II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 September 1990

terminating the review of the anti-dumping measures concerning dense sodium carbonate originating in the United States of America

(90/507/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 14 thereof,

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

Whereas :

I. PROCEDURE

(1) On 8 March 1983 Council Regulation (EEC) No 550/83 [2] imposed an anti-dumping duty on imports of dense sodium carbonate originating in the United States of America. The duty did not apply to consignments of dense sodium carbonate exported by Allied Corporation (now General Chemical Corporation), FMC, Stauffer Chemical Company or Texas Gulf Chemicals Company, which offered acceptable price undertakings at the time the duty was imposed.

(2) In April 1984, in response to a request from the European Council of Chemical Manufacturers Federations (Cefic) and on the basis of evidence that renewed dumping was causing injury to the Community industry, the Commission reopened the proceeding concerning these imports [3].

(3) Council Regulation (EEC) No 3337/84 [4] amended the scope of the original Regulation. However, the new anti-dumping duty did not apply to exports by Allied Chemical Corporation (now General Chemical Corporation) or Texas Gulf Chemicals Company, which again offered acceptable price undertakings [5].

(4) In 1988 the Commission received a request for a review of the measure referred to above from certain US producers and exporters and the Standing Committee of Glass industries of the EEC on behalf of the Community glass industry. They asserted that US exporters were no longer dumping the product and that there was consequently no longer any material injury to the Community industry from imports from this source. The measures adopted in 1984 should therefore be repealed or amended.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 64, 10. 3. 1983, p. 23.
[3] OJ No C 101, 13. 4. 1984, p. 10.
[4] OJ No L 311, 29. 11. 1984, p. 26.
[5] OJ No L 206, 2. 8. 1984, p. 15.

(5) Having decided, after consultations, that there was sufficient evidence to justify a review, the Commission initiated an investigation in accordance with Article 14 of Council Regulation (EEC) No 2423/88. As the Commission had cause to believe, in addition, that the circumstances adduced by certain US exporters also applied to the other producers/exporters, the review would cover all of them [1].

(6) The Commission officially informed the exporters, Community producers, importers and consumers known to be concerned, and gave the interested parties the opportunity to make known their views in writing and to request a hearing.

(7) The Community producers, the exporters and some importers made known their views in writing.

(8) Some of the exporters and several Community importers and consumers of sodium carbonate asked for an opportunity to make known their views orally, and their request was granted.

(9) Several exporters and Community producers asked to be informed of the main facts and considerations on the basis of which the Commission had made its proposal to the Council, and their request was granted.

(10) The Commission colltected and verified all the information it deemed necessary to establish whether there was dumping, injury or the threat of injury, and carried out checks at the premises of the following companies :

— *Community producers*

  — Solvay, Belgium,
  — Solvay, France,
  — Rhône-Poulenc, France,
  — Solvay, Italy,
  — Chemische Fabrik Kalk, Germany,
  — Matthes & Weber, Germany,
  — Deutsche Solvay, Germany,
  — Akzo, Netherlands,
  — ICI, United Kingdom,
  — Solvay, Spain,
  — Soda Povoa, Portugal,

— *Community importers*

  — General Chemical Ltd, United Kingdom,
  — Saint-Gobain, France,
  — BSN, France,
  — Durand, France,

— *US producers/exporters*

  — General Chemical Corporation, New Jersey,
  — Texas Gulf Inc., North Carolina,
  — Kerr McGee Corporation, Oklahoma,
  — FMC Wyoming Corporation, Pennsylvania,
  — Stauffer Chemical Company, Connecticut,
  — Tenneco Minerals Company, Colorado.

(11) The investigation of dumping covered the period 1 December 1987 to 28 February 1989.

(12) The complexity of the case meant that the review could not be completed within the one year referred to in Article 7 (9) (a) of Regulation (EEC) No 2423/88 ; it was still in progress when the five-year period referred to in Article 15 (1) came to an end. The Commission published an opinion in accordance with Article 15 (4) [2].

