COMMISSION DECISION

of 13 July 1990

terminating the anti-dumping proceeding concerning imports of NPK fertilizers originating in Hungary, Poland, Romania and Yugoslavia

(90/383/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 Community [1], and in particular Article 9 thereof,

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

Whereas :

A. PROCEDURE

(1) In 1989 the Commission received a complaint lodged by the EFMA/CMC-Engrais, the common market committee of the nitrogen and phosphate fertilizer industry on behalf of producers representing about 90 % of Community production concerning imports of NPK fertilizers originating in Hungary, Poland, Romania and Yugoslavia. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports into the Community of NPK fertilizers falling within CN codes 3105 20 10 and 3105 20 90, and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainant, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing. Questionnaires were sent to all known exporters and importers concerned.

(3) The Commission, for the purposes of obtaining all the information it deemed necessary, sent questionnaires to the companies on whose behalf the complaint was made, in order to allow each company to demonstrate the injury caused to it by dumped imports of NPK fertilizers from the alleged countries. The Commission carried out a detailed analysis of those companies which returned completed questionnaires and whose combined production represents the Community industry.

(4) All the exporters as well as the importers known to be concerned made known their views in writing. All of them requested and were granted hearings. The complainant also requested and was granted a hearing.

(5) The Commission verified the information received to the extent it deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following Community companies whose production of NPK fertilizers represents more than 50 % of the total Community output (the remaining complainant companies either failed to respond to the Commission's questionnaire, or comprised individually an extremely small proportion of Community output) :

— Superfos Fertilizers A/S, Denmark,

— Badische Anilin und Soda Fabrik, Federal Republic of Germany,

— Ruhrstickstoff AG Federal Republic of Germany,

— Norsk Hydro Azote, France,

— Agrimonte, SpA, Italy,

— Sociedad Anonima Cros, Spain,

— Empresa Nacional de Fertilizantes, SA, Spain,

— Imperial Chemical Industries Ltd, United Kingdom,

— Kemira INCE Ltd, United Kingdom,

— Hydro-fertilizers Ltd, United Kingdom.

The Commission visited, in the course of the investigation, other Community companies which had returned the questionnaires. Nevertheless, most of the information contained in these questionnaires had to be disregarded because the companies in question failed to provide acceptable evidence during the on-the-spot visits.

(6) The investigation period covered the year 1988 and the first two months of 1989. The trends in the relevant economic factors to determine whether the Community industry is suffering material injury were examined for the years 1985 to 1989 (February).

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 55, 4. 3. 1989, p. 3.

(7) Due to the complexity of the proceedings, in particular the difficulties met by the Commission in obtaining from some of the interested parties the relevant data, the investigation exceeded the normal period of one year.

B. INJURY

(8) In order to determine whether or not the allegedly dumped imports caused material injury to the Community industry, the Commission took into consideration the following facts :

(a) Volume, market share and price of imports

(i) *Volume*

(9) The alleged dumped imports into the Community of NPK fertilizers originating in Hungary, Poland, Romania and Yugoslavia evolved as follows :

Hungary 90 877 tonnes in 1985, 76 957 tonnes in 1988 and 15 124 tonnes in the first two months of 1989 ; Poland 11 791 tonnes in 1985, 34 065 tonnes in 1988 and 10 310 in the first two months of 1989 ; Romania 61 655 tonnes in 1985, 20 408 tonnes in 1988, no imports in the first two months of 1989 ; Yugoslavia 129 324 tonnes in 1985, 261 395 tonnes in 1988 and 109 509 tonnes in the first two months of 1989.

However, it should be stressed that the figures relating to the first two months of 1989 cannot accurately represent in isolation the trade results of a full year since the fertilizer trade is subject to seasonal fluctuations.

(ii) *Consumption and market share*

(10) The total Community consumption per annum of the product concerned decreased from 14 734 000 tonnes in 1985 to 13 443 000 tonnes in 1988 ; this corresponded in percentage terms to a decline of 8,7 %.

In terms of market share, the development as regards the exporters concerned was as follows :

Hungarian exporters : 0,6 % in 1985 and 0,58 % in 1988 ;

Polish exporters : 0,08 % in 1985 and 0,25 % in 1988 ;

Romanian exporters : 0,42 % in 1985 and 0,15 % in 1988 ;

Yugoslav exporters : 0,88 % in 1985 and 1,94 % in 1988.

(iii) *Prices*

(11) The evidence available to the Commission shows that during the investigation period the prices of the alleged dumped imports were, on a weighted average basis, lower than those charged by the community producers by about 20 %.

(b) Effect on Community industry

(i) *Community production*

(12) The production of the Community manufacturers concerned decreased from 8 226 295 tonnes in 1985 to 7 534 456 tonnes in 1988 (January and February 1989 : 1 532 204 tonnes). This corresponded to a decline of about 8,9 %.

(ii) *Sales*

(13) The sales of the Community producers concerned increased from 5 446 258 tonnes in 1985 to 5 858 928 tonnes in 1988 (January and February 1989 : 918 693 tonnes). This corresponds to an increase of about 7,5 %.

