II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 January 1983

terminating the anti-dumping proceeding concerning imports of codeine and its salts originating in Czechoslovakia, Hungary, Poland and Yugoslavia

(83/9/EEC)

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) No1580/82 (2), and in particular Article 9 thereof,

Having regard to the proposal from the Commission submitted after consultations within the Advisory Committee set up by the abovementioned Regulation,

Whereas the Commission received a complaint lodged by the two major German manufacturers which, at that time, accounted for a large proportion of the total Community output of codeine and its salts ; whereas the complaint contained evidence of the existence of dumping in respect of like products originating in Czechoslovakia, Hungary, Poland and in Yugoslavia and of material injury resulting therefrom ;

Whereas, since the said evidence was sufficient to justify initiating a proceeding, the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (3), the initiation of a proceeding concerning imports of such products originating in the said countries and started an investigation at Community level ;

Whereas the Commission officially so advised the exporters and importers known to be concerned as well as the representatives of the exporting countries and the complainants ;

Whereas the Commission gave the parties directly concerned the opportunity to make known their views in writing and to be heard orally ; whereas all exporters and importers known to be concerned have taken this opportunity ;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought to obtain and verify all information which it deemed to be necessary ; whereas the Commission had also to take into consideration the fact that trade in codeine and its salts is subject to international control under the 1961 Single Convention and that, owing to the import restrictions applied on this basis by the other Member States, the Federal Republic of Germany is the only important Community market on which the said goods can be freely imported ;

Whereas the Commission carried out inspections at the premises of the sole Yugoslav producer Alkaloid, Skopje and at the premises of the two complainants E Merck, Darmstadt and Boehringer, Ingelheim ;

Whereas, for its determination of dumping the Commission had to take account of the fact that Czechoslovakia, Hungary and Poland are not market economy countries ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 71, 1. 4. 1981, p. 2.

Whereas for that reason, the Commission had to base its calculations on the normal value in a market country ; whereas, in that connection, the complainant suggested the domestic price in Yugoslavia ; whereas the Hungarian exporter disputed the choice of the Yugoslav domestic price as a basis for the determination of normal value and alleged that the protection of the Yugoslav market led to internal prices which were artificially high ; whereas as an alternative the Hungarian exporter suggested that a normal value be established by using the export price of another market economy third country to Germany ; whereas the Commission considered that the additional administrative burden which would be imposed on it by carrying out investigations in a further market economy country would be unjustified unless it could be demonstrated that it would be manifestly more appropriate and reasonable to use another third country's normal value rather than to use prices or costs in Yugoslavia ; whereas, in view of the fact that practically all countries producing codeine protect their home market, the Commission considered the choice of a third country's export price to be inappropriate because it was always likely to be dumped and because there was no justification for discriminating between Yugoslavia and the other three countries concerned by basing the normal value in one case on allegedly artificially high internal prices and in the other cases on a lower and therefore dumped export price ; whereas the Commission has consequently, since no other objections against the Yugoslav price were brought forward, based its preliminary determinations of normal value on the domestic price in Yugoslavia during the period 1 January 1980 to 31 March 1981 ;

Whereas export prices for the Czechoslovakian exporter Chemapol, the Hungarian exporter Medimpex, the Polish exporter Ciech and the Yugoslav exporter Alkaloid were established on the basis of the information obtained from these companies ; whereas in the case of Alkaloid this information was verified on the spot, while in respect of the other exporting companies the cif prices were checked by reference to the official German import statistics ;

Whereas the normal value was compared with the export prices of the four exporting companies ; whereas these comparisons were made at the ex-factory level for sales made during the period 1 January 1980 to 31 March 1981 ; whereas this preliminary investigation of dumping showed dumping margins of 93·6 % for Alkaloid, 94·3 % for Chemapol, 99·8 % for Medimpex and 87·5 % for Ciech ;

