COMMISSION DECISION

of 30 January 1997

terminating the anti-dumping proceeding concerning imports into Spain of certain Portland cement originating in Romania, Tunisia and Turkey

(97/169/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (1), and in particular Article 9 thereof,

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 (2), hereinafter referred to as the 'Basic Regulation', and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In January 1992, the Commission received a complaint lodged by Oficemen, the national organization of Spanish cement producers acting on behalf of all Spanish producers of Portland cement.

(2) The complaint contained *prima facie* evidence of dumping on a regional basis and of injury resulting therefrom. The evidence presented was considered sufficient to justify the initiation of a proceeding in order to establish whether the facts alleged existed and justified any action being taken. The Commission accordingly announced, by a notice in the *Official Journal of the European Communities* (3), the initiation of an anti-dumping proceeding concerning imports into Spain of certain Portland cement originating in Turkey, Romania and Tunisia, and began an investigation. The product concerned is Portland cement, other than white, whether or not artificially coloured, in bulk or in bags, falling within CN code 2523 29 00.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries, and the complainants, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(4) The Governments of Turkey and Tunisia, and the producers and exporters in the countries concerned made their views known in writing. All parties who so requested were granted a hearing.

(5) The investigation period was set as 1 April 1991 to 31 March 1992.

(6) The Commission sought and verified all information it deemed to be necessary for the purposes of its determination of dumping and injury and carried out investigations at the premises of the following Spanish producers:

— Asland Cataluna y del Mediterranneo, Barcelona,

— Asland, SA, Madrid,

— Cementos Atlantico, SA, Madrid,

— Cementos Molins, SA, Barcelona,

— Compania Valenciana de Cementos Portland, SA, Valencia,

— Portland Iberia, SA, Madrid,

— Sociedad Financiera y Minera, SA, Madrid,

— Uniland Cementera, SA, Barcelona.

(7) On the basis of the results of such investigation, the Commission, after consulting the Anti-dumping Committee, concluded that the proceeding should be terminated without measures because no material injury nor threat thereof was found to have been caused to the Spanish industry by the imports concerned.

(8) The Commission, given the objections within the Advisory Committee, submitted, on 10 February 1994, in accordance with Article 9 of the Basic Regulation, a report to the Council together with a proposal that the proceeding be terminated without measures.

The Council, on 7 March 1994, decided not to terminate the proceeding.

(9) The Commission, following the Council's decision, re-examined the results of its investigation in the light of both information provided by the Spanish industry and verified during the investigation, and further representations from the complainants. In this respect, the scope of this re-examination was limited by the fact that it could only look at data from the investigation period and the information relating to a subsequent period can therefore not be taken into account.

(1) OJ No L 56, 6. 3. 1996, p. 1.
(2) OJ No L 209, 2. 8. 1988, p. 1.
(3) OJ No C 100, 22. 4. 1992, p. 4.

(10) This re-examination led the Commission to maintain the proposal made to the Council in 1994.

B. LIKE PRODUCT

(11) The investigation showed that the various types of Portland cement sold on the domestic markets of the countries concerned were alike to those exported to Spain. Similarly, the various types of Portland cement manufactured in Spain and those exported to Spain from the three countries in question were alike in their essential physical characteristics and end uses. Therefore, the Commission concluded that, for the purposes of this proceeding, all types of Portland cement should be considered as a like product, in accordance with Article 2 (12) of the Basic Regulation.

C. REGIONALITY

(12) The Commission established that 94 % of total production of the product in question by the Spanish industry was sold on the Spanish market and that total demand in Spain, as defined by apparent consumption of the cement concerned, was not to any substantial degree supplied by producers elsewhere in the Community. The share of their domestic market held by sales of the Spanish industry in the investigation period was close to 89 %, while imports from other Community Member States represented 2 %. Furthermore, 89 % of total Community imports from the countries subject to this proceeding were imported into Spain.

The Spanish industry could, therefore, be considered as constituting the Community industry within the terms of Article 4 (5) of the Basic Regulation.

D. DUMPING

(13) From the data available, there were indications that the like product imported from the three countries in question had been sold on the Spanish market at prices which, in some instances, represented a substantial element of dumping. This aspect was not pursued, however, given the findings on injury below.

E. INJURY

1. Consumption, volume and market share of imports from the countries concerned.

(14) The Spanish market, as defined by apparent consumption went from 26 million tonnes in 1989 to 28 million in the investigation period. Imports from the countries concerned grew from 857 000 tonnes in 1989 to 2 388 000 in the investigation period. As a result of this, the market share taken by Turkey, Romania and Tunisia went from 3,28 % in 1989 to 8,54 % in the investigation period.

2. Impact of the imports concerned on the Spanish industry.

(15) With regard to the possible impact of the imports concerned on the situation of the Spanish industry, the Commission took account of the following facts:

(a) Spanish production was stable at around 27 million tonnes annually over the period examined.

(b) Capacity installed stood at an estimated 39 million tonnes in 1989, 1990 and 1991, and grew by around 5 % to 41 million tonnes in the investigation period. Capacity utilization was stable at 69 % between 1989 and 1991, but fell to 66 % in the investigation period. This fall in the capacity utilization rate was due only to the increase in capacity installed. In this context, the Commission notes that, relative to total demand in Spain, a large over-capacity, averaging 32 %, existed in the Spanish industry throughout the period examined.

(c) Total sales volumes of the Spanish industry remained stable at around 25 million tonnes throughout the period in question. Given the moderate rise in consumption, the market share of the industry, however, fell from 96 % in 1989 to 89 % in the investigation period. Despite this fall, the market share of the Spanish industry remained consistently high.

(d) The selling prices to unrelated customers of the Spanish producers investigated, on an index basis, rose from 100 in 1989 to 103 in 1990, and then fell to 97 in 1991 and 94 in the investigation period.

(e) The companies investigated saw profitability on sales to unrelated clients decline, on average, from 36 % in 1989, to 32 % in 1990, 21 % in 1991, and to 18 % in the investigation period.

(f) Employment by the producers investigated fell continuously over the period as a whole, moving, on an index basis from 100 in 1989, to 98 in 1990, 94 in 1991, and 92 in the investigation period.

(g) The Commission looked also into the possible injury caused by the imports concerned on a subregional basis, taking into account the different geographical locations of the Spanish producers. The Commission's examination of injury factors showed that only the situation of the producers based on the Mediterranean

coastal zone, which represents 52 % of the total complainant industry's output, clearly deteriorated in contrast to that of producers located further inland. In fact, in terms of sales volume, between 1989 and the investigation period, coastal volumes fell by 10 % while inland increased by 3 %, and, in terms of turnover, coastal figure fell by 9 % while inland increased slightly by 1 %. Finally, with regard to the coastal industry, its profitability fell since 1989 by 4 percentage points more than for the inland industry. Despite this decrease, the profitability for the coastal industry remained at a level of 18 % during the investigation period.

F. CONCLUSIONS ON INJURY

(16) Although the situation of the Spanish industry deteriorated to some extent over the period considered, notably with regard to producers located on the Mediterranean coastal zone, such situation has to be assessed in relation to the Spanish producers generally, in order to determine whether these developments constitute material injury. In doing so, the Commission paid particular attention to the following factors:

(a) Production and sales volumes were stable. Although the increase in consumption appeared to have benefited dumped imports and not domestic production, the Spanish industry nevertheless still retained a market share of 89 %.

(b) The Commission's examination of price undercutting showed that, although undercutting did exist, its effects could not be considered significant, in the light of, on the one hand, the respective market shares held by domestic producers and by imports from the three countries concerned and, on the other hand, the impact of these imports, which was limited geographically to the coastal industry.

(c) The large overcapacity and the consequent restructuring of the domestic industry played an important role in explaining the increase in costs of production and, therefore, the fall in profits. In this regard, Spanish producers did experience a reduction in their return on sales, which was however, still 18 % on average during the investigation period for the whole industry.

Alternative profit indicators, such as return on investment, as suggested by the Spanish industry, have been examined. On the basis of the data provided by the complainant and verified to a satisfactory extent in the course of the investigation, it was found that, after taking into account inflationary cost pressures and eliminating the excess of capacity, the return on investment ratio established for the investigation period amounted to 7 % and was thus considered adequate for the replacement of productive assets by the industry.

(d) Employment in the complainant industry fell by 8 % between 1989 and the investigation period. However, this fall was due, to a great extent, to the restructuring of the production process.

On the basis of the above factors, it cannot be concluded that the Spanish industry has suffered material injury. This conclusion can be explained by the fact that the present proceeding refers to a regional market, as pointed out in recital (11) above. In such cases, Article 4 (5) of the Basic Regulation requires that injury is caused to the producers of all or almost all of the production within the regional market concerned. In the present proceeding, however, the Commission's examination of the individual producers investigated, on both inland and coastal areas, did not lead to the conclusion that this requirement was met.

G. THREAT OF INJURY

(17) The Commission considers that, although the complainant also alleged that a threat of material injury existed, no substantial evidence of such threat was presented by the complainant when the complaint was submitted, nor found in the course of the investigation.

H. TERMINATION OF THE PROCEEDING

(18) In the absence of injury or threat thereof to the producers of all or almost all of the production within the regional market under consideration, a determination of material injury with regard to the Community industry concerned by the present proceeding cannot be made.

In these circumstances, it is concluded that the introduction of protective measures appears to be unnecessary and the anti-dumping proceeding should be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports into Spain of certain Portland cement originating in Turkey, Romania and Tunisia is hereby terminated.

Done at Brussels, 30 January 1997.

For the Commission

Leon BRITTAN

Vice-President