II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 February 1989

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of urea originating in Austria, Hungary, Malaysia or Romania, confirming the undertakings accepted pursuant to Council Regulation (EEC) No 3339/87 and terminating the investigations

(89/143/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 10 thereof,

Whereas :

I. CURRENT PROCEEDING

A. Provisional measures

(1) Commission Regulation (EEC) No 2623/88 imposed a provisional anti-dumping duty on imports of urea originating in Austria, Hungary, Malaysia, Romania, the USA or Venezuela [2]. That duty was extended for a period not exceeding two months by Council Regulation (EEC) No 4018/88 [3].

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, the Community producers and several exporters of the product concerned asked for and obtained a hearing and also made known in writing their views on the Regulation imposing the provisional duty.

(3) In addition to the investigations which resulted in the determination of the provisional anti-dumping duty, the Commission carried out further investigations at the premises of the following Community producers :

Belgium

Nederlandse Stikstof Maatschappij BV (NSM), Brussels,

France

— Compagnie française de l'azote (Cofaz), Paris,

— Société Chimique de la Grande Paroisse, Paris,

Ireland

Irish Fertilizer Industries (IFI), Dublin.

C. Dumping

(a) *Normal value*

1. Austria

(4) Normal value was definitively calculated according to the method used for the provisional calculation of normal value, in other words on the basis of the prices charged during the reference period on the domestic market by the Austrian exporter, which provided sufficient evidence. The Austrian exporter expressed no objection to the method laid down in recital 10 of Regulation (EEC) No 2623/88 or the results obtained by the Commission.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 235, 25. 8. 1988, p. 5.
[3] OJ No L 355, 23. 12. 1988, p. 3.

2. Malaysia

(5) Normal value was definitively calculated on the basis of constructed value, since the average selling price on the Malaysian domestic market during the reference period was lower than the cost of production. Normal value was definitively established according to the method, and in accordance with the information, given in recitals 11, 12 and 14 of Regulation (EEC) No 2623/88.

In this connection, the Malaysian firms concerned by the current proceeding reiterated for the most part the arguments they had put forward prior to adoption of the Regulation. In these circumstances, and in the absence of fresh evidence, the Commission confirms the validity of the method referred to above.

3. Hungary and Romania

(6) As Hungary and Romania are State-trading countries, normal value was definitively calculated according to the method used for the provisional calculation, that is on the basis of prices charged on the Austrian domestic market and according to the method, and in accordance with the information, given in recitals 18 to 21 of Regulation (EEC) No 2623/88.

(7) The Hungarian exporter contested the choice of Austria as an analogous country, maintaining that Austria was not representative because the Austrian exporter had a monopoly position and its production costs were greater than the Hungarian production costs.

Although no evidence was offered in support of these arguments, the Commission noted that prices on the Austrian market were influenced by a considerable level of imports, and that in this sense they were representative. As regards costs, the Commission received not the slightest evidence that some costs in Hungary were lower than costs found in Austria. In any case, even if it were possible to establish exactly the existence and extent of the advantages and disadvantages in question, any adjustment on this basis of costs determined in a market economy country would imply taking as a basis for comparison costs in a non-market economy country, which is precisely what Article 2 (3) of Regulation (EEC) No 2423/88 aims to prevent.

In these circumstances the Commission confirms the choice of Austria as an analogous country for the establishment of normal value in Hungary.

(8) The Romanian exporter repeated its objections to the choice of Austria as an analogous country, on the grounds that the Austrian market was very narrow and therefore not representative, that it was largely made up of urea for technological use whereas Romania exports only agricultural urea, and that Austria has no natural gas; Romania therefore proposed Kuwait as a reference country.

The Commission confirms its position, set out in recital 21 of Regulation (EEC) No 2623/88, as follows:

— although the Austrian market is limited, it is a competitive market where prices are influenced by substantial imports and are representative in this sense;

— the argument based on the type of urea is not relevant, since there are no significant differences in the technology and processes involved in the production of urea;

— any possible advantage resulting from the cost of gas was difficult to quantify and might be counterbalanced by other competitive disadvantages, as explained in recital 20 of Regulation (EEC) No 2623/88.

In these circumstances, the Commission considers it appropriate and not unreasonable to base normal value in Romania on prices on the Austrian domestic market. It is not therefore appropriate to choose Kuwait as reference country.

(b) *Export prices*

(9) Export prices were definitively determined on the basis of the prices actually paid or payable for products sold for export to the Community.

(c) *Comparison*

(10) In general, normal value was compared transaction by transaction with export prices at ex-works level.

The adjustments provisionally made, where appropriate, in recital 23 of Regulation (EEC) No 2623/88 to take account of differences affecting price comparability were retained.

(d) *Dumping margins*

(11) The dumping margin calculated for each exporter is equal to the difference between the normal value as established and the price for each export transaction to the Community, duly adjusted.

On the basis of the free-at-frontier price, the weighted average dumping margin for each of the exporters concerned is as follows:

— Austria: Chemie Linz over 50,0 %,

— Hungary: Chemolimpex over 51,0 %,

— Malaysia: ABF/Petronas 41,0 %,

— Romania: ICE Chimica over 55,0 %.

