II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 January 1988

accepting an undertaking given in connection with the anti-dumping review proceeding concerning imports of a herbicide originating in Romania

(88/47/EEC)

THE COMMISSION 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 Economic Community [1], as amended by Regulation (EEC) No 1761/82 [2], and in particular Article 15 thereof,

After consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) By Council Regulation (EEC) No 955/79 [3], a definitive anti-dumping duty of 40 % was imposed on a herbicide, DNBP technical (Dinoseb), originating in Romania. The anti-dumping proceeding was re-opened in 1981 following a request by the complainant for a review of the measures in force. The Commission conducted a further investigation but concluded on 6 May 1982, in its Decision (82/285/EEC) [4], that no alteration to the definitive duty of 40 % was required and that in consequence the review proceeding should be terminated.

In December 1986, the Commission gave notice [5] of the impending expiry of the anti-dumping duty pursuant to Article 15 of Regulation (EEC) No 2176/84.

On 29 May 1987, the Commission reopened the anti-dumping proceeding concerning DNBP technical originating in Romania following a request for a review of the measures lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of Community manufacturers representing a major proportion of Community production of the product concerned [6]. The request for review contained evidence that the expiry of the existing measures would lead to a threat of injury to Community producers. The product referred to in the request for a review is the herbicide, Dinoseb (4,6-dinitro-o-sec butylphenol-DNBP), which is a contact herbicide employed in various agricultural uses and also in the manufacture of polystyrene. It corresponds to combined nomenclature codes 2908 90 10 and ex 3808 30 10.

(2) The Commission officially so advised the exporter and importers known to be concerned, the representatives of the exporting country and the complainant, and give the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

Two Community producers, the exporter concerned and some importers made their views known in writing. In addition, the exporter

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No L 121, 17. 5. 1979, p. 5.
[4] OJ No L 128, 11. 5. 1982, p. 17.
[5] OJ No C 335, 30. 12. 1986, p. 11.
[6] OJ No C 142, 29. 5. 1987, p. 4.

concerned requested and was granted a hearing and proposed a confrontation meeting with the Community producers. The latter indicated that they were unwilling to participate in such a meeting.

(3) The Commission sought and verified all information it considered necessary and carried out investigations at the premises of A. H. Marks, Bradford, United Kingdom. Information relating to the other main Community producer, SNPE, was also verified.

(4) The Commission requested and received detailed written submissions from the complainant Community producers, the exporter and several importers, and verified the information therein to the extent considered necessary.

(5) The investigation of dumping covered the period 1 May 1986 to 30 April 1987.

B. Normal value

(6) Since Romania is a non-market economy country within the meaning of Article 2 (5) of Regulation (EEC) No 2176/84, the Commission was obliged to avail itself of one of the methods for determining normal value set down in that Article. As the United States of America is the only market economy country outside the Community in which DNBP technical was produced in the investigation period, the Commission chose, as it had in its previous anti-dumping investigations relating to this product, the prices of the largest producer in that country as the basis for calculating normal value. Those prices were verified at an on-the-spot inspection of the US producer concerned.

(7) The Romanian exporter, Danubiana, questioned the Commission's choice of analogue country for determining normal value on the grounds that sales of the product ceased in the United States halfway through the investigation period, in October 1986. However, no alternative approach was suggested by the exporter. Despite the availability of data for only a part of the investigation period the Commission considered that, since the United States is the largest market-economy country in which DNBP technical was employed and the producer concerned was the largest manufacturer of the product, normal value could reasonably be estimated on the basis of sales made in the United States market in the period May to October 1986.

C. Export price

(8) In the investigation period there were no exports of DNBP technical from Romania to the Community. However, in the fourth quarter of 1986, Danubiana made an offer to supply a substantial quantity of DNBP technical to an independent Community importer at a certain price for delivery in 1986 and 1987. The validity of this offer went beyond the date by which the measures imposed in 1982 would have been in force for five years, i. e. the date at which, in the absence of a re-opening of the anti-dumping proceeding, the measures in force would have lapsed.

D. Comparison

(9) In order to effect a comparison between normal value and the export price at which Danubiana offered DNBP technical to importers in the Community, the Commission compared the prices concerned at ex-works level, as nearly as possible at the same time, and made due allowance where warranted for difference in transport and ancillary costs, packaging, duties and taxation and other factors affecting price comparability.

E. Margins

(10) The dumping margin would have been 21 % for the contract referred to in paragraph 8 if Danubiana had supplied DNBP technical to the Community importer.

F. Injury

Background

(11) The size of the Community market for DNBP technical has remained relatively stable since 1983 subject to certain minor variations arising from factors associated with the weather. The annual market is characterized by two distinct phases; in the period October to March orders are placed for the product for the next growing season and from April to September the product is produced and sales are made to formulators who process it into a herbicide for agricultural and horticultural use. Some sales (less than 10 %) are also made to companies who use DNBP technical as an inhibitor in the polymerization of styrene.

The development of the market worldwide has recently been affected by major environmental concerns about the safety of the product. As a result of these concerns, sales of the product in the United Kingdom were banned indefinitely from December 1986. Other Community countries may follow suit in the near future. In the United States, the largest market, the product was to all intents and purposes banned from further usage in the agricultural sector from October 1986. In addition, following the completion of further studies in that country since then, it seems probable that the United States Federal Environmental Protection Agency will institute an indefinite ban on the use of the product for agricultural purposes.

