

COMMISSION REGULATION (EEC) No 2172/93

of 30 July 1993

imposing provisional anti-dumping duties on imports of ethanolamine
originating in the United States of America

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 sub-
sidized imports from countries not members of the Euro-
pean Economic Community⁽¹⁾, and in particular
Article 11 thereof,After consultation with the Advisory Committee as
provided for under the above Regulation,

Whereas :

A. PROCEDURE

- (1) In March 1992, the Commission received a complaint lodged by the Conseil Européen des Fédérations des Industries Chimiques (Cefic) on behalf of the Community producers of ethanolamine, representing almost all Community production of the product concerned, concerning the import of ethanolamines originating in the United States of America, (hereinafter called 'the USA'). The complaint contained evidence, considered sufficient to justify the initiation of an anti-dumping proceeding, that the imports had been dumped and had caused material injury to the Community industry.
- (2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of such a proceeding concerning imports of ethanolamines originating in the USA, falling within CN codes 2922 11 00, 2922 12 00 and 2922 13 00, and commenced an investigation.
- (3) The Commission officially advised the exporters and importers known to be concerned, representatives of the exporting country and the complainants. Interested parties were given the opportunity to make known their views in writing and to request a hearing.
- (4) Representatives of the exporters, the related importers and the complainants made their views known in writing.
- (5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination of dumping and injury and carried out investigations at the premises of the following :
 - (a) Community producers :
 - BASF AG, Ludwigshafen, Germany,
 - Huels AG, Marl, Germany,
 - ICI Ltd, Middlesbrough, United Kingdom,
 - BP Chemicals Snc, Paris, France ;
 - (b) Producers in the USA :
 - Union Carbide Corporation, Danbury, Connecticut,
 - Oxychem, Dallas, Texas,
 - Dow Chemical Company, Midland, Michigan,
 - Texaco Chemical Company, Houston, Texas ;
 - (c) Related importers :
 - Dow Benelux NV, Rotterdam, Netherlands,
 - Dow International BV, Rotterdam, Netherlands,
 - Texaco Chemical UK, London, United Kingdom,
 - Union Carbide Benelux NV, Antwerpen, Belgium.
- (6) The investigation of dumping covered the period from 1 July 1991 to 30 June 1992 ('the investigation period').

Information was also requested and obtained from Dow Europe SA and Union Carbide Europe SA which are both situated in Switzerland and which carried out certain functions concerning the importation of the product into the Community.

B. PRODUCT UNDER INVESTIGATION

- (7) Description of the product

Ethanolamine is a chemical product derived from a reaction of ethylene oxide and aqueous ammonia.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 201, 8. 8. 1992, p. 12.

There exist three main types of the product :

- monoethanolamine (MEA),
- diethanolamine (DEA),
- triethanolamine (TEA).

All types are chemically very similar. They are made on the same production facilities and have overlapping end-uses.

The main end-use of ethanolamines is as surfactants (in detergent formulations, personal care products, all-purpose cleaners, wax formulations and waterless hand-cleaners), gas purification, metals and textiles.

There did not exist any significant difference between the Community product and the imported product.

C. DUMPING

(8) Normal value

Normal value was established for each type of the product and each exporter in accordance with the provisions of Article 2 (3) (a) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation'), that is, on the basis of the comparable prices actually paid or payable in the ordinary course of trade (i.e. on the average price to independent customers) for the product intended for consumption in the country of origin. Captive use (i.e. use of the product by the producers themselves in the manufacture of other products, mainly ethylenediamines) and sales to associated companies were not considered to be made in the ordinary course of trade, on the grounds that the buyers were not free in their choice of suppliers and the price of these sales was influenced by the relationship between buyer and seller. These sales comprised, for each of the companies concerned, no more than 15 % of sales and, accordingly, the remaining sales on which normal value was based were considered representative.

(9) Export price

In all cases the imports of the product concerned were made by companies which were related to the US producers. It was, therefore, considered that the prices of the sales from the producing companies to the importing companies were unreliable, and for that reason, and in accordance with the provisions of Article 2 (8) (b) of the basic Regulation, the export prices were constructed on the basis of the price at which the imported product was first

resold to an independent buyer, with allowance being made for all costs incurred between importation and resale and for a profit margin of 5 % which was considered reasonable in the light of information obtained from interested parties as regards imports of the product concerned. These costs included certain sales costs which were incurred by companies associated to US producers, situated in a third country (Switzerland) and which normally would be borne by an importer in the Community.

(10) Comparison

The comparison of the normal value with the export prices on a transaction-by-transaction basis was made at an ex-factory level and at the same level of trade.

Adjustments were claimed for differences in salaries of salespersons, technical assistance and certain after sales services. Where justification was supplied by the US producers, the adjustments were granted in accordance with Article 2 (9) and (10) of the basic Regulation.

(11) Dumping margins

The comparison of normal values with export prices shows the existence of an average weighted dumping margin for the different US companies ranging from 62 to 91 %, as expressed as a percentage of the cif value.

