable losses was due to the fact that they had to compete with the dumped imports ; whereas, accordingly, injury caused by the dumped imports has been sustained by producers throughout the Community and the allegation of the exporters and importers concerned that any injury to French and German producers was solely as a result of increased sales of UAN from other Community producers cannot be supported ;

Whereas, furthermore, the Commission is currently undertaking an anti-dumping review procedure concerning the remaining exports of UAN to the Community ;

Whereas the impact of the dumped imports of the companies concerned has therefore been isolated from that of the other exports subject to the above review investigation ;

Whereas the exporters and importers concerned further alleged that the French producers, comprising 43 % of Community production of UAN, could not be considered to have sustained injury in view of the Decision of the Minister responsible for competition [1] requiring an alteration of certain aspects of the French producers pricing policy regarding *inter alia* nitrogen based fertilizers ; whereas they further alleged that, although this decision refers to both solid (mainly ammonium nitrate) and liquid (UAN) nitrogen based fertilizers this does not reduce its relevance since ammonium nitrate and UAN are effectively like products ; whereas, however, in its investigation, the Commission sought and verified data relating to production and sales of UAN, this data clearly permitting separate identification of the product concerned ; whereas the Commission is satisfied that in the course of this investigation it received correct information on the particular situation relating to Community producers of UAN ; whereas the Commission, in the light of this information is satisfied that the dumped imports of UAN from the companies concerned have caused material injury to the Community producers including those in France ; whereas the Commission sees no

[1] Bulletin officiel de la concurrence et de la consommation of 12 December 1981.

contradiction between this specific injury finding regarding UAN and the Decision of the French authorities which referred to the behaviour of fertilizer producers in relation to a much wider range of both phosphate and nitrogen based fertilizers;

Whereas no representations have been received by the Commission from consumers in the Community; whereas, in any case, it is not in the long-term interest of consumers in the Community to allow a Community industry to be weakened or have its activities reduced by persistent dumping; whereas, in these circumstances, protection of the Community's interests calls for the imposition of definitive anti-dumping duties on urea ammonium nitrate solution fertilizer originating in the United States of America and exported by the three companies concerned; whereas, having regard to the extent of injury caused, the rates of these duties should be equal to the dumping margins found; whereas the protection of the Community's interests also calls for the definitive collection of all amounts secured by way of provisional duty in respect of the product concerned;

Whereas the exporters and importers concerned were informed of the Commission's findings in accordance with Article 7 of Regulation (EEC) No 3017/79;

Whereas, however, these definitive measures regarding the imports by those exporters which have withdrawn from their undertakings shall not in any way prejudice the results of the review procedure regarding other exports of UAN from the USA currently being undertaken by the Commission;

Whereas, until the current or any subsequent review procedure requires the repeal, annulment or amendment or Regulation (EEC) No 349/81 it shall remain in force,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on urea ammonium nitrate solution fertilizer, falling within subheading ex 31.02 C of the Common Customs Tariff and corresponding to NIMEXE code ex 31.02-90, exported by Allied Corporation, Kaiser Aluminium Domestic and International Sales Corporation and Transcontinental Fertilizer Company.

2. The rates of duty shall be based on 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) and are as follows:

Allied Corporation: 19·05 %,

Kaiser Aluminium Domestic and International Sales Corporation: 12·13 %,

Transcontinental Fertilizer Company: 12·01 %.

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

Article 2

The amounts secured by way of provisional duty pursuant to Regulation (EEC) No 1976/82 shall be definitively collected at a rate of:

6·5 % for exports by Allied Corporation,

6·5 % for exports by Transcontinental Fertilizer Company,

5·0 % for exports by Kaiser Aluminium Domestic and International Sales Corporation.

Article 3

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, 17 January 1983.

For the Council

The President

J. ERTL

(1) OJ No L 134, 31. 5. 1980, p. 1.