Threat of injury

(12) Since 1981, Romania has not exported DNBP technical to the Community and the market has been supplied only by Community producers. It is evident, therefore that no injury has been suffered by Community producers during the period 1982 to 1987 as a result of dumped imports from Romania. Community producers alleged, however, that the expiry of the anti-dumping measures against imports of DNBP from Romania would lead to a threat of injury. The complainants argued that this threat of injury was real in view of the existence of low-priced offers on the market made by Danubiana in 1986 which would have undercut Community producers' prices substantially in the absence of the anti-dumping duty of 40 %.

(13) In this case it should be borne in mind that the review of the measures carried out by the Commission took place within the context of Article 15 of Regulation (EEC) No 2176/84. In assessing whether there would be a threat of injury to Community producers if existing anti-dumping measures were to expire, the Commission has examined all relevant factors in order to determine whether the expiry of the anti-dumping duty would lead to a situation likely to develop into actual injury.

(14) In this regard the following facts were considered to be pertinent:

— The low-price offers made by the Romanian exporter in October to November 1986 to Community importers would have undercut Community producers' prices by about 19 % if no anti-dumping duty had been in force. This conclusion was contested by the exporter who argued that, in the absence of an anti-dumping duty, the offer price would have been correspondingly higher. It was claimed also by Danubiana that the offers were solicited by importers on behalf of Community producers with the intent of providing supporting evidence for the reopening of the anti-dumping proceeding. As such they were not genuine inquiries regarding possible purchase of Romanian product.

With regard to the argument that export prices would have been higher in the absence of an anti-dumping duty, the evidence shows that Danubiana was prepared to supply product at the same low price if the anti-dumping duty had expired. As to the claim that the requests for offers were not genuine, the Commission considers that the evidence does not support this view. What is clear, however, is that Danubiana responded as if the requests were genuine, and it is this fact which is the only relevant one in the circumstances.

— With regard to the export capacity of Danubiana, the facts showed this to be not inconsiderable, particularly in view of the closure of the United States market from October 1986 (previously a significant sales outlet) and the underutilization of capacity in 1986. *Ceteris paribus,* the potential export capacity which could have been employed for sales in the Community would have represented as much as 35 % of the Community market.

Danubiana argued that part of the surplus capacity was being utilized in increased trade within Eastern Europe and hence was not available for export sales to the Community. However, even if this were the case, the Commission still considers that an important part of remaining capacity could have been used for Community sales and could, if necessary, have been expanded through more intensive use of plant.

— Since contracts for sale of Dinoseb are typically concluded by manufacturers with formulators for an entire growing season (April to September) and in substantial amounts, the loss of one major contract can mean a substantial reduction of market share for a Community manufacturer. The Romanian offer to a Community importer represented about 10 % of the Community market. In addition, because sales are seasonal, loss of market share can only be recovered by producers in the following year. Loss of sales of this order of magnitude to dumped imports would have an immediate effect on Community producers' profitability. A similar effect on profits would have occurred also if Community producers had attempted to match low prices offered in the market by Danubiana.

— Toxicological studies carried out in the United States and elsewhere have cast certain doubts on the future of DNBP technical as an agricultural herbicide. In the light of this, and the possibility that the Community market may contract significantly in the near future, it is evident that the loss of a large part of a declining market to low-priced sales would be a severe blow to Community producers and may inhibit them from liquidating stocks and readapting production facilities as necessary.

— Finally, the Commission observes that there is a history of dumping of this product by Romanian exporters, evidenced by the high dumping margins found in the original investigation in 1979 and its subsequent review in 1982.

(15) In conclusion, and taking account of all facts and considerations, the Commission considers that there is evidence that the elimination of the anti-dumping duty would lead to a situation likely to develop into actual injury to the Community producers.

G. Community interest

(16) In view of the threat of injury to Community producers if dumped imports from Romania were to resume on the Community market, the Commission has come to the conclusion that it is in the Community's interest that action be taken.

H. Undertaking

(17) The Romanian exporter, having been informed of the main findings of the review investigation, agreed, without prejudice to its view that there was no threat of injury to Community producers, to offer an undertaking to respect a minimum price, expressed in ECU per kilogram, at the Community frontier. The effect of the said undertaking will be to ensure that export prices to the Community will be at prices which will not cause injury to Community producers, i. e. that the threat of injury is eliminated. The minimum export price to be observed was established on the basis of the selling price necessary to provide an adequate return to Community producers, particular account being taken of the profitability and cost price structure of the two producers concerned in the most recent period.

The Commission, after consultation, considers that the undertaking is acceptable and therefore the investigation may be terminated without imposition of anti-dumping duties.

HAS ADOPTED THIS DECISION :

Article 1

The anti-dumping proceeding concerning imports of DNBP Technical (Dinoseb) corresponding to combined nomenclature codes 2908 90 10 and ex 3808 30 10, originating in Romania is hereby terminated.

Article 2

The undertaking offered by Danubiana, Bucharest, Romania in connection with the reopened anti-dumping proceeding concerning imports of DNBP technical as referred to as referred to in Article 1 is hereby accepted.

Done at Brussels, 26 January 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission