COMMISSION REGULATION (EEC) No 2127/82

of 28 July 1982

imposing a provisional anti-dumping duty on trichloroethylene originating in the German Democratic Republic and Poland and terminating the anti-dumping proceeding in respect of trichloroethylene originating in Czechoslovakia, Romania, Spain and 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 9, 10 and 11 thereof,

After consultations within the Advisory Committee set up under Article 6 of Regulation (EEC) No 3017/79,

Whereas in July 1981 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of manufacturers accounting for the totality of Community production of trichloroethylene;

Whereas since the complaint provided sufficient evidence of dumping in respect of the like product originating in Czechoslovakia, the German Democratic Republic, Poland, Romania, Spain and the United States of America, and of material injury resulting therefrom, 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 trichloroethylene originating in the abovementioned countries, 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 countries and the complainants;

Whereas the Commission has given all parties directly concerned the opportunity to make known their views in writing and to be heard orally; whereas all the exporters and most of the importers known to be concerned have taken the opportunity to make known their views in writing; whereas all the exporters, with the exception of the Czechoslovakian exporter, and several of the major importers requested, and were granted, an opportunity to be heard orally;

Whereas, at the request of the US exporter, the Commission organized a meeting between the exporter, his distributors in the Community, and the complainants, so that opposing views could be presented and any rebuttal argument put forward;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought to obtain and verify all information which it deemed to be necessary and carried out inspections at the premises of the exporters in Spain and the United States of America, namely: Sociedad Anonima Cros, Barcelona, and PPG Industries Inc., Pittsburgh Pa.; a number of the principal importers known to be concerned, namely: Samuel Banner & Co. Ltd, Liverpool, Klöckner & Co., Duisburg, Société Commerciale Lambert Rivière, Bagnolet, and Tesco Chemie, Düsseldorf; whereas the Commission requested and received very detailed written submissions from all the complainant Community producers with respect to the question of injury and causation thereof, and also carried out inspections at the premises of all but two of the complainant producers, accounting for a substantial proportion of total Community production, viz: Chloë Chemie, Paris la Defense, Chemische Werke Hüls AG, Marl Imperial Chemical Industries Ltd, Runcorn, Montedipe SpA, Milan, Solvay et Cie, Paris, and Wacker Chemie GmbH, Munich;

Whereas no information was submitted by, or on behalf of, any Community consumer of trichloroethylene;

Whereas in the case of Czechoslovakia, the Commission's investigation has established that no trichloroethylene of Czechoslovakian origin has been entered for consumption in the Community since 1977, and that the information concerning Czechoslovakia supplied in the complaint was based on provisional statistics for 1981, which have since been revised; whereas consequently the proceeding should be terminated in respect of trichloroethylene originating in Czechoslovakia;

Whereas, in its determination of dumping for Spain and the USA, the Commission has established normal value on the basis of the weighted average ex-factory price charged by the exporters for sales to unrelated customers on their respective domestic markets;

[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No C 271, 23. 10. 1981, p. 5.

Whereas, in the case of the USA, following a request from the exporters, the Commission made certain adjustments to the above normal value, to take account of verified differences in conditions and terms of sale as between the domestic and export markets;

Whereas in establishing normal value for the other countries concerned the Commission had to take into account the fact that they do not operate market economies; whereas the complainant had proposed prices charged on the US domestic market as the basis for normal value, and this proposal was not contested by any interested party; whereas the Commission, having considered the possible alternatives known to it, considers that it is appropriate and not unreasonable to establish normal value for the German Democratic Republic, Poland and Romania, on the same basis as for the US exporter, making appropriate adjustments for the differences in conditions and terms of sale;

Whereas, as regards the export price, the Commission has, in the case of Spain and the USA, used the price actually paid or payable for export to the Community; whereas, for the German Democratic Republic, Poland and Romania, for which the Commission does not possess complete and verified details of actual export prices, the export price has been established on the basis of the weighted average value free-at-Community frontier shown in the Community's official import statistics; whereas these figures are not contradicted by the partial information on export prices supplied to the Commission by the exporters and importers concerned;

Whereas in the case of Spain, the exporter's ex-works revenue for export sales is increased by an export tax rebate ('desgravación fiscal'), equal to 11·87 % of the free-at-frontier export price, which the exporter receives from the Spanish Government; whereas the Commission has not so far received sufficient information to determine whether or not this rebate exceeds the amount of duties or taxes borne by the like product when destined for consumption in Spain;

Whereas a monthly comparison was made, using weighted averages where varying prices were applied between normal values and export prices, on the most important Community markets for the period October 1980 to September 1981, except in the case of Spain, where the information available led the Commission to make a comparison over the period January to December 1981; whereas this showed the existence of the following dumping margins, expressed as a percentage of the price free Community frontier:

— for the German Democratic Republic for sales on the French market from 9·4 to 55·6 %, with a weighted average of 30·3 %,

— for Poland for sales on the German market from 12·5 to 66·1 %, with a weighted average of 36·0 %,

— for Romania for sales on the German market from 6·2 to 35·8 %, with a weighted average of 13 %,

— for Spain from 68·6 to 91·4 %, with weighted averages of 82·7 % for sales to Belgium, 76·0 % for sales to Germany and 74·7 % for sales to the Netherlands; or, if the export price is adjusted by the full amount of the tax rebate, from 52·0 to 72·7 % with weighted averages of 64·7 % for Belgium, 58·7 % for Germany and 59·5 % for the Netherlands,

— for the USA form 0·9 to 79·1 % with weighted averages of 43·9 % for sales to France, 42·1 % for sales to Germany and 9·4 % for sales to the United Kingdom;