D. INJURY

The development with regard to the volume and price of imports as well as the situation of the Community industry have shown a steady evolution between 1988 and the end of the investigation period, as is shown by the following findings :

I. Volume of dumped imports, their increase in particular in relation to production and consumption

- (12) It was established that imports of ethanolamine originating in the USA are made only by importers related to the US producers and according to the data provided by these importers, the imports of ethanolamine rose steadily from 41 000 tonnes in 1988 to 48 600 tonnes during the investigation period, an increase of more than 18 %, where Community production during the same period decreased by more than 8 % and Community consumption during this period only rose 4 % (see recitals 16 and 20).

- (13) The US producers increased their market share from 1988 to the investigation period from 31,1 to 35,5 %, an increase of 4,1 percentage points, which has to be compared with a fall in market share of the Community producers with 7,1 percentage points (see recital 20).

II. Prices of the imports, in particular in relation to prices of the Community products

- (14) Prices of the imports under investigation, ex-warehouse of the related importer at the Community border, decreased on a weighted average basis, from ECU 916 per tonne in 1988 to ECU 537 per tonne during the investigation period, a decrease of 41 %.
- (15) A comparison, at the same level of trade, of prices of imports ex related importer's warehouse with the prices ex works of the Community industry shows persistent price undercutting by these imports.

In absolute figures, the undercutting, by all the US producers concerned, increased, on average, from ECU 9 in 1988 to ECU 27 during the investigation period.

In percentage terms and on a weighted average basis, the price undercutting was found to be 6 % during the reference period.

III. Situation of the Community industry

(a) Production capacity utilization rate and stocks

- (16) Overall Community production of ethanolamine decreased from 141 700 tonnes in 1988 to 130 200 tonnes during the investigation period, a decrease of more than 8 %.
- (17) Capacity utilization by the different Community producers decreased over the same period from 98 to 79 %, a decrease of 19 %.
- (18) The level of stocks of the Community industry increased significantly from 4 939 tonnes in 1988 to 9 059 tonnes in 1989 and 6 335 tonnes in 1990 and returned to 5 342 tonnes during the investigation period, *inter alia* because the Community producers adjusted their production to their diminishing market share.

(b) Sales and market shares

- (19) Sales by the Community industry on the Community market decreased from 81 000 tonnes in 1988 to 75 000 tonnes during the investigation period, a decrease of 7,6 %.
- (20) While the apparent consumption showed an increase from 130 800 tonnes to 136 600 tonnes during the same period, an increase of 4,4 %, the market share held by the Community industry fell from 62 % in 1988 to 54,9 % during the investigation period, a decrease of 7,1 %.

(c) Prices

- (21) On a weighted average basis, average prices of the sales of the Community industry on the Community market, ex works, decreased from ECU 925 in 1988 to ECU 564 during the investigation period, a decrease of 39 %.

(d) Profitability

- (22) Profitability of the Community industry, expressed as a percentage of turnover, decreased, on a weighted average basis, from 18 % in 1988 to a loss of 22 % during the investigation period, a decrease of 40 percentage points.

These negative results were reached in spite of investments made by the Community industry in order to reduce costs, and a reduction of the workforce to the minimum levels necessary to keep the production process going on safely.

(e) Investment

- (23) The Community market for ethanolamines is expanding gradually, for which development the Community industry has prepared itself by making the necessary investment as regards the required production levels and the quality of the output.

IV. Conclusion as to injury

- (24) In a growing market, an increase in production and sales is normally anticipated. This development in the market has not had the expected impact for the Community industry. Indeed, contrary to the industry's expectations, sales, production and market share have decreased from 1988 to the end of the reference period, by which time the industry was unable to achieve a reasonable level of capacity utilization resulting in higher unit costs.

Additionally, the significant decrease in prices led to considerable losses which prevented the Community industry from keeping pace with required investments, impeded its growth and adversely affected its long term viability.

In these circumstances, it is concluded that the Community industry is suffering material injury characterized by sales suppression, price depression and resulting lack of profitability.

E. CAUSE OF INJURY

(a) *Effect of dumped imports*

(25) In its examination of the extent to which the material injury suffered by the Community was caused by the effects of the dumped imports, the Commission has found that the increase in volume and market share, and the decrease in the prices of the dumped imports coincided with the drop in the Community's industry's sales, loss of market share and serious loss of profitability.

(26) The Commission found, more particularly, that, as a result of the persistent undercutting of its prices by these imports, the Community industry was forced to reduce its prices in an attempt to maintain a reasonable capacity utilization and market share. This depression of prices led, in turn, to a general lack of profitability specifically demonstrated by the financial losses incurred since 1990.

(b) *Other factors*

(27) The Commission services have examined whether the injury suffered by the Community industry could have been caused by other factors than the dumped imports, in particular the evolution and impact of imports from third countries not covered by this proceeding and the trend of the apparent consumption in the Community market.

(28) Imports from other third countries (Sweden and countries of unspecified 'secret' origin) have increased their market share since 1988 from 4,7 to 8,4 %.

