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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 407/80

of 18 February 1980

imposing a definitive anti-dumping duty on certain sodium carbonate originating in the Soviet Union

THE COUNCIL 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 which are not members of the European Economic Community [1], and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee set up under Article 6 of the said Regulation,

Whereas in October 1978 the Commission received a complaint submitted by the European Council of Chemical Manufacturers Federations (Cefic), on behalf of almost all Community producers of sodium carbonate, setting out evidence as to the existence of dumping of the like product originating in Bulgaria, the German Democratic Republic, Poland, Romania, the Soviet Union, Czechoslovakia and Albania, and of material injury resulting therefrom ;

Whereas, since it was apparent that there was sufficient evidence to justify initiating a proceeding, the Commission published in the *Official Journal of the European Communities* a notice of initiation of an anti-dumping procedure concerning imports of sodium carbonate originating in Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union [2] ; whereas exports from Albania and Czechoslovakia were found to be of minor importance and were, therefore, not included in the investigation ; whereas the Commission advised the exporters and importers known to the Commission to be concerned as well as the complainants and commenced the investigation at Community level ;

Whereas, for the purposes of a preliminary determination of the dumping margin and of injury, the Commission sought and verified all information it deemed necessary and made on-the-spot investigations at the offices of the exporters' agents and importers, where deemed necessary, and in particular at those of Arnold Surh Belgique SA, Belgium ; Krahn-Chemie GmbH, Federal Republic of Germany ; Soprochim SA, France ; M. Golodetz (Overseas) Ltd, TR International (Chemicals) Ltd, United Kingdom ; SICEA SAS, SNIA Viscosa Spa, Tradeco Spa, Italy ; C. van Epenhuysen's Chemische Fabrieken BV, Menduga AG, the Netherlands, and of all Community producers involved ; whereas the Commission had contacts with several other agents and importers ;

Whereas, when determining the existence of dumping on the abovementioned imports, the Commission had to take account of the fact that Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union are non-market economy countries ;

Whereas, for this reason, the Commission based its preliminary dumping calculations on the prices at which the like product is sold for free circulation on the domestic market of a market economy non-member country ;

Whereas a comparison with prices at which the like product is sold for free circulation on the domestic market of Austria appear to be appropriate and not unreasonable, because, as in the exporting countries, there are raw materials readily available, there are similar production processes based on the manufacture of sodium carbonate by synthetic means, rather than by natural means, and there is production on a substantial scale ; whereas price controls in Austria ensure that price levels stand in a reasonable proportion to production costs ;

Whereas these calculations were made by comparing the Austrian weighted average ex-factory prices for 1978 with the weighted average export prices to the Community of the countries under investigation for the same year ;

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[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No C 227, 27. 11. 1978, p. 4.

Whereas due allowance was made for differences affecting price comparability by deducting from the Austrian ex-factory prices the maximum discounts granted on sales of the largest quantities, a special discount given on bulk transport to the largest quantities, a special discount given on bulk transport to the largerst customers, sales and service costs supported by the Austrian producer and the maximum discount granted for immediate payment; whereas export prices were available only on a fob or cif basis but no price adjustments were made for transport costs included in such prices; whereas all aforementioned factors had the effect of reducing the difference between the Austrian ex-factory prices and the export prices;

Whereas it emerged from the preliminary examination of the facts that dumping existed for all imports investigated, the dumping margins for light sodium carbonate exceeding 33 % in all cases;

Whereas, with regard to injury to the Community industry, the evidence available to the Commission during the preliminary examination showed that total imports into the Community of sodium carbonate originating in the countries included in the investigation have risen from approximately 83 500 tonnes in 1974 to a level of 273 000 tonnes in 1978 and increased further to approximately 151 206 tonnes during the first six months of 1979;

Whereas only a very minor part of these imports consisted of dense sodium carbonate; whereas the supply of dense sodium carbonate in the Community is subject to strong contractual ties between the Community producers and their main customers for dense sodium carbonate; whereas some of these ties are presently the subject of an investigation by the Commission as possibly restraining competition on the dense sodium carbonate market; whereas recently built and planned production facilities for dense sodium carbonate in some of the exporting countries, notably in Poland and Bulgaria, did not constitute a threat of injury to the Community industry since it could not be determined that there was a likelihood that such increased production capacity would lead to a significant increase in export to the Community in the foreseeable future; whereas, therefore, the preliminary examination showed that no injury had been caused by the imports of dense sodium carbonate;

