II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 July 1990

accepting an undertaking given in connection with the anti-dumping review concerning imports of oxalic acid originating in Brazil and terminating the investigation

(90/378/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 originating in countries not members of the European Economic Community [1], and in particular Article 10 thereof,

After consultations within the Advisory Committee as provided for by Regulation (EEC) No 2423/88,

Whereas :

A. PREVIOUS PROCEEDING

(1) On 8 March 1984 the Commission published a notice in the *Official Journal of the European Communities* initiating an anti-dumping proceeding concerning imports of oxalic acid originating in Brazil, the German Democratic Republic and Spain [2].

In a Decision dated 21 December 1984, the Commission accepted an undertaking offered by one Brazilian producer [3], and Council Regulation (EEC) No 228/85 imposed a definitive anti-dumping duty on imports of oxalic acid originating in Brazil [4].

(2) Pursuant to Article 15 of Regulation (EEC) No 2423/88, the Commission gave notice in June 1989 [5] of the impending expiry of the undertaking, and in August 1989 [6] of that of the anti-dumping duty.

B. REQUEST FOR A REVIEW AND INITIATION OF THE PROCEEDING

(3) In September 1989, the Commission received a request for a review of the measures in question from a group of producers accounting for a large part of Community production.

(4) The complainants justified their request for a review on the grounds that Brazilian exporters had continued dumping and that the probable expansion of their production capacity was likely to result in a new influx of oxalic acid on to the Community market following the expiry of the anti-dumping measures; the combined effects of these factors could result in a recurrence of injury to the Community industry if the measures in question were lifted.

(5) Having decided that there was sufficient evidence of dumping and injury to justify the initiation of an investigation, the Commission published notices in the *Official Journal of the European Communities* announcing its intention to carry out a review concerning imports into the Community of oxalic acid originating in Brazil [7], and initiating the review [8], and started an investigation. In accordance with Article 15 of Regulation (EEC) No

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 67, 8. 3. 1984, p. 7.
[3] OJ No L 340, 28. 12. 1984, p. 80.
[4] OJ No L 26, 31. 1. 1985, p. 6.
[5] OJ No C 163, 30. 6. 1989, p. 5.
[6] OJ No C 199, 4. 8. 1989, p. 2.
[7] OJ No C 301, 30. 11. 1989, p. 3.
[8] OJ No C 318, 20. 12. 1989, p. 2.

2423/88, the anti-dumping duty on imports of oxalic acid from Brazil and the undertaking given by the Brazilian exporter remained in force.

C. PRODUCT

(6) The product concerned is oxalic acid, which is sold in the form of a white, crystalline powder and used *inter alia* in the textile industry, the building industry, metal-working and chemical and pharmaceutical industries. The product falls within CN code ex 2917 11 00.

(7) None of those concerned had any comment to make in respect of the 'likeness', within the meaning of Article 2 (12) of Council Regulation (EEC) No 2423/88, of the Brazilian and Community products since their chemical properties and end-use were the same, and the manufacturing process, from a glucide base, also identical.

D. SUBSEQUENT PROCEEDING

(8) The Commission officially informed the exporters and importers known to be concerned, the representatives of the exporting country concerned and the complainants. It gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(9) Pursuant to, and in accordance with, Article 7 (4) of Regulation (EEC) No 2423/88, those concerned had the opportunity to study any information made available to the Commission by anyone concerned in the investigation.

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

Complainant Community producer:

Destillados Agricolas Vimbodi SA (DAVSA), Tarragona, Spain.

Non-Community producer/exporter:

Industrías Quimicas e Explosivos SA (Explo), Sáo Paolo, Brazil.

(11) The Commission asked for, and received, detailed written comments from other Community producers and importers. One importer requested and obtained a hearing.

(12) The investigation of dumping covered the period from 1 January to 30 November 1989 (hereinafter referred to as 'investigation period').

