COUNCIL REGULATION (EEC) No 955/79

of 15 May 1979

imposing a definitive anti-dumping duty on a certain herbicide originating in Romania

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 459/68 of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community (1), as last amended by Regulation (EEC) No 1411/77 (2), and in particular Article 17 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee set up under Article 12 of Regulation (EEC) No 459/68,

Whereas the Commission has received a complaint submitted in the name of the Community industry producing DNBP technical (Dinoseb) setting out evidence as to the existence of dumping of the like product originating in Romania as well as material injury resulting therefrom ;

Whereas, since the information received indicated that the complaint was admissible and that anti-dumping measures might be necessary, the Commission officially notified the importers and exporters known to be concerned, published in the *Official Journal of the European Communities* of 29 December 1978 a notice of the initiation of an anti-dumping procedure concerning imports of a certain herbicide originating in Romania (3), and commenced an examination of the facts ;

Whereas, since preliminary examination of the matter showed that there was dumping, that there was sufficient evidence of injury and that the interests of the Community called for immediate intervention, the Commission, by Regulation (EEC) No 322/79 (4), imposed a provisional anti-dumping duty for the abovementioned herbicide ;

Whereas, in the course of the subsequent examination of the matter, completed after the imposition of the provisional anti-dumping duty, the Commission gave interested parties the opportunity to make known their views in writing, heard the interested parties and gave the parties directly concerned the opportunity orally to develop their views and to meet and to present opposing views and rebuttal arguments ;

Whereas the information received after the imposition of the abovementioned duty did not significantly affect the result of the preliminary investigation but merely provided corroborating evidence ;

Whereas in order to determine the existence of dumping with regard to the abovementioned imports, the Commission had to take account of the fact that in Romania trade is on a basis of near or total monopoly and that prices are fixed by the State ; whereas, therefore, a comparison between the export price of the product to the Community and its domestic price is not appropriate ;

Whereas, in these circumstances, the Commission has decided to base its dumping calculations on the prices at which a like product of a market economy country is sold for consumption on the home market of that country ;

Whereas, according to the information obtained by the Commission, the United States is the only market economy country apart from the Member States in which DNBP technical is produced ; whereas for this reason the Commission chose the prices of this country as a basis calculation ;

Whereas the calculations were made at ex-factory level, and in respect of sales made as nearly as possible at the same time and due allowance was made, on their merits, for transport and ancillary costs, packaging, duties and taxation and for other factors affecting price comparability ;

Whereas this examination of the matter shows that dumping has taken place, the margin of which exceeds 40 % in markets principally concerned ;

Whereas, with regard to injury to the industry concerned, the evidence available to the Commission shows that imports into the Community of DNBP technical originating in Romania began in 1978 only and by the end of that year had reached a level of approximately 350 to 400 tonnes ;

Whereas the imports concerned represent a market share which in the Community amounts to approximately 40 % and in the two main countries of importation to 49 % and 68 % respectively ;

(1) OJ No L 93, 17. 4. 1968, p. 1.
(2) OJ No L 160, 30. 6. 1977, p. 4.
(3) OJ No C 311, 29. 12. 1978, p. 2.
(4) OJ No L 44, 21. 2. 1979, p. 8.

Whereas the prices of these imports on the Community markets have been extremely low, thus exercising a depressive effect on the Community producers' prices ;

Whereas this development has taken place to the detriment of the Community industry which is thus in an extremely difficult situation, characterized by sales at prices far below the European costs of production, by a decline in production of approximately 60 %, by a significant loss of sales and market shares, by almost complete absence of new orders for 1979, and by the imminent loss of jobs ;

Whereas, therefore, the facts as finally established show that, due consideration having been given to the other factors having a bearing on the situation of this industry, as, for example, the decline of exports to countries outside the Community, the dumped imports are causing and threatening to cause substantial injury to the Community production concerned ;

Whereas in these circumstances, protection of the Community's interests calls for the definitive collection of the amounts secured by way of provisional duty in respect of DNBP technical of Romanian origin and for the imposition of a definitive anti-dumping duty the rate of which, having regard to the extent of injury caused, should approximate to the dumping margins established,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on DNBP technical (Dinoseb) falling within Common Customs Tariff subheading ex 29.07 C III or ex 38.11 D and corresponding to NIMEXE codes ex 29.07-59 or ex 38.11-50, 70, originating in Romania and exported by Chimimportexport, Bucharest. The provisions in force for the application of customs duties shall apply for the application of this duty.

2. The duty referred to in paragraph 1 shall be at a rate of 40 % on the basis of the value declared in accordance with Commission Regulation (EEC) No 375/69 of 27 February 1969 on the declaration of particulars relating to the value of goods for customs purposes ([1]).

Article 2

The amounts secured by way of provisional duty under Regulation (EEC) No 322/79 shall be definitively collected.

Article 3

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 1979.

For the Council

The President

R. BOULIN

([1]) OJ No L 52, 3. 3. 1969, p. 1.