COMMISSION REGULATION (EEC) No 2182/80

of 14 August 1980

imposing a provisional anti-dumping duty on certain chemical fertilizer originating in the United States of America

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee set up under that Regulation,

Whereas in December 1979 the Commission received a complaint lodged by the Comité Marché Commun de l'Industrie des Engrais Azotés et Phosphates on behalf of manufacturers accounting for a major part of the Community production of urea ammonium nitrate solution fertilizer; whereas the complaint contained evidence of the existence of dumping in respect of the like product originating in the United States of America, and of material injury resulting therefrom, especially in France and the Federal Republic of Germany;

Whereas the said information supplied provided sufficient evidence to justify initiating a proceeding; whereas the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of a proceeding concerning imports of certain chemical fertilizer originating in the United States of America, and commenced an investigation of the matter at Community level;

Whereas the Commission officially so advised the exporters and importers known to be concerned, as well as the representatives of the exporting country and the complainants;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to be heard orally; whereas most of the importing and exporting parties known to be concerned have taken this opportunity;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought and verified all information it deemed to be necessary and carried out inspections at the premises of exporters and importers accounting for almost all imports of the product concerned, including, in the United States of America, Allied Chemical Corporation (Houston), Transcontinental Fertilizer Corporation (Philadelphia), International Ore and Fertilizer Corporation and Intsel Corporation (New York); in Belgium, Demufert SA (Brussels); in France, Comagri SA (Paris); in Germany, Helm Düngmittel GmbH (Hamburg); whereas the Commission also carried out inspections at the premises of the main complainant Community producers, including, in France, APC SA, Compagnie Française de l'Azote SA, Générale des Engrais SA and Société Chimique de la Grande Paroisse SA (Paris), in Germany, Ruhr-Stickstoff AG (Bochum) and BASF AG (Ludwigshafen);

Whereas in seeking to determine normal value the Commission had to take into account that all US producers other than Allied Chemical Corporation did not export the product concerned to the Community during the period of investigation and therefore did not furnish the information sought; whereas, therefore, no inspections at the premises of these firms were carried out; whereas the exporters visited who do not produce the product in question did not during the period under investigation sell it on their domestic market, and, with the exception of one sale to Sweden, did not export to third countries; whereas this sale to Sweden was considered to be too small to permit a proper comparison; whereas, therefore, the Commission calculated the normal value on the basis of the information received from Allied Chemical Corporation, the only exporter to the EEC who both produces and sells the product on the American market;

Whereas, on the basis of the information obtained from this producer, the Commission concluded that the price at which substantial quantities of the product concerned were sold for consumption on the domestic market during 1978 and 1979 did not permit recovery of all costs in the normal course of trade;

Whereas, therefore, the Commission considered these sales as not having been made in the ordinary course of trade and established a constructed value by taking the US producer's 1979 costs of materials and manufacture and adding the amount for overheads shown in the company's accounts as well as a 5 % profit margin considered to be reasonable;

Whereas the constructed value was compared at ex-works level with prices for export shipments made

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 47, 26. 2. 1980, p. 2.

by Allied Chemical Corporation to the EEC during 1979 ;

Whereas this producer claimed that for the purpose of a fair comparison account should be taken of the fact that distribution expenses and costs for inventory were only incurred on domestic sales ; whereas, moreover, the producer further claimed that allowance should be made for differences between domestic and export sales in respect of payment conditions, selling costs, quantities sold to individual domestic and export customers and level of trade ;

Whereas the Commission took account of the differences affecting price comparability with respect to variable distribution and selling costs, salesmen's salaries and payment conditions ;

Whereas no allowance was made for fixed distribution and selling costs, other than salesmen's salaries, and costs for inventory since, although these costs were incurred only on the domestic market, the Commission, taking account of the established practice of the US authorities, did not consider them to bear a direct relationship to the individual sales under consideration ; whereas the Commission considered that the terms on which the product was sold on the domestic market did not provide for a freely available quantity discount, and therefore no account was taken of differences in quantities sold domestically and for export ; whereas no adjustment was made for possible differences in level of trade because the producer was unable to demonstrate the extent of any differences in cost due to different levels of domestic and export trade ;

Whereas the export price of the exporters other than Allied Chemical Corporation was only made available on an fob port basis and was therefore not always comparable with the constructed value as established above ; whereas in these cases the inland freight to be subtracted from the export price was determined on the basis of the average inland freight from the plants of Allied Chemical Corporation to its various domestic selling points, this being the best information available ; whereas in comparing the export price of the exporters other than Allied Chemical Corporation with the normal value no allowance could be made for differences in selling expenses because no appropriate evidence on the exporters' selling expenses was made available to the Commission ;

