COMMISSION DECISION

of 12 December 1988

accepting undertakings given in connection with the anti-dumping review concerning imports of oxalic acid originating in China or Czechoslovakia and terminating the review

(88/623/EEC)

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 subsidized imports from countries not members of the European Economic Community [1], and in particular Article 15 thereof,

After consultations within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

A. Procedure

(1) In September 1981 the Commission initiated an anti-dumping proceeding concerning imports of oxalic acid originating in China or Czechoslovakia.

(2) Provisional measures were adopted by the Commission ; in May 1982 Council Regulation (EEC) No 1283/82 [2] imposed a 34.2 % *ad valorem* definitive anti-dumping duty on imports of oxalic acid originating in China and by Decision 82/335/EEC [3] the Commission accepted a price undertaking concerning Chemapol's exports to the Community of oxalic acid originating in Czechoslovakia.

(3) In accordance with Article 15 of Council Regulation (EEC) No 2176/84 [4], as last amended by Regulation (EEC) No 1761/87 [5], the Commission published a notice [6] in December 1986 concerning the impending expires of those measures.

(4) In April 1987 Destilados Agrícolas Vimbodí SA (DAVSA), a manufacturer accounting for a large proportion of Community production of oxalic acid, requested a review, within the meaning of Article 15 of Regulation (EEC) No 2176/84, of the anti-dumping measures imposed on imports into the Community of oxalic acid originating in China or Czechoslovakia. The request, which showed that the expiry of the measures in force would lead again to injury and followed a complaint lodged by the same company concerning imports of oxalic acid originating in Taiwan and South Korea, contained evidence which, after consultations, were judged sufficient to warrant a review of the measures concerned.

(5) The Commission accordingly published a notice of in the *Official Journal of the European Communities* [7] announcing the initiation of a review of anti-dumping measures applicable to imports of oxalic acid falling within subheading ex 29.15 A I of the Common Customs Tariff and NIMEXE code ex 29.15-11, corresponding to CN code 2917 11 00, originating in China or Czechoslovakia, and initiated an investigation.

(6) The Commission officially informed the exporters and importers known to be concerned, Community producers and representatives of the non-member countries concerned. It gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(7) The exporters known to be concerned, a number of importers and the Community producers made known their views within the period allowed. Some of them, and also the Czechoslovak authorities, requested hearings, which were granted.

(8) The Chinese authorities submitted written comments. Those comments were not submitted within the period referred to in the notice of review and were accordingly not taken into consideration.

(9) No Community buyers or processors of the product concerned submitted comments within the period allowed.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 148, 27. 5. 1982, p. 37.
[3] OJ No L 148, 27. 5. 1982, p. 51.
[4] OJ No L 201, 30. 7. 1984, p. 1.
[5] OJ No L 167, 26. 6. 1987, p. 9.
[6] OJ No C 335, 30. 12. 1986, p. 11.
[7] OJ No C 137, 22. 5. 1987, p. 4.

(10) Unlike the main Czechoslovak exporter, which did not contest the initiation of the review, the main Chinese exporter contested its legality. It claimed that the expression used in the second subparagraph of Article 15 (2) of Regulation (EEC) No 2178/84, and in particular the word 'again', implied that to be able to initiate a review the interested party must belong to the group of Community producers which had suffered injury which the previous investigation (which had led to the imposition of the anti-dumping measures to be reviewed) had established was caused by the dumped imports. It accordingly claimed that since DAVSA did not belong to that group the review had been undertaken in breach of the provisions of the said Regulation. This claim was rejected, however, on the ground that a grammatical analysis of Article 15 (2) shows clearly that the word 'again' does not qualify the concept of 'interested party' but specifies evidence which the party requesting the review must submit to the Commission before the Commission decides whether or not a review is warranted. As stated above, it was decided, after consultation, that the request from DAVSA contained sufficient evidence to justify a review of the measures in question.

The Commission collected and verified all information it deemed necessary and carried out checks at the premises of the following companies :

Community producers

— Destilados Agrícolas Vimbodí SA, Tarragona, Spain

— Rhône Poulenc Chimie de Base SA, Paris, France

— Société Française Hoechst SA, Paris, France

Importer

— Arnold Suhr België NV, Antwerp, Belgium

(11) During the review main Chinese exporter asked to be allowed to meet the party requesting the review in order to discuss their respective positions. The Commission was prepared to grant this request but the party requesting the review opposed the idea. In support of its refusal the latter party claimed that the Chinese exporter had not complied fully with the obligation imposed on it by Article 8 of Regulation (EEC) No 2176/84 and that it accordingly refused to participate in such a meeting.