(iii) *Production capacity and capactiy utilization*

(14) The production capacity per annum decreased from 9 921 000 tonnes in 1985 to 8 242 000 tonnes in 1988 while the capacity utilization increased from 82,9 % in 1985 to 85,9 % in 1988.

(iv) *Prices*

(15) The sales prices of the Community producers generally decreased from 1985 to 1987 and then increased, with a few exceptions, throughout 1988 until the end of the investigation period on 28 February 1989. The overall decrease in prices from 1985 to the end of the investigation period was, on a weighted average basis, approximately 21 %.

(v) *Profits*

(16) With regard to profitability, it was found that, while some of the Community producers made substantial losses in the investigation period, others were able to make reasonable profits.

(c) Conclusion on injury

(17) Taking into account all the relevant economic factors, as referred to above, and in particular, the volume and prices of the imported products and the trend in Community production, the Commission has come to the conclusion that there are some indications of injury sustained by the Community producers.

C. CAUSATION OF INJURY

(18) Given the volumes of imports from Hungary, Poland and Romania as indicated in the eighth recital and the market shares in the Community represented by these quantities indicated in the ninth recital, the Commission has concluded that

even if these imports were at dumped prices their contribution, if any, to the injury by the imports from these countries could o not be considered to be anything more than *de minimis* or not such as to be by itself a cause of material injury and accordingly should not be cumulated together or with other exports for the purposes of establishing causation.

(19) Consequently the Commission examined whether this injury, to the extent that it could be considered material, may have been caused by the imports from Yugoslavia or factors other than the alleged dumped imports.

In this context, it was found that most of the economic difficulties sustained by the Community producers were due to structural problems which the manufacturers of NPK fertilizers have been facing not only in the Community but worldwide. Indeed, the market demand for the product concerned has been declining in the last few years for several reasons, as is confirmed by the figures indicated in the ninth recital concerning the trend in Community consumption.

(20) The fall in consumption has caused over-capacity problems that have obliged the Community producers to reduce their output significantly. Another consequence has been a considerable reduction in the level of prices worldwide. This has resulted in a general decrease in price of the products sold within the Community from 1985 to 1988. This fall has amounted to 21 % as regards NPK fertilizers manufactured by the Community producers, to 24 % as regards the imports from Yugoslavia, and to 22 % as regards other imports.

(21) A further consequence of the contraction in demand of the product concerned has been the need of an urgent restructuring and rationalization of the production facilities of the Community producers. Some of these producers have reacted faster than others to this need which explains the increase in their sales and the improvement in their capacity utilization as indicated in recitals (12) and (13).

(22) Another factor examined was the volume and price of imports from countries not covered by the investigation. In this context it was found that these imports increased from 785 951 tonnes in 1985 to 893 818 tonnes in 1988 (January and February 1989 : 264 840). These imports corresponded, in the investigation period, to 69 % of the overall imports into the Community while the imports from the countries covered by the investigation accounted for 31 %.

As regards the prices of the NPK fertilizers imported from countries not covered by the investigation, these declined from 1985 to 1988 by 22 %, as indicated in recital (19). This had an additional depressive effect on the Community producers sales, given the considerable volume of the imports in question.

Furthermore, in examining the prices of some of these countries, the Commission established that there was, in the investigation period, significant undercutting ranging from 5,19 to 16,23 %, as compared with the price of the like product in the Community.

(23) Having considered the above, the Commission has drawn the following conclusions :

— the contribution of the alleged dumped imports from Hungary, Poland and Romania to the injury suffered by the Community industry can be considered as *de minimis;*

— the alleged dumped imports from Yugoslavia, taken in isolation, have not had such effect as to cause material injury to the Community industry, within the meaning of Article 4 of Regulation (EEC) No 2423/88, given the volume of these imports, the volume and price of other imports into the Community and the fall in consumption in the Community market for the product concerned, during the investigation period.

D. DUMPING

(24) In view of the above findings, the Commission considered it unnecessary — notwithstanding the allegation in the complaint of the existence of dumping practices during the investigation period — to further investigate the question of dumping with regard to the imports concerned.

E. WITHDRAWAL OF THE COMPLAINT

(25) After having been informed by the Commission of the above findings, the complainant decided to withdraw the complaint on the following grounds :

— as regards the companies located in Hungary, Poland and Romania, in view of the new developments in these markets ;

— as regards the companies located in Yugoslavia, in view of the need for a non-discriminatory approach to the case, in spite of the concentration of the Yugoslav exports in the German market.

F. CONCLUSION

(26) Having considered the circumstances mentioned above, the proceeding should be terminated without the imposition of protective measures. This does not, of course, preclude the possibility of a new investigation being initiated if a new complaint were lodged showing evidence of changed circumstances.

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning NPK fertilizers falling within CN codes 3105 20 10 and 3105 20 90 originating in Hungary, Poland, Romania and Yugoslavia is hereby terminated.

Done at Brussels, 13 July 1990.

For the Commission
Frans ANDRIESSEN
Vice-President