COMMISSION REGULATION (EEC) No 1101/81

of 23 April 1981

imposing a provisional anti-dumping duty on potato granules originating in Canada

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 July 1980 the Commission received a complaint lodged by the European Union of the Potato Processing Industry (UEITP) on behalf of the British, Dutch and German manufacturers accounting for total Community production of potato granules;

Whereas the complaint contained evidence of the existence of dumping in respect of the like product originating in Canada, and of material injury resulting therefrom, especially in the United Kingdom;

Whereas the 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 potato granules originating in Canada 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, to be heard orally and to inspect the non-confidential information made available to it by any party to the investigation;

Whereas most of the importing and exporting parties and some of the Community producers 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 Canada, Carnation Foods Co. Ltd (Toronto), Vauxhall Foods Ltd (Lethbridge) and McCain Foods Ltd (Florence Ville); in the United Kingdom, Briess & Co. Ltd and Kiril Mischeff Ltd (London); whereas the Commission also carried out inspections at the premises of the main complainant Community producers, including, in the United Kingdom, Dornay Foods (King's Lynn) and Cadbury Typhoo Ltd (Birmingham);

Whereas the investigation carried out at McCain Foods' premises showed that this company had only exported to the EEC relatively small quantities of a mix of potato granules and milk powder, a product not subject to this investigation;

Whereas, in seeking to determine the normal value of the Vauxhall product, the Commission had to take account of the fact that the price at which substantial quantities of the product concerned were sold for consumption on the domestic market during the period of investigation, running from August 1979 to July 1980, did not permit recovery of all costs within a reasonable period of time; whereas, therefore, the Commission considered these sales as not having been made in the ordinary course of trade; whereas, in respect of Carnation, it was determined that during their 1979/80 accounting year they only sold minimal quantities of potato granules on the domestic market representing less than 2 % of export sales; whereas, therefore, these domestic sales did not permit a proper comparison;

Whereas, for these reasons, the Commission determined that for both companies the normal value should be established on the basis of their constructed values; whereas the Commission established Vauxhall's and Carnation's constructed values, for the period of investigation, by taking their respective costs of materials and manufacture and adding the amount for overheads shown in their accounts and adding a 6 % profit margin considered to be reasonable;

Whereas export prices were determined on the basis of prices actually paid for the product concerned sold for export to the Community; whereas these prices were on a cif Community frontier basis; whereas, in

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 221, 29. 8. 1980, p. 2.

order to make these prices comparable to the normal value, costs of domestic and ocean transport, insurance, certain additives, packing and credit had to be deducted;

Whereas, in seeking a preliminary determination of the existence of dumping, the Commission compared the export prices thus established, transaction by transaction, on an ex-factory basis, with the normal values;

Whereas, for the purpose of a fair comparison between normal value and export prices, account was also taken of the fact that certain variable costs and salesmen's salaries were only incurred on the domestic market; whereas no allowance was made for fixed marketing expenses other than salesmen's salaries as these expenses did not bear a direct relationship to domestic sales;

Whereas this examination showed that exports made by both Carnation and Vauxhall were dumped at varying rates; whereas on some transactions these were as high as 45 % for Carnation and 11 % for Vauxhall; whereas the weighted average margins corresponded to 44·81 EUA per tonne for Carnation and to 4·37 EUA per tonne for Vauxhall;

Whereas, with regard to the injury caused by the dumped imports to the Community industry, the evidence available to the Commission shows that imports increased from 2 730 tonnes in 1975, to 2 753 tonnes in 1978 and to 3 954 tonnes in 1979 but declined to approximately 2 700 tonnes in 1980;

Whereas imports into the United Kingdom, which generally receives more than 90 % of these imports and which accounts for over 50 % of Community consumption, decreased slightly from 2 692 tonnes in 1975 to 2 603 tonnes in 1978 but increased to 3 133 tonnes in 1979 before declining to 2 433 tonnes in 1980; whereas, however, imports increased sharply to 336 tonnes in the first month of 1981; whereas this increase in January 1981 represented the highest January total for three years and the highest total for any month since September 1979; whereas the decrease in imports in 1980, which occurred in the last four months of that year after the opening of the current anti-dumping investigation, coincided with a temporary shortage of potatoes in some parts of Canada;

Whereas the extraordinarily high level of imports in 1976 and 1977, 7 931 tonnes and 6 514 tonnes respectively, was due to the extremely hot dry summers in the United Kingdom in 1975 and 1976; whereas this drought led to dramatically increased potato prices which simultaneously caused a significant increase in United Kingdom consumption of granules and a decrease in United Kingdom production which, as a percentage of Community production, fell from over 50 % in 1975 to 18 % in 1977; whereas, during this period, it was uneconomic to produce granules from United Kingdom potatoes and all sectors of the industry purchased large tonnages from North America;

Whereas the market share of Canadian imports in the Community rose from 5·6 % in 1975 to 8 % in 1979 and in the United Kingdom from 9·6 to 12·3 % in the same period; whereas, during the same period of time, Community consumption rose from 48 927 to 49 486 tonnes;

Whereas Canadian prices continually undercut United Kingdom producers' prices by up to 26 % during the period of investigation; whereas the undercutting continued in the last few months of 1980 when the level of Canadian exports to the United Kingdom declined;

Whereas this undercutting resulted in sales of British manufactures being restricted to below 1975 levels; whereas sales in the United Kingdom by Netherlands manufacturers, the only other large Community producers who sell regularly on the United Kingdom market, declined from over 2 400 tonnes in 1978 to 815 tonnes in the first nine months of 1980, though during the same period consumption in the United Kingdom increased by over 20 %;

Whereas this undercutting also resulted in considerably increased losses being suffered by United Kingdom producers when comparing the years 1979 and 1980; whereas these losses were made worse by the United Kingdom producers' attempting to hold on to their market share by keeping prices steady and, in fact, reducing them towards the end of 1980, despite sharply increased manufacturing and other costs;

Whereas, under these circumstances, both United Kingdom manufacturers made workers redundant in 1980 and one of these producers is scheduled to stop all production of granules in 1981, thereby leading to a further 118 redundancies;

Whereas the Commission 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 non-member countries into the United Kingdom; whereas imports from other non-member countries, and in particular from the United States of America, into the United Kingdom, fell from 2 690 tonnes in 1975 to 859 tonnes in 1979, and their market share fell from 10 to 3 % during the same period; whereas prices of imports of the product in question originating in the United States of America since 1978 have been considerably above prices of Canadian exports;

Whereas these circumstances have led the Commission to determine, on a preliminary basis, that Canadian exports of potato granules have caused material injury to the Community industry concerned;

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 potato granules originating in Canada at a rate which, having regard to the extent of the injury caused, should eliminate the dumping margins provisionally established;

Whereas one of the exporters, Carnation, 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 exported by this company from the application of the duty;

Whereas a time limit should be fixed within which the parties concerned may, following the imposition of the provisional duty, make their views known and apply to be heard orally by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on potato granules, falling within heading No ex 11.05 of the Common Customs Tariff and corresponding to NIMEXE code ex 11.05-00, originating in Canada. This duty shall not apply to potato granules exported by Carnation Inc. and Carnation Foods Company Ltd, Canada.

2. The duty referred to in paragraph 1 shall be equivalent to 4·481 European units of account per 100 kg net weight, except for potato granules exported by Vauxhall Foods Ltd for which the duty shall be 0·437 European units of account per 100 kg net weight.

3. 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.

4. The provisions in force concerning customs duties shall apply for the application of this 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, 23 April 1981.

For the Commission

Étienne DAVIGNON

Vice-President