E. RESULTS OF DUMPING INVESTIGATION

(a) Normal value

(13) Normal value was established on the basis of the prices charged on the domestic market of the exporting country concerned. Normal value was established on a month-by-month basis.

(b) Export price

(14) The export price was established on the basis of the prices actually paid or payable for products sold for export to the Community.

(c) Comparison

(15) The normal monthly value and the export price were compared for each transaction at the ex works stage.

(16) The Commission took account where necessary, by means of adjustments, of differences affecting price comparability, e.g. transport, insurance, handling and credit costs. On this basis, the weighted average dumping margin, expressed as a percentage of the total cif value of imports of the product in question during the reference period, is 28,1 %.

F. FORESEEABLE EFFECTS OF THE EXPIRY OF THE ANTI-DUMPING MEASURES

(17) The purpose of the Commission investigation was to examine whether imports of the product in question would lead to a recurrence of the injury or threat of injury if the anti-dumping measures in force were lifted. The Commission therefore studied the current situation and assessed the possibility of the injury recurring were the measures to expire.

(a) Current state of the market and Community industry

Volume and market share of dumped imports

(18) Figures available to the Commission show that imports of oxalic acid originating in Brazil were relatively stable from 1986 to 1987 but rose from 1 340 tonnes in 1987 to 1 824 tonnes in 1988, an increase of 36 %, before falling back to 1 241 tonnes in the investigation period. Extrapolating these figures to cover 1989 indicates that imports from Brazil remained relatively stable over the period from 1986 to 1989 (up 1,7 %).

(19) The share taken by Brazil of total Community consumption of oxalic acid, which stabilized at about 18 600 tonnes between 1986 and 1988, rose from 7 to 10 % before falling to 6,1 % for the investigation period owing to an increase in apparent consumption to 22 000 tonnes. This figure was extrapolated for 1989 from figures relating to non-member countries.

Price difference

(20) Evidence available to the Commission showed that the prices of these imports mainly undercut those on the Italian market, which was the largest export market for the Brazilian product. These price differences ranged from 0,3 to 29 %.

Community production

(21) Between 1986 and 1987 Community production fell by 13 %, rising again in 1988. Extrapolation for 1989 shows production to be 3 % up on 1988.

Utilization of capacity

(22) Utilization of capacity, which had declined from 80,5 to 70,3 % between 1986 and 1987, climbed to 82,9 % in 1988 before slipping to 78,1 % during the investigation period.

Community sales and market share

(23) The complainant's sales on the Community market fell 23,7 % between 1986 and 1987, regaining in 1988 a level slightly higher than that of 1986. Extrapolation during the investigation period shows 1989 to be stable in comparison with 1988.

(24) The share of the market held by these Community sales fell from 17,13 to 13,79 % between 1986 and 1987 before climbing to 19 % in 1988. It fell again to 16,1 % in the investigation period.

Stocks

(25) Stocks held by the Community industry concerned declined considerably between 1986 and 1988 (down 22,7 %) before rising by 68,9 % between 1988 and the investigation period.

Prices

(26) The Community industry dropped its prices by 11,58 % between 1986 and 1987. Since 1988, the average unit price of the Community product has followed the upward trend on the world market in oxalic acid, rising by 20,8 % between 1987 and 1988 and 13,9 % between 1988 and 1989 (the investigation period).

Financial results

(27) The losses experienced in 1986 were still greater in 1987. The Community industry regained its profitability in 1988, only to see it decline again during the investigation period.

Employment

(28) Employment has remained stable since 1986.

(b) Conclusions on the current state of the Community industry

(29) Following a marked decline in the state of the Community industry in 1987, when all indicators — production, sales, prices, financial losses — were down, 1989 saw a clear recovery. Community production and sales were back at 1986 levels; financial results became positive, while Brazilian exports were making particularly strong inroads (rising by 36 % between 1987 and 1988).

Despite a degree of stability in Community production and sales, the investigation period saw capacity utilization decline, stocks rise and financial results worsen significantly.

In view of the above, the state of the Community industry is far from healthy.