Whereas, with regard to injury caused by the dumped imports to the Community industry, the evidence available to the Commission during the preliminary investigations shows that imports from Poland into the Federal Republic of Germany have increased from 500 kg in 1978 to 2 645 kg in 1980 ; whereas during the same period imports from Czechoslovakia have increased from 400 to 620 kg and those from Hungary from 0 to 200 kg after reaching a peak of 650 kg in 1979 ; whereas imports from Yugoslavia increased from 275 kg in 1978 to 3 164 kg in 1979 and dropped to 450 kg in 1980 ;

Whereas in 1980 Polish exports held a share of 11·6 % and Czechoslovakian exports a share of 2·7 % of the German market ; whereas the market share of Hungarian exports dropped from 3·2 % in 1979 to 0·9 % in 1980 and during the same period the Yugoslav market share dropped from 15·4 % to 2·0 % ;

Whereas the prices of the dumped imports were significantly below the prices charged by the two complaining German producers ; whereas in 1980 Polish import prices, on average, undercut the domestic selling prices of the two German producers by more than 41 % ; whereas the corresponding figures for the other exporters concerned were 32 % in the case of Czechoslovakian, 43 % in the case of Hungarian and 34 % in the case of Yugoslav exports ;

Whereas the consequent impact on the German industry has contribued to an alarming drop in the market share held by the complainants from 23 % in 1978 to 6·3 % in 1980, a drop in sales volume of up to 90 % and an increase in the average storage time at the premises of the complainants from around 150 days in 1978 to up to 960 days in 1980 ; whereas both complainants, due to the depressed price levels, suffered serious losses in 1979 and 1980 and were forced to stop their production and to reduce their work force by 50 % ;

Whereas the Commission has also considered whether injury has been caused by other factors such as volume and prices of imports from other countries, which individually or in combination are also adversely affecting the complainants ; whereas imports into the Federal Republic of Germany from other Member States also increased from 6 946·5 kg in 1978 to 10 572 kg in 1980 ; whereas during the same period the market share held by these imports increased from 35·7 to 46·4 % ; whereas in 1980 the average price of these imports was more than 39 % below the average domestic selling prices of the two German firms ;

Whereas, in addition, in 1977 import prices of the products concerned originating in the countries subject to this proceeding were well above the comparable price of the products originating in other Member States ; whereas, in 1978, while the differential between the price levels of the various imports was, in general, maintained, a sharp drop in prices of imports from all sources coincided with an increase in the market share of imports originating in Member States from 31·9 to 35·7 % ;

Whereas, under these circumstances, it appears that the imports from other Member States have been the principal cause of injury and it is difficult to establish whether the imports from Czechoslovakia, Hungary, Poland and Yugoslavia, taken in isolation, have caused material injury to the Community industry concerned ;

Whereas, furthermore, the interests of the Community do not call for Community intervention against the dumped imports as long as other Member States, while maintaining import restrictions, continue to export low priced codeine to the Federal Republic of Germany ; whereas any restriction on the imports from the four countries concerned would probably only result in their being replaced by low-priced imports from the rest of the Community as happened between 1979 and 1980, when an increase of 7·3 % in imports of Community origin coincided with a drop of 8·9 % in imports from the four countries concerned ;

Whereas the Commission's view is that, on the basis of the foregoing, the proceeding should be terminated ; whereas, however, one Member State has raised an objection in the Advisory Committee ; whereas the Commission has therefore referred the matter to the Council ;

Whereas on the basis of the above findings it has been determined that any action taken against the imports found to be dumped would not give relief to the complainant industry and that it is, therefore, not in the Community's interests at this time to take protective measures against these dumped imports ; whereas, in these circumstances the procedure concerning imports of codeine and its salts from Czechoslovakia, Hungary, Poland and Yugoslavia should be terminated,

HAS DECIDED AS FOLLOWS :

Sole Article

The anti-dumping proceeding concerning imports of codeine and its salts originating in Czechoslovakia, Hungary, Poland and Yugoslavia is hereby terminated.

Done at Brussels, 17 January 1983.

For the Council

The President

J. ERTL