(12) The investigation of dumping covered the period from November 1986 to April 1987.

(13) The exporters known to be concerned were informed of the main facts and considerations on the basis of which the Commission proposed to amend the anti-dumping measures in force. They had the opportunity to submit comments within a given period and their comments were taken into consideration.

B. Dumping

(a) *Normal value*

(14) In order to establish the normal value of the product in question the Commission had to take account of the fact that China and Czechoslovakia do not have market economies and it accordingly based its calculations on the normal value of oxalic acid in a market economy country.

(15) The Community industry proposed that South Korea should serve as reference country. The main Czechoslovak exporter did not contest that choice. The Chinese exporter objected. However, the South Korean producers of oxalic acid known to the Commission refused to cooperate fully with the investigation, as stated in Commission Regulation (EEC) No 699/88 [1], and South Korea could not therefore be used as reference country given the lack of satisfactory information.

(16) The Chinese exporter suggested that normal value could be determined on the basis of domestic prices charged in China of the normal value in a market economy country. This request could not, however, be granted, because the proposed method is not one of the possibilities provided for in Article 2 (5) of Regulation (EEC) No 2176/84.

(17) The Community industry suggested that Taiwan could serve as reference country instead of South Korea. The Chinese exporter opposed that choice. Information at the Commission's disposal suggests that the prices charged on the Taiwan market could be considered to be artifically high. The Commission accordingly judged it inappropriate to use Taiwan as reference country for this review.

(18) The Community industry concerned suggested that Japan could serve as an alternative reference country. However, this suggestion was rejected because, according to available information, the manufacturing process and the raw materials used in Japan are fundamentally different from those used in China and Czechoslovakia.

[1] OJ No L 72, 18. 3. 1988, p. 12.

(19) The Chinese exporter proposed that normal value could instead be established on the basis of the prices of exports to the United States of America of oxalic acid originating in Brazil. This proposal was also rejected. In rejecting it the Commission took account of the fact that it had in the past been established that exports to the Community of oxalic acid originating in Brazil had been dumped. It considered that it was therefore not possible to exclude the possilibity that exports to the United States might also be dumped.

(20) The Commission initially considered that it would nevertheless be appropriate and not unreasonable to calculate the normal value of the product originating in China and Czechoslovakia on the basis of the domestic prices charged in Brazil, provided that it could be verified that domestic prices on the Brazilian market were in reasonable proportion to the costs of production. In order to obtain the necessary information it approached a Brazilian producer and invited it to cooperate with the investigation. The producer concerned refused to cooperate, and it was therefore necessary to reject this possibility too.

(21) The parties known to be concerned were informed of that refusal and asked again to suggest appropriate reference countries. India was suggested and the Commission approached the Indian producer referred to in order to obtain the necessary information. This producer also refused to cooperate with the Commission and India could not therefore serve as reference country.

(22) Since none of the possibilities referred to above provided an adequate basis, the normal value of the products in question was eventually determined, in accordance with Article 2 (5) (c) of Regulation (EEC) No 2176/84, by reference to the price actually paid or payable in the Community, duly adjusted to include a reasonable profit margin.

(b) *Export prices*

(23) As a general rule the export prices of oxalic acid originating in China or Czechoslovakia were established on the basis of the prices actually paid or payable for products sold for export to the Community.

(c) *Comparison*

(24) When comparing the normal value with the prices for each consignment of exports the Commission took account, where appropriate, of differences affecting price comparability, in particular differences in selling expenses such as discounts, commissions, credit terms, transport, insurance, handling, loading and ancillary costs.

All comparisons were made at ex-works level.

(d) *Dumping margins*

(25) Examination of the above facts showed that exports of oxalic acid from both China and Czechoslovakia were still being dumped, the dumping margins being equal to the difference between the normal value and the prices of exports to the Community.

(26) Expressed as a percentage of total cif value, the dumping margins were as follows:

— Product originating in China 53.73 %

— Product originating in Czechoslovakia:

— Exported by Chemapol 1.87 %

— Exported by other exporters 41.17 %

C. Injury or threat of injury following the expiry of anti-dumping measures in force

(27) In accordance with Article 15 of Regulation (EEC) No 2423/88, the Commission considered whether the expiry of anti-dumping measures in force would lead again to injury or threat of injury within the meaning of that Regulation and whether it was accordingly appropriate, in view of the finding that exports were still being dumped, that the anti-dumping mesures applicable to imports originating in China or Czechoslovakia be retained and, where appropriate, amended.