D. Injury

(12) As no new evidence was received, the Commission confirms the facts and conclusions presented in recitals 27, 30, 32 and 36 to 40 of Regulation (EEC) No 2623/88.

As regards the effect of dumped imports on the market share held by the exporters, on Community production and on the sales and market share of Community producers, as determined following the additional investigations carried out after the imposition of the provisional anti-dumping duty, the Commission refers to the amended information contained in recitals 14, 17, 19 and 20 of Council Regulation (EEC) No 450/89 (1) imposing a definitive anti-dumping duty on imports of urea originating in the United States of America or Venezuela.

E. Quantitative restrictions and anti-dumping measures

(13) As regards the existence in certain Member States of the Community of quantitative restrictions concerning imports of urea originating in Hungary or Romania, it was argued by the Romanian exporter that the imposition of an anti-dumping duty on imports of urea in addition to the quantitative restrictions was incompatible with some provisions of the GATT. The Commission considers that neither Community law nor international rules forbid the imposition of import duties, customs duties or any other measure affecting imports, provided that injury has been established.

As for the advisability of such measures in this case, the Commission notes that during the reference period more than half of the exports were concentrated on the markets of the Member States not protected by quantitative restrictions, namely Belgium, Luxembourg and the United Kingdom. In additon, it was established that the quantitative restrictiodns on imports of the products concerned into Germany and Ireland had been substantially exceeded.

The Commission also notes that there is substantial price undercutting on these imports, reaching 17 % in the case of Hungary and 38 % in that of Romania.

As a result, the quantitative restrictions existing in certain Member States do not eliminate the injury caused to the majority of the Community by the unfair trading practices of the Hungarian and Romanian exporters.

F. Community interest

(14) As regards the Community's interest in taking protective measures against dumped imports, Malaysia repeated the arguments put forward in recital 42 of Regulation (EEC) No 2623/88.

G. Undertakings

(15) The following producers/exporters offered undertakings in accordance with Article 10 of Regulation (EEC) No 2423/88 :

— Austria : Chemie Linz GmbH,

— Hungary : Chemolimpex,

— Malaysia : Asean Rintulu Fertilizer, SDN. BHD (ABF)/Petroliam, National Berhard (Petronas),

Romania : ICE Chimica.

The Commission regarded these undertakings as acceptable, considering that they were such as to bring some stability to the Community market while allowing the exporters in question to maintain a share of the Community market.

H. Collection of the provisional duty

(16) Given the dumping margins established and the injury caused, the Commission considers it necessary to release the amounts secured by way of a provisional duty, for the following reasons :

— in the case of products originating in Malaysia, malaysia qualifies for special differential treatment under Article 13 of the GATT anti-dumping code ;

— in the case of products originating in Austria, the provisional anti-dumping duty is very small ;

— in the case of products originating in Hungary and Romania, there were no exports of the product in question between the imposition of the provisional duty and the Commission Decision.

II. REVIEW OF PREVIOUS MEASURES

(17) Having reviewed the measures as requested by the Council, the Commission found that the undertakings accepted pursuant to Council Regulation (EEC) No 3339/87 (2) had been adhered to and that they were such as to have alleviated considerably the difficulties facing the Communmity industry by reducing imports of urea originating in the countries concerned to a reasonable share of Community consumption.

In these circumstances, the Commission confirms the validity of the undertakings accepted pursuant to Regulation (EEC) No 3339/87.

(1) See page 1 of this Official Journal.

(2) OJ No L 317, 7. 11. 1987, p. 1.

III. TERMINATION OF THE INVESTIGATION

(18) The exporters concerned were informed of the main conclusions of the investigation and had the opportunity to make known their point of view.

In consultations within the Advisory Committee, certain Member States opposed the proposed undertakings.

The Commission presented the proposal for acceptance of undertakings to the Council. There was not the necessary qualified majority in the Council to accept the undertakings as proposed. Since it was also impossible to find a qualified majority for the Council to take a different decision, the undertakings offered by the exporters can be accepted under Article 10 of Regulation (EEC) No 2423/88, and the investigations concerning imports of urea originating in the countries involved in the proceeding can be terminated pursuantto Article 9 of the same Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The undertakings offered by:

— Chemie Linz GmbH. Austria

— Chemolimpex, Hungary

— Asean Bintulu Fertilizer SDN. BHD (ABF), Petroliam National Berhard (Petronas), Malaysia

— ICE Chimica, Romania

in connection with the anti-dumping proceeding concerning exports of urea falling within CN code 3102 10 10 or 3102 10 99 originating in Austria, Hungary, Malaysia or Romania are hereby accepted.

2. The acceptance of the undertakings accepted pursuant to Article 2 of Regulation (EEC) No 3339/87 is hereby confirmed.

Article 2

The amount of the provisional anti-dumping duty imposed by Regulation (EEC) No 2623/88 is hereby released as regards imports of urea originating in Austria, Hungary, Malaysia and Romania.

Article 3

The anti-dumping investigation referred to in Article 1 is hereby terminated as regards the exporters mentioned in that Article.

Done at Brussels, 21 February 1989.

For the Commission

Frans ANDRIESSEN

Vice-President