COMMISSION REGULATION (EEC) No 2667/82

of 4 October 1982

imposing a provisional anti-dumping duty on imports of certain sodium carbonate originating in Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union

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], as amended by Regulation (EEC) No 1580/82 [2], and in particular Article 11 thereof,

After consultations within the Advisory Committee set up under Article 6 of that Regulation,

Whereas a previous proceeding concerning light sodium carbonate was terminated by the acceptance of undertakings offered by the exporters in Bulgaria, the German Democratic Republic, Poland and Romania [3]; whereas the proceeding against the Soviet Union was terminated by the imposition of a definitive anti-dumping duty on imports from the Soviet Union [4];

Whereas in February 1982 the Commission received a new complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of all the Community producers of light sodium carbonate;

Whereas, since this complaint provided sufficient evidence of dumping and material injury resulting therefrom, the Commission accordingly announced by a notice published in the *Official Journal of the European Communities* [5], the re-opening of a proceeding concerning imports of light sodium carbonate originating in Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union;

Whereas the Commission officially so advised the exporters known to be concerned, as well as the exporting countries and the complainants;

Whereas the Commission has given all parties directly concerned the opportunity to make known their views in writing;

Whereas the exporter in Romania requested, and was granted, an opportunity to make known its views orally;

Whereas no information was submitted by, or on behalf of, any Community purchaser or consumer of light sodium carbonate;

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;

Whereas, in order to verify the export prices to the Community of the sodium carbonate under investigation and its resale prices in the Community, the Commission carried out inspections at the premises of the principal importers concerned, namely:

— Akzo Chemie BV, Amsterdam,
— CITIS, Paris,
— Cofrachim France SA, Courbevoie,
— Commercia GmbH, Hannover,
— Copedis France SA, Marcq-en-Baroeul,
— Hartmann GmbH, Hamburg,
— Krahn-Chemie GmbH, Hamburg,
— Marco Polo SpA, Milano,
— Menduga AG, Amstelveen,
— Peja Chemie BV, Arnhem,
— Rhône-Poulenc SA, Courbevoie,
— SICEA SpA, Calvenzano (BG),
— TR International, London,
— Woellner-Werke GmbH, Ludwigshafen;

Whereas the Commission requested and received detailed written submissions from the complainant Community producers with respect to the question of injury and causation thereof; whereas the Commission also carried out inspections at the premises of all the Community producers;

Whereas, in order to establish whether the abovementioned imports were dumped, the Commission had to take account of the fact that Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union are not market-economy countries;

Whereas, for that reason, the Commission had to base its calculations on the normal value in a market-economy country; whereas, in that connection, the complaint cited Austrian domestic market prices of the Austrian producer of sodium carbonate;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 303, 4. 12. 1979, p. 5.
(4) OJ No L 48, 22. 2. 1980, p. 1.
(5) OJ No C 93, 14. 4. 1982, p. 5.

Whereas one exporter disputed the choice of the Austrian domestic market prices because there is only one Austrian producer and asked for Community producers' selling prices to be taken as basis for normal value ;

Whereas other exporters disputed the choice of Austrian domestic market prices for the same reason but without being in a position to make alternative proposals ;

Whereas the Commission is satisfied that in Austria, as in the exporting countries, there are similar production processes based on the manufacture of sodium carbonate by synthetic rather than by natural means, that there are raw materials readily available, that there is production on a substantial scale and that price controls in Austria ensure that price levels are in a reasonable proportion to production costs ;

Whereas, therefore, the Commission is satisfied that normal value can be determined in an appropriate and not unreasonable manner by reference to the price at which sodium carbonate is sold for consumption on the domestic Austrian market ;

Whereas the Commission has consequently based its preliminary determinations of normal value on average 1981 ex-works prices in Austria for light sodium carbonate in bags and bulk ; whereas due allowance was made for differences affecting price comparability by deduction from the Austrian ex-works prices of the maximum discountrs granted on sales of the largest quantities, of a special discount given on bulk transport to the largest customers and of the maximum discount granted for immediate payment ; whereas, as regards equivalence of quality between light sodium carbonate from Austria and from the countries under investigation the Commission considered, on the basis of opinions expressed by the exporters, with the exception of the Soviet Union, that light sodium carbonate originating in the German Democratic Republic was of equal quality, that the product originating in Bulgaria justified a price differential of 3 % and that the products originating in Poland, Romania and the Soviet Union justified a price differential of 5 % as compared to the Austrian product ;

Whereas, in these circumstances, the Commission considers it reasonable to determine the normal value for the light sodium carbonate under investigation on the basis of the Austrian value, reduced by 3 % or 5 % as appropriate ;

Whereas exports from all the countries in question are made in bagged form and from two countries in bulk as well ; whereas, in certain cases, bagged light sodium carbonate is debagged in the Community and then resold in bulk ;

Whereas it appears therefore reasonable to determine the normal value on the basis of the form and, where necessary the quantities in which the light sodium carbonate is, in the case of each exporter, resold in the Community ;

Whereas actual prices were established where possible and, where appropriate, verified for each Member State where major imports were made and where data were available ;

Whereas due adjustments have, where necessary, been made to bring export price and normal value to a comparable basis ; whereas these adjustments concerned mainly payment and delivery terms, transport and insurance costs as well as different forms of packaging ;

Whereas a comparison of normal value and export prices for the year 1981 shows the existence of dumping in respect of imports from all countries under investigation, the dumping margin being equal to the amount by which the normal value as established above exceeds the prices for export to the Community ;

Whereas these margins, expressed as a percentage of the price free-at-Community-frontier, vary for Bulgaria between 53·99 % and 63·58 %, for the German Democratic Republic between 41·5 % and 62·9 %, for Poland between 20·32 % and 42·72 % and for Romania between 40·01 % and 41·46 % ; whereas for the Soviet Union, for which prices were verified by the Commission on only one Community market, the dumping margin is 56·6 % ;

Whereas, as regards the injury caused to the Community industry, the evidence available to the Commission shows that imports of light sodium carbonate increased from 235 000 tonnes in 1979 to 260 000 tonnes in 1981 and reached 86 000 tonnes in the first quarter of 1982 ; whereas the share of the Community market held by such imports increased from 13·8 % in 1979 to 16·7 % in 1981 and to 21·6 % in the first quarter of 1982 ; whereas the Commission's best estimate suggests that the market share held by such imports in the second quarter would show a further increase ; whereas the share of the Community market held by the Community producers declined from 82·9 % to 76·2 % over the same period, the remainder being made up of imports from third countries ;

Whereas, with the exception of sales in bulk in one Member State and of light sodium carbonate originating in one country only, the resale prices in the Community of the imported light sodium carbonate under investigation are lower than those of the producers in the Community by amounts lower than the dumping margins ;

Whereas one exporter objected to the fact that the proceeding was directed against exports of light sodium carbonate only and thus only took into account the situation as regards the production of light sodium carbonate by the Community industry; whereas, however, the Commission is satisfied that available data permit the separate identification of light sodium carbonate and that sodium carbonate in light and dense forms is not at random interchangeable by the end user and that, therefore, light and dense sodium carbonate are not like products within the meaning of Article 2 (12) of Regulation (EEC) No 3017/79;

Whereas, as regards the impact on the Community industry, the evidence available to the Commission shows that the production of light sodium carbonate fell from 1 498 000 tonnes in 1979 to 1 294 000 tonnes in 1981 and reached 318 000 tonnes in the first quarter of 1982, a decrease in average monthly production over the period of 15·1 %; whereas average utilization of production capacity has fallen from 85 % to 72 % over the same period;

Whereas, in general terms, the Community industry has been more adversely affected by the loss of sales in bags than of sales in bulk;

Whereas the evidence available to the Commission shows that the Community producers competing in this market have been unable to raise their selling prices sufficiently to cover increases in production costs, especially the costs of energy, which represent over 40 % of the entire production costs and which increased, on a Community average, by at least 230 % between 1979 and 1981; whereas, on the best evidence available, the increase in export prices from the countries investigated was never more than 46 % and in some cases the 1981 export prices are below those of 1979; whereas the aforementioned factors have resulted in a severe erosion of the Community industry's profitability, with an increasing number of producers selling light sodium carbonate at a loss;

Whereas the Commission has examined other factors which, individually or in combination, may have adversely affected the Community industry, and in particular the volume and prices of imports from countries other than those under investigation, and the level of consumption in the Community;

Whereas imports of light sodium carbonate from countries other than those under investigation fell between 1979 and 1981, and the evidence available to the Commission suggests that their market share was not greater than 2·2 % in 1981; whereas the Commission consequently takes the view that such imports have not had any material adverse effect on the Community industry;

Whereas the level of consumption of light sodium carbonate was influenced by an increase in the recycling of glass and the general economic development; whereas average monthly Community consumption fell by 5·6 % between 1979 and the first quarter of 1982; whereas, however, this decline had a greater adverse affect on the Community producers, whose production fell by 15·1 % over the period, than on the dumped imports, which increased by 7·8 %, whereas the Commission considers that the decline in Community production would have been higher, had the Community producers not chosen to accept reduced profits or losses in order to maintain their traditional market position;