China

(28) The evidence available to the Commission shows that 8 138 tonnes of oxalic acid originating in China were entered for free circulation on Community territory in 1980, and that imports fell well below that level in the years after the anti-dumping measures currently in force were imposed.

(29) Customs statistics show, however, that export sales to the Community under the inward processing relief arrangements, which are not subject on arrival at customs to payment of the anti-dumping duty on account of their destination for customs purposes, have increased substantially over the same period.

(30) The Commission believes that the substantial increase in such sales under the inward processing relief arrangements is a clear indication of the will of the Chinese exporter and its exclusive agent to maintain, and even increase, the sales on Community territory of products originating in China, and their interest in doing so.

(31) The information collected shows that the prices of imported products entered for free circulation during the reference period, excluding customs duties and anti-dumping duties, were 42.44 % lower than those charged by Community industry, as defined in Regulation (EEC) No 699/88. It was also established that those price levels were not sufficient to enable Community producers to cover their costs plus a sufficient profit margin.

(32) These facts, and in particular the substantial increase in the volume of imports into the Community under the inward processing relief arrangements, led the Commission to conclude that the absence of protective measures in respect of the product originating in China would, given China's annual production capacity of some 35 000 tonnes, result sooner or later in the volume of imports originating in China returning to the levels obtaining before the protective measures were introduced in 1982. In view of the evidence concerning the terms on which the products from China were imported into the Community during the reference period and the margin by which their prices undercut the minimum price necessary, this would lead again to injury to the Community industry, which would in turn lead to a fall in its output, sales, capacity utilization and price levels.

Czechoslovakia

(33) The evidence available to the Commission shows that imports originating in Czechoslovakia increased slightly in 1983 and 1984, peaked in 1985 and fell substantially in 1986 and during the first four months of 1987.

(34) This downward trend can be explained by a combination of the price level at which the main exporter undertook to export its products to the Community and its will to comply with the terms of the undertaking given, and the prices charged during 1986 and the first four months of 1987 for imports of oxalic acid originating in Taiwan and South Korea which, as is stated in Regulation (EEC) No 699/88, were the cause of the fall in the prices charged for Community products.

(35) The information collected by the Commission concerning the prices of imported goods originating in Czechoslovakia shows that although as a result of the undertaking they were higher during the reference period than those of imported products originating in Taiwan or South Korea, in many cases they were nevertheless 19.78 % lower than the prices charged by Community producers, and like the prices of imported goods from Taiwan, South Korea and China, these prices are not sufficient to enable the Community industry to cover its costs of production plus a reasonable profit margin.

(36) The Commission believes that the fall in the volume of imports originating in Czechoslovakia shows clearly that the measure imposed in 1982 with a view to eliminating the injury caused to the Community industry had a useful effect, since without it the volume of imports from Czechoslovakia would certainly have continued to increase and, in view of their price levels, would have made a not insignificant contribution to the injury suffered by the Community industry as determined in Regulation (EEC) No 699/88.

(37) This, together with the goegraphical proximity of Czechoslovakia and its not insignificant production capacity of 6 000 tonnes, is sufficient proof that the party requesting the review is correct in claiming that the expiry of the measure in force would lead again to material injury, or at least the threat of material injury.

D. Community interest

(38) Given the serious difficulties facing the Community industry concerned, the Commission has concluded, in view of the above, that it is in the Community interest to maintain protective measures against the imports in question.

E. Undertakings and termination of teview

(39) China National Chemicals Import and Export Corporation and Chemapol were informed of the main conclusions and offered undertakings concerning exports to the Community originating in China and Czechoslovakia respectively.

(40) Those undertakings will have the effect of bringing the prices of exports to the Community up to a level or keeping them at a level which the Commission considers sufficient to prevent the injury which would result from the expiry of the anti-dumping measures in force.

(41) In these circumstances the above undertakings must be considered acceptable and the investigation can accordingly be terminated without anti-dumping duties being imposed on imports of the product in question originating in China or Czechoslovakia.

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings offered by China National Chemical Import and Export Corporation, Beijing, China, and Chemapol, Prague, Czechoslovakia, in connection with the review of anti-dumping measures concerning imports of oxalic acid falling within CN code 2917 11 00, originating in Czechoslovakia or China, are hereby accepted.

Article 2

The review referred to in Article 1 is hereby terminated.

Done at Brussels, 12 December 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission