COMMISSION DECISION

of 21 January 1998

terminating the anti-dumping proceeding concerning imports of dihydrostreptomycin originating in the People's Republic of China

(98/90/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], as amended by Council Regulation (EC) No 2331/96 [2], and in particular Article 9(2) thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) Following a complaint lodged by the European Council of Chemical Manufacturers Federations (CEFIC) acting on behalf of the sole known producer of dihydrostreptomycin in the European Community, the Council, by Regulation (EEC) No 3836/91 [3], imposed a definitive anti-dumping duty on imports of dihydrostreptomycin (hereinafter referred to as DHS) falling within CN code 2941 20 10, originating in the People's Republic of China.

The rate of duty imposed was ECU 20,16 per kilogram of base DHS or the difference between the cif price and ECU 58,4 per kilogram of base DHS, whichever is the higher.

For two Chinese companies, specifically mentioned in the operative part of the Regulation, the duty amounted to ECU 14,9 per kilogram of base dihydrostreptomycin or the difference between the CIF price and ECU 53,16 per kilogram of base DHS, whichever is the higher.

B. REVIEW INVESTIGATION

(2) The Commission subsequently received a request by an importer in the Community, acting on behalf of a Chinese exporter, to repeal the measures in force. The applicant alleged that there was no longer a Community DHS industry which could be injured by the imports concerned. The evidence of changed circumstances contained in the application was considered sufficient to justify the opening of a review investigation pursuant to Article 11(3) of Regulation (EC) No 384/96 (the 'Basic Regulation').

(3) By a notice published in the *Official Journal of the European Communities,* the Commission accordingly announced the review of Regulation (EEC) No 3836/91 pursuant to Article 11(3) of the Basic Regulation. Given that no change of circumstances regarding dumping had been claimed in the request, the review, initiated on 4 January 1996 [4], was initially limited to aspects of injury.

(4) A preliminary examination of the situation showed that there was one producer of DHS remaining in the Community. However, it emerged that the circumstances of the case had changed sufficiently to warrant a full review of both dumping and injury. The changed circumstances included an alteration in the composition of the domestic industry (the original sole complainant producer, Rhône-Poulenc, had ceased production but there was one other producer in the Community) and information that Japan, the analogue country used in the original investigation, no longer produced DHS. Furthermore, Chinese export prices appeared to have considerably increased. The implications of these developments were thought to justify the extension of the scope of the reveiw to cover a full examination of both dumping and injury.

(5) Having consulted the Advisory Committee on the matter, the Commission decided, on its own initiative, to extend the initial scope of the review to cover both dumping and injury. An investigation was initiated by a notice published in the *Official Journal of the European Communities* [5], pursuant to Article 11(3) of the Basic Regulation. The Commission officially advised the producer, exporters and importers known to be concerned as well as users of the product.

(6) The investigation initially covered the year 1995 and, following the extension of the scope of the review, the investigation period for dumping was 1 January to 30 November 1996.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ L 362, 31. 12. 1991, p. 1.
[4] OJ C 1, 4. 1. 1996, p. 4.
[5] OJ C 386, 20. 12. 1996, p. 9.

(7) Since the review was in progress at the end of the period of application of the measures, it also covered the circumstances mentioned in Article 11(2) and (7) of the Basic Regulation.

(8) The Commission sought and verified all the information it deemed necessary to its determination. Questionnaires were sent to all the companies known to be concerned and replies were received from the companies listed below. Verification visits were carried out at the premises of the Community producer, the cooperating unrelated importers and two user companies including one related to the Community producer.

All parties which so requested were granted a hearing.

(a) *Community producer*

Norbrook Manufacturing Ltd (NML, Ireland);

(b) *Producers/Exporters in the People's Republic of China*

— Long March Pharmaceutical Plant,
— Shanghai No 4 Pharmaceutical Plant;

(c) *Importers in the Community*

— Helm AG (Germany),
— Tocelo Chemicals BV (Netherlands);

(d) *Community users*

— Intervet International (Akzo-Nobel group, Netherlands),
— Sanofi-SNA (France),
— Laboratoires Virbac (France),
— Laboratorios Syva (Spain),
— Norbrook Laboratories Ltd (Northern Ireland, related to NML).

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(9) The product concerned by this investigation is the same as the one covered by the initial investigation, i.e. DHS, an anti-infective agent obtained from the hydrogenation of streptomycin and generally combined with other antibiotics such as penicillin-procaïn for the production of basic veterinary medicines (injectable pen-strep doses). These end-products have become commodities and are widely used as preventive medicine in cattle, pig and sheep breeding. Minor applications include a number of other veterinary products such as ointments and oily suspensions.

2. Like product

(10) DHS is mainly exported as powdered sulphate by Chinese exporters/producers but is also produced in a liquid form in the Community. Both forms are derived from one single raw material, streptomycin, which is obtained by a fermentation process and mostly produced in the People's Republic of China. Both forms are intended for the same applications, mainly pen-strep formulations used in veterinary medicine.

A number of users claimed that the liquid formulation produced and sold by the Community industry could not be compared with the DHS powder produced and exported by the People's Republic of China because they cannot be processed in the same way. However, the Commission has found that, although traded in liquid form, the DHS produced and sold by the Community industry and the one imported in dry form from the People's Republic of China have the same chemical formula and properties and have exactly the same uses (basically the production of pen-strep medicines) and are generally interchangeable.

Therefore these products are considered as like products, in accordance with Article 1(4) of the Basic Regulation, for the purpose of this investigation.

