

COUNCIL REGULATION (EEC) No 1244/86

of 28 April 1986

imposing a definitive anti-dumping duty on imports of copper sulphate
originating in Yugoslavia

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Community ⁽¹⁾, and in particular Article 12 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. Procedure

1. Following a request by the Italian Republic, into which market substantially all imports of Yugoslav copper sulphate were made, the Commission, in November 1983, published in the *Official Journal of the European Communities* a notice reopening the anti-dumping proceeding concerning imports of copper sulphate originating in Yugoslavia ⁽²⁾.
2. The request by Italy alleged, with supporting evidence, that Yugoslav export prices of copper sulphate to the Community, and specifically to Italy, had been, even after the imposition of a definitive anti-dumping duty of 19,5 % in March 1983 by Regulation (EEC) No 486/83 ⁽³⁾, regularly below the published prices for raw copper which accounts for some 75 % of all production costs of copper sulphate. Accordingly, it was alleged that these export prices did not cover production costs and that this had led to a continuation of dumping, causing further injury to the Community industry.
3. Decision 84/404/EEC ⁽⁴⁾ confirmed these allegations and a dumping margin of 61 % was established. It was further calculated, on the basis of the facts available to the Commission at the time of the review investigation, that an anti-dumping duty of 53 %, together with a minimum price duty to avoid possible circumvention, would have been required to eliminate the injury sustained by the Community industry and caused by the dumped imports.
4. Following discussions in the Cooperation Council set up under the Cooperation Agreement between the

European Economic Community and the Socialist Federal Republic of Yugoslavia ⁽⁵⁾ the Commission, by Decision 84/404/EEC, accepted a price undertaking offered by the Yugoslav exporters concerned and Regulation (EEC) No 486/83 was repealed by the Council by Regulation (EEC) No 2333/84 ⁽⁶⁾.

B. Breach of undertaking

5. On receipt, in September 1985, of a complaint from the Community industry that Yugoslav imports of copper sulphate were again entering the Community at prices which were causing material injury, this complaint being supported by published statistical evidence on quantities and prices, the Commission, in accordance with Article 10 (6) of Regulation (EEC) No 2176/84, requested the Yugoslav exporters to comment. The comments made in September 1985, together with the information submitted to the Commission from the Yugoslav exporters, showed that the price undertaking had been breached for all export sales to the Italian market during the second quarter of 1985, the peak annual selling period for copper sulphate in the Community, sales being on a seasonal basis.
6. Based on the evidence available, and taking into account the fact that a further Community producer had ceased operations since the acceptance of the undertaking in 1984, the Commission, by Regulation (EEC) No 3106/85 ⁽⁷⁾ imposed a provisional anti-dumping duty on imports of copper sulphate originating in Yugoslavia. In accordance with Article 10 (6) of Regulation (EEC) No 2176/84, the rate of duty was based on the facts established before the acceptance of the undertaking, namely 53 % or the difference between the price at the Community frontier and 600 ECU, whichever is the higher.

C. Reopening

7. In such circumstances, the Commission considered that further investigation was warranted and decided, after consultation, to reopen the investigation in accordance with Articles 7 and 14 of Regulation (EEC) No 2176/84. Accordingly, a notice to that effect was published in the *Official Journal of the*

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No C 301, 8. 11. 1983, p. 2.

⁽³⁾ OJ No L 55, 2. 3. 1983, p. 4.

⁽⁴⁾ OJ No L 215, 11. 8. 1984, p. 16.

⁽⁵⁾ OJ No L 41, 14. 2. 1983, p. 1.

⁽⁶⁾ OJ No L 215, 11. 8. 1984, p. 1.

⁽⁷⁾ OJ No L 296, 8. 11. 1985, p. 26.

European Communities⁽¹⁾ concerning imports of copper sulphate originating in Yugoslavia, falling within subheading ex 28.38 A II of the Common Customs Tariff and corresponding to NIMEXE code 28.38-27.

D. Extension of the provisional anti-dumping duty

8. The validity of the provisional anti-dumping duty imposed by Regulation (EEC) No 3106/85 was extended by a period not exceeding two months by Regulation (EEC) No 677/86⁽²⁾. This extension, which was not objected to by the exporters concerned, was to allow sufficient time for all interested parties to make submissions and for the Commission to complete its examination of the facts.

E. Investigation

9. The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the Community producers of the opening of the investigation and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing. The Community producers and two Yugoslav exporters made their views known in writing. One submission was made by a Community importer which raised the question of the application of anti-dumping measures to products falling within the special trade agreement between the city of Trieste and the adjacent frontier zone in Yugoslavia. The importer was informed that there was no exemption from the application of anti-dumping measures for such products. No submissions were made by purchasers or processors of copper sulphate, but two of the exporters, Zorka-Sabac and Zupa-Krusevac, requested, and were granted, a hearing. At this hearing, both exporters concerned claimed that comments made previously, in particular in September 1985, contained wrong data and that in fact sales had not been made at prices below the levels stipulated in the undertakings. However, the documentation submitted in support of this claim merely confirmed that all sales made in the second quarter of 1985 to Italy had been in breach of the undertaking.
10. The Commission sought and verified all information it deemed necessary and carried out investigations at the premises of the following EEC producers: Metallo Chimique (Belgium) and Manica (Italy). The Commission requested, and received, written submissions from the Community producers and two Yugoslav exporters and verified the information therein to the extent considered necessary.
11. The investigation covered the period January to October 1985, which included the peak selling period

for copper sulphate in the Community (March to July) and consequently the main period for imports of Yugoslav copper sulphate to the Community.