Whereas the preliminary examination showed a weighted average dumping margin for all exports of 12·2 % ;

Whereas, with regard to the injury caused to the Community industry concerned, the evidence made available to the Commission during its preliminary investigation showed that imports into the Community of nitrogen solution fertilizer, originating in the USA, had increased from 3 300 tonnes in the agricultural year 1977/78 to more than 400 000 tonnes in 1979/80 ; whereas the market share held by these imports had increased from nil in the agricultural year 1976/77 to approximately 50 % in 1979/80 in France and in the Federal Republic of Germany ;

Whereas in 1979 the resale prices of the product imported into France and the Federal Republic of Germany substantially undercut the prices for the like product produced by local manufacturers ; whereas, for example, the prices of the French producers, the industry mainly affected, were undercut by up to 15 % at the same level of trade ;

Whereas the consequent impact on the French and German industry consisted of loss of market share and depression of prices ; whereas the production of French producers visited fell from 390 000 tonnes in 1977 to 280 000 tonnes in 1979 ; whereas German production remained relatively stable during the same period ; whereas at the same time French consumption of the product increased from an estimated 597 000 tonnes in the agricultural year 1977/78 to an estimated 733 000 tonnes in 1979/80 and in the same period consumption in the Federal Republic of Germany had risen from an estimated 71 000 tonnes to an estimated 93 000 tonnes ;

Whereas, therefore, the share of the market in France held by French producers fell from an estimated 72 % in the agricultural year 1977/78 to an estimated 38 % in the year 1979/80 and similarly the share of the market in Germany held by German producers fell during the agricultural year 1978/79 from an estimated 61 % to an estimated 45 % in 1979/80 ;

Whereas the price undercutting practised by US exporters forced the Community producers concerned to sell at prices which were not sufficient to recover increases in costs which occurred during the period under consideration ;

Whereas the Commission has further considered whether there is injury caused by other factors which, individually, or in combination, are also adversely affecting the industry concerned ; whereas in this context it has examined the evolution of imports originating in other third countries and other Member States ; whereas such an examination was not possible for the Federal Republic of Germany because precise statistical information was not available ; whereas for France, the largest market for urea ammonium nitrate solution in the Community, there have been no imports from other third countries during the period 1977 to 1979 and imports from Belgium and the Netherlands, the principal Community exporters to the French market, fell from 125 000 tonnes in the first seven months of the agricultural year 1978/79 to almost 88 000 tonnes in the same period of 1979/80.

Whereas it has emerged that these imports have not significantly affected the industry concerned ; whereas, therefore, the dumped imports were considered to have caused the difficulties described above ;

Whereas, in these circumstances, to prevent injury being caused during the proceeding, the interests of the Community call for immediate intervention consisting in the imposition of a provisional anti-dumping duty on imports of urea ammonium nitrate solution fertilizer originating in the United States of America at a rate which, having regard to the extent of injury caused, should be equal to the dumping margin provisionally established ;

Whereas one of the exporters, Allied Chemical Corporation, has meanwhile voluntarily undertaken to increase its prices to a level which eliminates the dumping margin found ; whereas the Commission considers this undertaking to be acceptable ; whereas it is consequently appropriate to exclude the imports of the product manufactured and exported by this company from the application of the duty,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on urea ammonium nitrate solution fertilizer, falling within Common Customs Tariff subheading ex 31.02 C and corresponding to NIMEXE code ex 31.02-90, originating in the United States of America. This duty shall not apply to urea ammonium nitrate solution fertilizer manufactured and exported by Allied Chemical Corporation, USA.

2. The duty referred to in paragraph 1 shall be at a rate of 12·2 % on the basis of the value declared in accordance with Commission Regulation (EEC) No 1496/80 of 11 June 1980 on the declaration of particulars relating to customs value and on documents to be furnished ([1]).

3. The provisions in force concerning customs duties shall apply for the application of this duty.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to payment of a deposit, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views, and apply to be heard orally by the Commission, within a month of the entry into force of this Regulation.

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, this Regulation shall be applicable for four months or until the adoption by the Council of definitive measures.

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, 14 August 1980.

For the Commission

Étienne DAVIGNON

Member of the Commission

([1]) OJ No L 154, 21. 6. 1980, p. 16.