D. DEVELOPMENT OF THE COMMUNITY MARKET

1. Community industry

(11) The investigation showed that Rhône-Poulenc, the sole complainant Community producer in the original 1990 investigation, had ceased production of DHS in May 1994. At present, Norbrook Manufacturing Ltd, in Ireland, is the sole producer of DHS in the Community. Nearly all the output of Norbrook Manufacturing Ltd is transferred internally to its related company, Norbrook Laboratories Ltd (NLL), for the manufacture of pen-strep medicines. The global Community market share of Norbrook Manufacturing Ltd, (i.e. comprising both sales to the open market as well as transfers of products used captively within the Norbrook group) was 24 % in 1995 and during the investigation period. As far as Norbrook's open market share is concerned, less than 1 % of the respective sales were made to independent customers, mainly in Spain, thus representing a negligible part of the Community open market.

2. Consumption

(12) In the investigation period, the estimated apparent global Community consumption of DHS amounted to 234 tonnes. On an indexed basis, consumption fell from 100 in 1993 to 87 in the investigation period.

3. Imports

(13) It should be noted that in addition to Rhône-Poulenc, in the Community, Meiji in Japan ceased production of DHS in 1993. The Chinese producers seem to be enjoying a worldwide dominance of the DHS market now that the major chemical groups have stopped producing DHS sulphate. China is the main supplier of the Community's market (98 % of direct imports into the Community and 75 % of the total Community consumption in the investigation period) and virtually the only supplier on the Community's open market. It should be noted that, following the imposition of the anti-dumping duty on CN code 29 41 20 10 in 1991, Chinese imports of DHS have largely been made under other codes not subject to the duty, thus evading the anti-dumping measures.

The Chinese exports to the Community amounted to 176 tonnes, of a value of ECU 7,9 million [1] in the investigation period. Chinese average prices showed an increase of 25 % in 1994 and 5 % in 1995. They increased by another 7 % in the investigation period. Other imports (Romania, Switzerland) are presently negligible.

E. DUMPING

1. Analogue country

(14) Since the People's Republic of China is considered a non-market economy country, the Commission undertook to find a market economy third country in which DHS was produced in sufficient quantities during the investigation period in order to establish a normal value for the Chinese exports. Producers of the product concerned in Brazil, India, Romania and the United States of America were considered, but none was willing or able to co-operate in the Commission investigation. In the absence of any available third country, there was no other option than to use the Community as the analogue market for the establishment of the normal value, in accordance with Article 2(7) of the Basic Regulation.

2. Normal value

(15) Since the sole Community producer did not sell the product concerned in sufficient quantities to independent customers on the Community market, normal value had to be constructed on the basis of its cost of manufacture plus a reasonable margin for SG&A and profit.

However, since its sales of the like product or of the same general category of products were not made in sufficient quantities, and in the absence of any other reliable source of information, the Commission services examined whether or not the amounts for SG&A costs and for profit could be determined on the same basis as in the original investigation.

In the original investigation, Japan served as an analogue country and the SG&A costs were determined by reference to those incurred by the sole cooperating Japanese producer. As far as the profit margin is concerned, a rate of 5 % was applied in the original investigation, the product in question being a raw material used in a mature generic pharmaceutical product in the agricultural sector. Since there were no indications that this method was no longer appropriate, it was decided to determine SG&A costs and profit accordingly.

3. Export price

(16) The two Chinese producers/exporters which replied to the questionnaire represented nearly all Chinese exports of the product concerned to the Community. As the cooperating Chinese exporters made export sales to the Community directly to independent importers, export prices were established on the basis of the prices actually paid or payable by independent importers, in accordance with Article 2(8) of the Basic Regulation, as provided by the cooperating exporters.

4. Comparison

(17) For the purpose of a fair comparison, the export price was adjusted to fob Chinese harbour level and normal value was similarly adjusted to fob national border level.

The comparison between the export price and the normal value on a weighted average to weighted average basis showed a dumping margin of 1,5 %, i.e. *de minimis.*

F. RECURRENCE OF DUMPING

(18) In examining whether dumping is likely to recur, it should be noted that Chinese unit prices of DHS have been increasing since 1993, with an overall increase of 40 % up to and including the investigation period. During this period the volume of imports also grew to the extent that it now represents 98 % of the direct imports into the Community.

[1] Estimated on the basis of Eurostat, CN codes 2941 20 10 and 2941 20 20.

These developments are mainly due to China now being virtually the only source of supply on the Community open market. These circumstances reflect the fact that competition on the market for DHS is now limited. There are no indications that this situation will change, which has led the Commission to deem the recurrence of dumping of Chinese imports unlikely. No arguments to the contrary have been presented.

G. INJURY AND COMMUNITY INTEREST

(19) In view of the conclusions concerning dumping, it was not considered necessary to develop injury and Community interest aspects arising from the investigation since this would not alter the conclusions reached. The Community producer was informed of the Commission's findings and contested the figures used for the evolution of Chinese prices, which the Commission had established on the basis of Eurostat. However, no other substantiated information was submitted which would alter the Commission's conclusions in this respect.

H. CONCLUSION

(20) Given the above findings, it was concluded that the proceeding concerning imports of DHS originating in the People's Republic of China should be terminated and that the anti-dumping duty in force should be allowed to lapse.

DECIDES:

Sole Article

The anti-dumping proceeding concerning imports of dihydrostreptomycin falling within CN codes 2941 20 10 and 2941 20 20 and originating in the People's Republic of China is hereby terminated.

Done at Brussels, 21 January 1998.

For the Commission
Leon BRITTAN
Vice-President