II. PRODUCT

1. Description

(13) The product concerned is high-density sodium carbonate, in other words sodium carbonate with a specific gravity exceeding 0,700 kg/dm^3, consisting of grains with a diameter of not less than 0,25 mm and no more than 0,60 mm, falling within CN code ex 2836 20 00.

2. Like product

(14) The Commission established that the sodium carbonate produced in the Community and that exported by the United States were like products in terms of all their essential physical and technical characteristics.

III. DUMPING

1. Normal value

(15) Normal value was, in general, established on a month-by month basis, using the prices charged on the US domestic market by the US producers which exported to the Community and furnished sufficient evidence. The Commission based its calculations on the price paid or payable in the ordinary course of trade, disregarding all sales at prices below the cost of production. Although substantial quantities had been sold at a loss, the volume of sales of the like product on the exporters' domestic market was an average of 30 % of total sales and was well above the threshold adopted by the Commission in previous cases : 5 % of the volume of exports to the Community of that product.

[1] OJ No C 64, 14. 3. 1989, p. 6.

[2] OJ No C 183, 20. 7. 1989, p. 10.

(16) In order to identify sales made at a loss, the Commisison calculated a cost of production for the export period concerned for each of the firms in question. The figure was based on all costs, both fixed and variable, in the contry of origin, of materials and manufacture, plus an amount for selling, administrative and other general expenses. From this figure were deducted the costs (not the selling price) identifiably and directly relating to any by-product of the manufacture of dense sodium carbonate.

(17) Domestic sales at prices below the cost of production so calculated were not taken into consideration in establishing normal value in accordance with Article 2 (4) of Regulation (EEC) No 2423/88.

2. **Export price**

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

In cases where consignments were sent to subsidiaries in the Community, export prices were calculated on the basis of the prices at which the imported product was first resold to an independent buyer, duly adjusted to take account of all costs, particularly storage costs, incurred between importation and resale and of a reasonable profit margin (3 %), calculated with reference to that of independent importers of the product.

(19) From the export prices were deducted costs resulting from non-recoverable waste caused by successive loading and unloading of the export consignments. Where a producer had not furnished evidence of these costs, a percentage considered reasonable in the light of the financial data from those firms which did provide it and checked during the investigation was deducted from the selling price in order to obtain the net ex-works price of the exports.

(20) The Commission considered it reasonable to adjust some of the figures provided by the US manufacturers whose exports had not been regular, particularly the data relating to the costs of transport, insurance, commission and interest rates, in the light of the verified figures for regular exports. Based on a single sale in the Community, these costs in fact appeared abnormally low.

3. **Comparison**

(21) In makin a transaction-by-transaction comparison of the normal value with the export price, the Commission took account, where necessary and where sufficient evidence had been provided, of differences affecting price comparability. The adjustments mad related mainly to delivery and payment terms and to transport and insurance costs. All the comparisons were made ex works.

4. **Margin**

(22) Comparison of the normal value and export prices for the period from December 1987 to February 1989 reveals that the four US producers who exported to the Community dumped their products and that the weighted average dumping margins on the basis of the free-at-Community frontier price were :

— General Chemical Corporation : 2,9 %,

— Texas Gulf Inc. : 12,8 %,

— FMC Wyoming Corporation : 9,8 %,

— Kerr McGee Corporation : 11,9 %.

IV. INJURY

(23) The issue on which the Commission was being asked to decide was that of whether the expiry of the anti-dumping measures in force would lead to renewed injury.

1. **Current situation**

(24) United Statets exports to the Community have remained limited since the imposition of anti-dumping duties. They had acquired a 3,2 % share of the Community market before 1983. Since then, this share has fallen to 1,4 % and remained at that level.

(25) Between 1982 and 1989, Community consumption of dense sodium carbonate rose very slightly — from 3,55 million tonnes in 1982 to around 4 million tonnes in 1989.

(26) The Commission has established that the prices of the imports were an average of 6 % lower than those of the Community industry during the perid covered by the investigation. In the light of the limited volume of these imports, the undercutting observed had practically no effect on general price levels.

