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*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 2193/83  
of 29 July 1983**

**accepting an undertaking given in connection with the anti-dumping review proceeding on imports of urea ammonium nitrate solution fertilizer (UAN) originating in the United States of America and terminating the proceeding**

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<sup>(1)</sup>, as amended by Regulation (EEC) No 1580/82<sup>(2)</sup>, and in particular Article 10 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas,

**A. Provisional action**

- (1) The Commission, by Regulation (EEC) No 290/83<sup>(2)</sup>, imposed a provisional anti-dumping duty on urea ammonium nitrate solution fertilizer (UAN) originating in the USA. That duty was extended for a maximum period of two months by Regulation (EEC) No 1366/83<sup>(3)</sup> at the request of the exporter concerned;

**B. Subsequent procedures**

- (2) Following the imposition of the provisional anti-dumping duty the exporter and certain Community producers concerned requested, and were granted, an opportunity to be heard by the Commission. The exporter also made written submissions making known its views on the duty.

The exporter concerned further requested to be informed of certain facts and essential considerations on the basis of which it was intended to recommend definitive action and this request was granted;

**C. Dumping**

- (3) For the imposition of the provisional anti-dumping duty the Commission, in arriving at the most appropriate level at which to make the comparison between normal value and export prices, took account of the fact that Agrico supplied almost all its domestic customers ex-terminal; these storage terminals are situated in areas of high consumption and are supplied mostly by direct pipeline from the manufacturing plant and also by barge or truck. The Commission, in its provisional determination considered that the costs of operating these terminals were, by nature, overheads and accordingly no allowance could be made for these costs;
- (4) The exporter, Agrico, contested this determination and submitted further evidence in support of its argument that certain of these costs were treated by the company as variable and that, in any event, a direct relationship in terms of Article 2 (10) (c) of Regulation (EEC) No 3017/79 existed between all the costs of the terminal and the sales under consideration;
- (5) In its definitive determination the Commission took the view that, since such costs were incurred prior to the sale to purchasers on the domestic market, or would have been incurred whether or not any particular sale was made, no direct relationship between these costs and these sales could be established and accordingly no allowance could be made;
- (6) Allowance was, however, made for the cost of transporting the product to the terminal, a similar

<sup>(1)</sup> OJ No L 339, 31. 12. 1979, p. 1.

<sup>(2)</sup> OJ No L 178, 22. 6. 1982, p. 9.

<sup>(2)</sup> OJ No L 33, 4. 2. 1983, p. 9.

<sup>(3)</sup> OJ No L 140, 31. 5. 1983, p. 21.

deduction being made in the case of export sales for the cost of transport from the plant to an fob level ;

- (7) Account was taken of differences in the terms and conditions of sale, namely credit terms and salesmen's salaries, and of differences in the concentration of nitrogen in the product in question ; a number of expenses which Agrico claimed as ancillary to salesmen's salaries were not deducted since no direct relationship between these expenses and the sales under consideration was established. In addition, no allowance was made for quantity differences claimed by Agrico since these claims did not fall into any of the categories specified in Article 2 (10) (b) of Regulation (EEC) No 3017/79 ;
- (8) The exporter also submitted evidence relating to transport costs to the Community frontier which has led the Commission to adjust the weighted average dumping margin expressed as a percentage of the cif Community frontier price to 3,9 % ;

#### D. Injury

- (9) No fresh evidence regarding injury to the Community industry has been submitted, the Commission has therefore confirmed the conclusions on injury reached in Regulation (EEC) No 290/83 ;
- (10) In the Commission's view, therefore, the facts as finally determined show that the injury being caused by dumped imports of UAN originating in the USA, taking in isolation from that caused by other factors, has to be considered as material ;

#### E. Community interest

- (11) Although no representations have been received by the Commission from consumers in the Community, importers to the Community have argued that the introduction of protective measures would significantly increase costs in the agricultural industry and therefore not be in the Community's interests ; however, the Commission considers that the interests of the Community are not served, in the long term, by a Community industry weakened or reduced by persistent dumping and in view of the particularly serious difficulties facing the Community industry and the relatively low incidence of a price increase on the costs of the agricultural

industry concerned, the Commission has come to the conclusion that it is in the Community's interests that action be taken ;

#### F. Undertaking

- (12) The exporter concerned was informed of the main findings of the investigation and commented on them. An undertaking was subsequently offered by Agrico concerning their exports of UAN to the Community.

The effect of the said undertakings will be to increase export prices to the Community to the level necessary to eliminate the dumping. This increase does not exceed the dumping margin found in the investigation.

However, during the consultations within the Advisory Committee concerning the acceptability of this undertaking, one delegation objected to the termination of the proceeding on the basis of acceptance of this undertaking.

The Commission has consequently submitted a proposal to the Council to terminate the proceeding on the basis of the acceptance of the undertaking offered.

#### G. Existing definitive duty

- (13) This decision does not affect the continued application of the definitive anti-dumping duties on imports of UAN originating in the USA, imposed by Regulation (EEC) No 349/81<sup>(1)</sup>, since the Commission has received no evidence to alter its view that such continued application is a requirement for the elimination of injury and the prevention of its recurrence,

HAS ADOPTED THIS REGULATION :

#### Article 1

The Council hereby accepts the undertaking given by Agrico Chemical Company in connection with the anti-dumping review proceeding concerning 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, originating in the United States of America.

<sup>(1)</sup> OJ No L 39, 12. 2. 1981, p. 4.

*Article 2*

The anti-dumping review proceeding concerning imports of urea ammonium nitrate solution fertilizer originating in the United States of America is hereby terminated.

*Article 3*

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, 29 July 1983.

*For the Council*

*The President*

C. SIMITIS

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