F. Normal value

12. Normal value for each exporter was determined on the basis of the domestic prices as supplied to the Commission by the Yugoslav producers. These prices were considered to be representative of the domestic market concerned.

G. Export price

13. Export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community during the reference period. The information received by the Commission from the Yugoslav exporters during the investigation further confirmed that the undertakings had been breached during the second quarter of 1985, i.e. the peak season for copper sulphate sales.

H. Comparison

14. In order that an appropriate comparison could be made, the Commission estimated on the basis of the information available to it the costs incurred in transporting the product from the factory to the Community frontier. The costs were deducted from the export prices and the Comparisons were accordingly made at an ex-works level.

I. Margins

15. The above comparison shows the existence of dumping in respect of all exports to the Community during the reference period by the exporters who made themselves known to the Commission, the margin of dumping being equal to the amount by which the normal value, as established, exceeds the price for exports to the Community i.e. 139 % for Zorka-Sabac and 143 % for Zupa-Krusevac.

For those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the investigation, dumping was determined on the basis of the facts available. In this connection, it was considered that the results of the investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention and an invitation to non-cooperation in future anti-dumping cases to hold that the dumping margin for these exporters was any lower than the higher dumping margin determined with regard to an exporter who has cooperated in the investigation. For these reasons the Council considers it appropriate to use this latter dumping margin for this group of exporters.

⁽¹⁾ OJ No C 284, 7. 11. 1985, p. 3.

⁽²⁾ OJ No L 62, 5. 3. 1986, p. 1.

J. Injury

16. The Community industry in respect of which the impact of the dumped imports must be assessed has recently been reduced by closures in the United Kingdom and Germany to three manufacturing facilities situated in Belgium, France and Italy. The evidence available to the Commission shows that imports into Italy and Greece of copper sulphate from Yugoslavia have risen from 4 165 tonnes for the whole of 1984 to 6 350 tonnes for the first 10 months of 1985. This represents an increase in market share in the Community from 7,8 % in 1984 to 12,8 % in 1985 and in Italy, where the largest part of these imports were sold, from 11 % in 1984 to 17 % in 1985.
17. The resale prices of these imports during the reference period have undercut the prices of the Community producers by up to 16 %, and were considerably lower than those required to cover these companies' production costs. This increase in the level of imports combined with the price depression caused by the dumped prices has caused production in the Community to fall, with capacity utilization levels at approximately 50 %.
18. Although the dumped Yugoslav imports have, for the most part, been restricted to Italy and Greece, their effect in other Member States has also been significant. The prices of Yugoslav copper sulphate have had a depressive effect throughout the Community on all Community producers' prices directly, and also indirectly where the Italian producer has been forced to attempt to sell increasing quantities in the Community in markets other than in its traditional areas in Italy and Greece. A direct result of this has been the closure, since June 1985, of two of the five Community manufacturing facilities.
19. The Commission has considered whether injury has been caused by other factors such as the volume and prices of imports from other sources or a fall in Community consumption. However, it has been established that, despite fairly stable consumption in the Community between 1984 and 1985, the Yugoslav share of the Community market has increased significantly. This is also true of the market share held by imports from certain other sources such as Czechoslovakia, Hungary, Poland and the Soviet Union which are currently the subject of anti-dumping measures. Nevertheless, the continued high volume of Yugoslav imports and the price levels at which these imports are offered for sale in the Community have led the Commission to conclude that these dumped imports, taken in isolation, caused material injury to the Community industry.

K. Community interest

20. In view of the serious difficulties facing the Community industry concerned, resulting in the recent withdrawal from manufacture by two Community producers of copper sulphate, the Council has come to the conclusion that it is in the Community's interests that action be taken in order to eliminate the injury being caused to this industry and that this action take the form of a definitive anti-dumping duty.

L. Rate of duty

21. Having regard to the extent of the injury caused, the rate of such duty should be less than the dumping margins provisionally established but adequate to remove the injury caused. Having taken into account, on the one hand, the selling price necessary to provide the return currently being made from efficient manufacturing in the Community and, on the other hand, the prices at which the dumped imports are offered for sale in the Community, the Commission determined the amount of duty necessary to eliminate the injury to be 27 % or, to avoid possible circumvention, the difference between the price per tonne net free at Community frontier and 790 ECU, whichever is the higher —

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of copper sulphate falling within Common Customs Tariff subheading ex 28.38 AII corresponding to NIMEXE code 28.38-27 and originating in Yugoslavia.
2. The amount of the duty shall be 27 % of the price per tonne net, free-at-Community-frontier, before duty or the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 790 ECU, whichever is the higher.
3. The provisions in force with regard to customs duties shall apply.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 3106/85 shall be definitively collected up to a maximum of 27 %.

Article 3

This Regulation shall enter into force on the day following that 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 Luxembourg, 28 April 1986.

For the Council

The President

H. RUDING