Whereas the imports of light sodium carbonate originating the countries under investigation represented a share of the total light sodium carbonate market in the Community of 19·7 %, and in France, Belgium, Italy, the Netherlands and the Federal Republic of Germany of 11 %, 23·6 %, 25·8 %, 28·7 % and 34·8 % respectively; of these, imports from the Soviet Union represented 2·7 % of the total Community market and in the main country of importation, Italy, 13·6 % of the market;

Whereas the prices of these imports on the Community markets were extremely low and undercut the prices of the like product in the Community by significant amounts, particularly during the second and third quarters of 1978; whereas these prices increased only slightly afterwards;

Whereas the consequent impact on the Community industry consisted of a loss of sales to small customers of light sodium carbonate in bags in all Member States, a loss of bulk customers in some Member States and a depressive effect on the Community producers' prices for light sodium carbonate in bags and in bulk; whereas, as a result, market shares, particularly in the market for bagged light sodium carbonate, were reduced and returns had decreased to levels where further investments could not economically be envisaged;

Whereas the other factors which were known to be adversely affecting the Community producers of light sodium carbonate, such as the volume and price of other imports, stagnation in demand and the substitution, in some applications, by other products, were considered and were found to be of minor importance;

Whereas the dumped imports were, therefore, considered to be demonstrably the principal cause of the difficulties described above;

Whereas, since this 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 2599/79 [1], imposed a provisional anti-dumping duty on light sodium carbonate originating in the Soviet Union; whereas voluntary undertakings were accepted from the export organizations in Bulgaria, the German Democratic Republic, Poland and Romania;

Whereas, in the course of the subsequent investigation of the matter, completed after the imposition of the provisional anti-dumping duty, no additional information has been received from the interested parties and no further arguments have been advanced;

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[1] OJ No L 297, 24. 11. 1979, p. 12.

Whereas the subsequent examination has not revealed any elements which would warrant a change in the conclusions reached during the preliminary examination of the matter;

Whereas, under these circumstances, the calculations and determinations with respect to dumping and injury remain unchanged;

Whereas the protection of the Community's interests calls for the definitive collection of the amounts secured by way of provisional duty in respect of light sodium carbonate and for the imposition of a definitive anti-dumping duty; whereas the amount of this duty should correspond to the amount of the provisional duty which corresponded to the amount by which the import price was less than US$ 105·10;

Whereas, however, the collection of this duty on the basis of the free-at-frontier price of the importing Member State has created technical difficulties, so that it appears appropriate to base it in future on a free Community frontier price; whereas this will have no significant consequences with respect to the amount of the duty to be collected;

Whereas, in order to avoid evasion of the anti-dumping duty, it is necessary to provide for an alternative procedure for the calculation of the duty for cases where the product is not entered for free circulation by the first purchaser in the Community;

Whereas the undertakings given by the export organizations in Bulgaria, the German Democratic Republic, Poland and Romania have satisfied the Commission that the introduction of protective measures with respect to products originating in these countries is unnecessary at present;

Whereas the Soviet export organization has not offered such an undertaking;

Whereas, under these circumstances, it is appropriate to exclude the exporting countries from which voluntary undertakings were received from the application of the duty and to ensure its application against exports from the Soviet Union, in order both to neutralize the injury caused by those exports and to ascertain that the stabilization of the market sought by the acceptance of these undertakings is not undermined by further dumped imports from the Soviet Union, to the disadvantage of the Community producers and the exporters who offered such undertakings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on light sodium carbonate, falling within subheading ex 28.42 A II of the Common Customs Tariff, corresponding to NIMEXE code ex 28.42-31 and originating in the Soviet Union.

2. Without prejudice to paragraph 4, the amount of the duty shall be equal to the amount by which the price, free Community frontier, before duty, per tonne net, to the first purchaser in the customs territory of the Community, is less then US$ 105·10.

3. The price of US$ 105·10, as mentioned in paragraph 2, shall be net if the conditions of sale provide for payment within 30 days from the end of the month of delivery; it shall be increased or reduced by 1 % for each increase or decrease of one month in the time limit for payment.

4. (a) Where the product defined in paragraph 1 is not entered for free circulation on the basis of the price to the first purchaser in the Community, a definitive anti-dumping duty of 33 % of US$ 79·02 shall be levied.

(b) Where, however, the declarant provides satisfactory proof to the customs authorities as to the price paid by the first purchaser, paragraphs 2 and 3 shall apply.

5. For the purposes of this Regulation, light sodium carbonate shall be all non-compacted sodium carbonate with a specific weight of less than 0·7 kg/dm^3 and consisting of powder or grains smaller than 0·4 mm in diameter.

6. The provisions in force for the application of customs duties shall apply to this duty.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 2599/79 shall be definitely 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, 18 February 1980.

For the Council

The President

G. MARCORA