Whereas the Commission has consequently concluded that the dumped imports have been a cause of material injury to the Community industry; whereas the injury is proportionately higher on the market for bagged light sodium carbonate than for the bulk product;

Whereas the Bulgarian and Romanian exporters offered price undertakings regarding future exports to the Community; whereas, after consultation the Commission did not consider these undertakings acceptable;

Whereas, in these conditions and in order to prevent injury being caused during the investigation, the interests of the Community require immediate intervention in the form of the imposition of a provisional anti-dumping duty on imports of light sodium carbonate originating in the countries under investigation; whereas the rate of such duty, having regard to the extent of injury caused, should be less than the dumping margins provisionally established but adequate to remove the injury caused;

Whereas, in order to determine the amount of duty necessary to eliminate the injury, the Commission compared the Community producers' weighted average prices, costs and profit and loss conditions with the individual importers' costs and special marketing conditions, where available;

Whereas the provisional anti-dumping duty to be imposed on imports of the said product originating in the Soviet Union differs from the definitive duty imposed by Council Regulation (EEC) No 407/80; whereas, accordingly, the Council has by Regulation (EEC) No 2672/82 [1] repealed the said Regulation (EEC) No 407/80;

[1] See page 22 of this Official Journal.

Whereas the fact that much of the imported light sodium carbonate is debagged after importation into the Community in order to be sold in bulk renders it impracticable and inequitable to fix separate rates of duty for exports in bags and in bulk; whereas, however, the proportions per exporting country of light sodium carbonate finally sold on the Community markets in bags and in bulk have been established and have been taken into consideration, thus providing different injury elimination rates; whereas it is appropriate to supplement the variable duty by a specific duty in order to prevent circumvention of the provisional measures;

Whereas the Commission has concluded that injury would at present be removed if the amount of duty applicable to all imports of light sodium carbonate originating in the countries under investigation corresponded to 14·09 % for Bulgaria, 40·86 % for the German Democratic Republic, 9·68 % for Poland, 18·79 % for Romania and 37·26 % for the Soviet Union or to the amount by which the free-at-frontier price, before duty, to the first importer in the importing Member State is less than 113·85 ECU for Bulgaria, 127·24 ECU for the German Democratic Republic, 113·85 ECU for Poland, 117·62 ECU for Romania and 129·6 ECU for the Soviet Union, where such difference in value is greater than the abovementioned percentages;

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

The Commission Decision of 4 December 1979 accepting the undertakings given respectively by exporters in Bulgaria, the German Democratic Republic, Poland and Romania in connection with the anti-dumping proceeding concerning exports of light sodium carbonate is hereby repealed.

Article 1

1. A provisional anti-dumping duty is hereby imposed on light sodium carbonate falling within Common Customs Tariff subheading 28.42 A ex II and corresponding to NIMEXE code 28.42-31, originating in Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union.

2. The amount of the duty shall be equal to:

(a) in the case of Bulgaria:

— 14·09 % of the price per tonne net, free-at-Community-frontier, before duty, or

— the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 113·85 ECU,

whichever amount is the higher;

(b) in the case of the German Democratic Republic:

— 40·86 % of the price per tonne net, free-at-Community-frontier, before duty, or

— the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 127·24 ECU,

whichever amount is the higher;

(c) in the case of Poland:

— 9·68 % of the price per tonne net, free-at-Community-frontier, before duty, or

— the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 113·85 ECU,

whichever amount is the higher;

(d) in the case of Romania:

— 18·79 % of the price per tonne net, free-at-Community-frontier, before duty, or

— the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 117·62 ECU,

whichever amount is the higher;

(e) in the case of the Soviet Union:

— 37·26 % of the price per tonne net, free-at-Community-frontier, before duty, or

— the amount by which the price per tonne net, free-at-Community-frontier, before duty, is less than 129·60 ECU,

whichever amount is the higher.

3. The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period for payment.

4. For the purposes of this Regulation, light sodium carbonate means non-compacted sodium carbonate with a specific weight of less than 0·700 kg/dm^3 and consisting of powder or grains smaller than 0·4 mm in diameter.

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

6. 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 3

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 one month of the entry into force of this Regulation.

Article 4

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, it shall apply for four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 4 October 1982.

For the Commission

Wilhelm HAFERKAMP

Vice-President