(29) In these circumstances, and in particular, given the market share (35,5 %) of the dumped imports, it has been provisionally concluded that, even if the imports from other third countries have had injurious effects, the price levels and volume of the imports under consideration, have, taken in isolation,

caused material injury to the Community industry.

(30) Furthermore, given the increase in consumption of the product concerned between 1988 and the end of the investigation period, the deterioration of the situation of the Community industry cannot be attributed to a decrease in demand.

F. COMMUNITY INTEREST

(31) When examining the Community interest, the Commission found that the Community industry has continuously been able to supply the Community market to a large extent, and is making continuous efforts to meet the increased demand on the Community market for ethanolamine from both a quantity and quality point of view.

A continuation of the negative effects of the dumped imports of ethanolamine originating in the USA would jeopardize the ability of this Community industry to continue to meet this demand without increasing unsustainable losses.

A halt to the Community production of ethanolamines would also entail negative effects on the profitability of the other products which stem from the same integrated production facilities as ethanolamine.

Furthermore, such losses would put at risk the continued viability of the Community industry with the consequent negative effects on employment, investment and competition.

(32) The Commission is aware of the effects of anti-dumping measures on the prices for end-users of the product concerned.

As to these consumer interests in the Community, any short-term price advantage from injurious dumping has to be seen against the background of the longer-term effect of not restoring fair competition. Indeed, to refrain from taking action would seriously threaten the viability of the Community industry, the disappearance of which would, in fact, reduce supply and competition to the ultimate detriment of consumers.

The Commission is furthermore of the opinion that possible negative effects of measures against the dumped imports of ethanolamine originating in the USA are fully offset by the need to preserve a sufficient number of suppliers of ethanolamine on the Community market who will compete with each other under fair conditions.

The available data on the US market show that, where only three suppliers serve the market, prices for end-users tend to be much higher than on the Community market.

- (33) Two Community purchasers of ethanolamine approached the Commission with a view to averting measures that would exclude the US producers completely from the Community market. In this context they referred to the lack of capacity of the Community producers to satisfy fully the demand on the Community market. The Commission shares the view that the Community producers cannot fully supply the market and that therefore access for non-Community producers should be maintained. However, it is also clearly in the interest of the end user in the Community market that a viable Community industry be maintained and that its substitution by a lesser number of third country suppliers be prevented.
- (34) In these circumstances, the Commission concludes that the adoption of measures aimed at re-establishing fair competitive conditions for ethanolamine in the Community market, while maintaining access for the US suppliers to this market, is in the interest of the Community.

G. PROVISIONAL DUTY

- (35) When considering the measures necessary to remove the injury caused by the dumped imports and to restore fair competitive conditions, the Commission had to consider that the Community industry as a whole is not profitable in the present circumstances. Accordingly, the Commission calculated the level of prices at which the Community industry would be able to cover its costs and to obtain a reasonable return on sales taking into account the price differentiation found in the market for the different types of ethanolamine.

In the present circumstances and given the requirements of this particular industry, it was found that 8 % could be regarded as an appropriate rate of return on turnover.

- (36) Given the determination of the US producers to defend their increased market shares and the possibilities for them to absorb to a large extent high anti-dumping duties, and given the vulnerability of the Community industry, the Commission considered it appropriate to establish minimum import prices which would permit the Community industry to raise its prices to a profitable level. Under existing customs monitoring procedures regarding transfer pricing in the case of related companies, the risk of circumvention of anti-

dumping duties by inappropriate invoicing by the companies concerned is minimized.

Given the cyclical low level of the prices of the imports of ethanolamine, on the basis of which the calculation of the necessary minimum prices is based, and given the high degree of competition, *inter alia* from producers in other third countries, there is no danger that the prices to the end-user will be kept unjustifiably high.

- (37) The Commission has found that since the minimum import price considered necessary to remove the injurious effects of the dumping did not exceed the normal value, the provisional anti-dumping duty, as provided for in Article 13 (3) of the basic Regulation should be set at this price.
- (38) A period should be fixed within which the parties known to be concerned may make their view known and request a hearing. A one-month period is considered appropriate for this purpose. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ethanolamines falling within CN codes 2922 11 00, 2922 12 00 and 2922 13 00, originating in the United States of America.

2. The amount of the duty shall be the difference between the cif price Community frontier per tonne, exclusive of duty, when lower, and the following levels :

- (a) in the case of monoethanolamine, CN code 2922 11 00 : ECU 606
- (b) in the case of diethanolamine, CN code 2922 12 00 : ECU 584
- (c) in the case of triethanolamine, CN code 2922 13 00
- with a content of less than 99 %, (Taric code 2922 13 00 10) : ECU 609
 - with a content of 99 % or more, (Taric code 2922 13 00 90) : ECU 652.

3. The provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88 the parties concerned may make known their views in writing and apply to be heard orally

by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Subject to Articles 11, 12, and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 July 1993.

For the Commission

Leon BRITTAN

Vice-President