(27) The financial situation of the Community industry has improved, and this has enabled it to achieve satisfactory results overall. The improvement is due partly to the restructuring measures which have made it possible to keep the utilization of capacity high, and partly to the effect of the anti-dumping duties on the imports in question, but the recovery of the market for glass has also played a part.

2. **Threat of injury**

(28) Account was taken of the following considerations in determining if under these circumstances the expiry of the anti-dumping measures was likely to cause renewed material injury to Community producers.

(29) The US exporters in question together possess 10 million tonnes of production capacity and thus account for a high proportion of world capacity. Their combined production is currently around nine million tonnes, while domestic consumption is approximately six million tonnes.

(30) Since consumption is showing a tendency to stabilize, appreciable quantities are available for export. The fact that new production facilities are being set up throughout the world means that it will probably not be long before the United States loses some of its traditional markets, chiefly in the People's Republic of China and South Africa. It is therefore not unlikely that additional quantities of the US product will reach the Community, which is an attractive market because of its price levels.

(31) However, in present circumstances, the conclusion is that the possible increase is unlikely to become a genuine threat. Firstly, the current volume of US exports is very low, and the manufacturers do not at the moment have the kind of sales structure needed to increase their sales significantly, mainly because their joint sales organization does not operate on the Community market. In addition, a feature of the Community market for dense sodium carbonate is the stability of relations between the suppliers and users : the latter attach importance to having their needs met in a constant and regular fashion by their traditional suppliers.

(32) The investigation showed moreover that during the period concerned the US exporter whose exports were steady maintained a moderate price policy. It can be presumed that all the US exporters would base their export prices for the Community on their normal value in order to avoid dumping and thus a recurrence of complaints.

(33) In the light of these considerations, it should be recognized that it has not been established that the expiry of the anti-dumping measures in force would threaten to cause serious injury to the Community industry.

V. TERMINATION OF THE INVESTIGATION

(34) The Community producers and other interested parties were informed of the facts and main considerations on the basis of which the Commission intended to terminate the proceeding. Some made known their views, and the Commission studied these in detail.

(35) The Community producers' comments included a comparison of production costs in the exporting countries and in the Community which revealed a more advantageous cost structure in the United States of America. It was observed, however, that this comparison was not relevant to the Commission's conclusions, since the existence of a comparative advantage on the part of the US producers, provided it was also reflected in prices on the domestic market, was not evidence of dumping.

(36) With regard to the effect of possible increases in US exports to the Community, the Community producers claimed that the sensitivity of the product in question to market prices in the Community meant that even a small volume of low-priced imports was sufficient to cause material injury to the Community industry. Though allowing that in the case of a raw material such as sodium carbonate differences in price levels had a key influence on the competitiveness of the various operators, the Commission considered that in view of the circumstances seen in the investigation the argument could not apply in this case.

As the current volume of US exports is insignificant, only a large increase is liable to succed in influencing general price levels in the Community. It is difficult to imagine such an increase in current circumstances, however (see recitals 31 and 32).

(37) In view of these circumstances and the current situation of the market for dense sodium carbonate in the Community, the review concerning imports of dense sodium carbonate originating in the United States of America should be terminated without protective measures being imposed, it being understood that a recurrence of dumping and injury

could justify the immediate opening of a new investigation, and, in the light of previous dumping and injury, that definitive anti-dumping duties with retroactive effect could be imposed in accordance with the conditions laid down in Article 13 (4) of Regulation (EEC) No 2423/88,

HAS DECIDED AS FOLLOWS:

Article 1

The review of the anti-dumping measures concerning imports of dense sodium carbonate falling within CN code ex 2836 20 00 originating in the United States of America is hereby terminated.

Article 2

This Decision shall be published in the *Official Journal of the European Communities.*

It shall take effect on the day of its publication.

Done at Brussels, 7 September 1990.

For the Commission
Frans ANDRIESSEN
Vice-President