(c) Foreseeable state of the Community industry

General state of the oxalic acid market

(30) The precarious situation of the Community industry in question must in any event be assessed in the context of the market.

The oxalic acid market has undergone a number of changes since 1988, when anti-dumping measures were taken against several countries (China, South Korea, Taiwan, Czechoslovakia) and world prices began to recover.

Note also that:

— the Brazilian exporter has succeeded in retaining almost all the market share held before becoming the subject of anti-dumping measures, 7,5 % compared with 6 % today,

— it has continued dumping in spite of the anti-dumping measures applied against it,

— substantial profits from the domestic market permit it to undercut Community prices and continue dumping exports without risking major losses,

— it has a dominant position on the home market, although it is beginning to experience competition from foreign imports, which could lead it, while retaining the advantages of economies of scale by maintaining current production levels, to offset some of the loss of domestic market share by increasing sales to the Community,

especially as these currently represent only a quarter of their exports.

Lastly, this exporter could very easily step up production by bringing into use new production capacity, currently available on the factory site.

In these circumstances, the Community industry's already precarious situation would be bound to deteriorate, since it is financially weak and holds only a relatively small share of the Community market, which would lead to the recurrence of material injury.

The situation of the Community industry should moreover be assessed in the context of the measures taken against other countries which have been dumping, whose combined exports have a marked influence on the Community market. It would therefore be discriminatory not to apply anti-dumping measures the the Brazilian exporter.

G. COMMUNITY INTEREST

(31) It must be emphasized that the Community interest requires the reestablishment of fair competition.

In view of the arguments set out above, the Commission feels that there is a major risk of the Community industry being wiped out, given its precarious situation, if no anti-dumping measures are taken against the Brazilian exporter. The disappearance of the industry concerned would be particularly injurious to the Community interest in that it is the only one geared solely to the production of oxalic acid, and would leave the Community market dependent on exporters who may not prove able to guarantee regular supply. Lastly, the failure of firms using oxalic acid to respond during the proceeding must be noted. Under the circumstances, the Commission considers that some of the anti-dumping measures in respect of imports of oxalic acid from Brazil should be renewed.

H. UNDERTAKING AND CLOSURE OF THE INVESTIGATION

(32) On being notified of the main conclusions, the Brazilian exporter offered a price undertaking concerning its exports of oxalic acid to the Community. This price was based on the production costs of the Community producer concerned plus a reasonable profit margin, representative of profits in this sector of industry.

The effect of this undertaking will be to bring the price of exports to the Community to a level which the Commission considers high enough not to cause the injury which would certainly occur if existing anti-dumping measures were to expire.

Under the circumstances the undertaking must be considered acceptable and the investigation closed. The anti-dumping duty which had remained in force pending review becomes null and void.

(33) It should furthermore be noted that, in the event of the undertaking being breached, the proceeding can be re-initiated in respect of the breach of the undertaking alone and that provisional and definitive anti-dumping measures can be taken on the basis of the facts and considerations concerning dumping, injury and threshold of injury established by the Commission before it accepted this undertaking.

(34) However, since the exporter concerned in this investigation is the only producer/exporter of oxalic acid originating in Brazil and its undertaking thus covers all Brazilian exports of the product, and since it is unlikely that any other Brazilian firm will begin producing oxalic acid and exporting it to the Community given that the exporter's production greatly exceeds the needs of Brazil's market and it is having to face competition on this market from foreign exporters, there is, under the circumstances, no need to maintain in force a definitive anti-dumping duty.

(35) The Advisory Committee opposed the measure proposed,

HAS DECIDED AS FOLLOWS:

Sole Article

The undertaking offered by Industrías Quimicas e Explosivos SA (Explo), in connection with the review procedure concerning imports of oxalic acid falling within CN code ex 2917 11 00 originating in Brazil, is hereby accepted.

Done at Brussels, 13 July 1990.

For the Commission

Frans ANDRIESSEN

Vice-President