Whereas, with regard to the injury caused by the dumped imports to the Community industry, the evidence available to the Commission shows that total imports of trichloroethylene from the countries found to be dumping rose from 15 620 tonnes in 1978 to 25 434 tonnes in 1980 and 14 773 tonnes in the first nine months of 1981, an increase over the period in the average monthly rate of imports of 26·1 %; whereas this represents a share of the Community market of 6·6 % in 1978, 11·5 % in 1980 and 9·8 % in 1981;

Whereas the evidence available to the Commission shows that the prices charged at resale in the Community for the dumped imports have undercut the prices being charged by Community producers by up to 25 %;

Whereas, as regards the consequent impact on the Community industry, the evidence available to the Commission shows that production of trichloroethylene in the Community fell from 252 250 tonnes in 1978 to 157 274 tonnes in the first nine months of 1981, a reduction in average quarterly production of 17 %, thereby causing a fall in the average level of utilization of production capacity from 60·6 % in 1978 to 50·7 % in the first nine months of 1981;

Whereas, according to the information available to the Commission, the share of the Community market held by Community producers fell from 92·6 % in 1978 to 87·2 % in 1980; whereas 90 % of this lost share of the market was taken by the dumped imports; whereas in 1981, Community producers were able to regain a part of this lost market share only by progressively reducing their prices towards those charged for resale of the dumped imports;

Whereas this progressive reduction in the prices charged by Community producers, combined with the fall in the level of production, has seriously eroded their profitability, such that by the second and third quarters of 1981 all procedures were making losses on trichloroethylene, which in most cases were extremely high ;

Whereas the Commission has considered the injury caused by other factors which, individually or in combination, are also affecting the Community industry ; whereas it has examined in particular the prices and level of non-dumped imports, and the level of consumption of trichloroethylene in the Community ;

Whereas the level of imports from countries other than those found to be dumping has been small compared with the level of dumped imports ; whereas the former stood at 1 910 tonnes in 1978 and 1 615 tonnes in the first nine months of 1981 ; whereas the evidence available to the Commission shows that the market share held by those imports was 0·8 % in 1978 and 1·1 % in the first nine months of 1981 ; whereas, moreover, the average value of these imports has been considerably above the export prices free-at-Community frontier charged for the dumped imports ; whereas the Commission consequently considers that these imports cannot have had a significant influence on the situation of the Community industry, compared with that of the dumped imports ;

Whereas the evidence available to the Commission shows that total demand for trichloroethylene in the Community has fallen from 237 000 tonnes in 1978 to 220 000 tonnes in 1980 and to 151 000 tonnes in the first nine months of 1981, which represents a decrease from 1978 to 1980 of 7 % and a decrease in average quarterly demand over the period of 15 % ; whereas, although this has undoubtedly had an impact on the Community industry, the loss of sales by Community producers on the Community market between 1978 and 1980 substantially exceeds the decline in demand, the remaining sales being lost to dumped imports ; whereas, in 1981 as compared with 1980, the loss of sales by Community producers on the Community market was less than the decline in overall demand only because they were able, owing to the price depression noted earlier, to recoup some of the sales previously lost to the dumped imports ; whereas, therefore, while the decline in demand has clearly been a factor causing injury to Community producers, the Commission is convinced, on the basis of the evidence available, that the injury caused by the increased market share of dumped imports, and by the accompanying price undercutting, must nevertheless, taken in isolation, be considered as material ;

Whereas in these circumstances and in order to prevent injury being caused during the investigation, the interests of the Community require immediate intervention in the form of imposition of a provisional anti-dumping duty on imports of trichloroethylene originating in the German Democratic Republic, Poland, Romania, Spain and the United States of America ; whereas the Commission considers that a duty lower than the margins of dumping established would be sufficient to eliminate the injury caused to the Community industry by the dumped imports, as measured by the price necessary to allow the most efficient Community producer to avoid losses on its sales of trichloroethylene ;

Whereas, after being informed of the results of the Commission's investigation, the exporters in Poland, Romania, Spain and the United States of America voluntarily undertook to increase their prices to a level sufficient to eliminate the dumping margin provisionally established, or the injurious effects thereof ; whereas the Commission, after consultation, considers the undertaking offered by the Romanian, Spanish and US exporters to be acceptable ; whereas the proceeding should consequently be terminated in respect of exports originating in Romania, Spain and the USA, thereby excluding them from the application of the duty ; whereas, on the other hand, the Commission, after consultation, does not consider the undertaking offered by the Polish exporter to be acceptable, since the price it undertakes to respect would not in reality eliminate the injury, as it would not be increased to the appropriate level within an acceptable period of time ; whereas this undertaking should consequently be rejected ;

Whereas a period 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 trichloroethylene falling within Common Customs Tariff subheading 29.02 A II ex b) (NIMEXE code 29.02-33), originating in the German Democratic Republic and Poland.

2. The amount of the duty shall be as follows, by country of origin, expressed as a percentage of the price free-at-Community frontier duty unpaid :

— German Democratic Republic : 26·2 %,
— Poland : 29·5 %.

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, 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 duty shall be applicable for four months or until the adoption by the Council of definitive measures.

Article 3

The undertakings offered by Chimi importexport, Bucharest, Sociedad Anonima Cros, Madrid, and PPG Industries Inc., Pittsburgh Pa., are hereby accepted.

Article 4

The anti-dumping proceeding concerning imports of trichloroethylene originating in Czechoslovakia, Romania, Spain and the United States of America is hereby terminated.

Article 5

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, 28 July 1982.

For the Commission
Karl-Heinz NARJES
Member of the Commission