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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 90/82

of 18 January 1982

imposing a definitive anti-dumping duty on phenol originating in the United States of America

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

Whereas the Commission by Regulation (EEC) No 2017/81 [2] imposed a provisional anti-dumping duty of 19·9 % on imports of phenol originating in the United States of America, with the exception of exports made by the following companies for which the rate of duty was :

— Allied Corporation, Morristown, New Jersey : 12·2 %
— ICC Industries Inc., New York, NY : 10·5 %
— Monsanto Company, St Louis, Missouri : 9·7 %
— Shell Chemical Company, Houston, Texas : 8·8 % ;

Whereas exports made by Dow Chemical Company and Georgia Pacific Corporation were excluded from the provisional anti-dumping duty ;

Whereas the period of validity of this provisional duty was extended for a period not exceeding two months by Regulation (EEC) No 3197/81 [3] ;

Whereas, in the course of the subsequent examination of the matter, the interested parties had the opportunity to make known their views in writing, to be heard by the Commission and to develop their views orally, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to make a final determination ; whereas the complainants and most of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally ; whereas the Commission after a careful analysis of the information available decided to carry out further inspections at the premises of Allied Corporation (New Jersey), Shell Chemical Company (Texas), US Steel Corporation (Pennsylvania), Monsanto Europe SA (Brussels, Belgium) and Shell International Chemical Company (London, UK) ;

Whereas Georgia Pacific Corporation, which had been excluded from the provisional duty because its export sales were effected at prices above normal value, provided information showing that no exports to the Community had been made since imposition of the provisional duty ; whereas in these circumstances the preliminary determination and the exclusion of this firm from the application of the duty is confirmed by the Commission ;

Whereas Dow Chemical Company, the second company excluded from the provisional duty because of its price undertaking given to the Commission, whilst maintaining this undertaking, contests the validity of the preliminary determination of dumping made by the Commission on the grounds that its phenol exports to the Community are manufactured from cumene of Community origin, which in view of the small value added to it in the United States of America retains its Community origin ; whereas the Commission considers that, in accordance with Article 5 of Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the

[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No L 195, 18. 7. 1981, p. 22.
[3] OJ No L 322, 9. 11. 1981, p. 1.

origin of goods (1), the phenol exported by the company is of American origin because the last process by which it becomes a new product takes place in the USA ; whereas, moreover, upon entering the products for consumption in the Community the company itself declares the products to be of American origin ; whereas, in these circumstances the preliminary determination of dumping is now considered by the Commission to be definitive ;

Whereas, in seeking to determine the existence of dumping for the other companies whose exports had not been excluded the Commission compared the export prices to the Community with the normal value of the product in question ;

Whereas the Commission determined normal value on the basis of the domestic prices excluding, however, certain sales from the calculation of normal value, such sales having been considered not to have been in the normal course of trade either because of special conversion arrangements or of the particular competitive situation relating to a customer ; whereas for those exporters who did not sell on the domestic market, normal value was determined on the basis of the weighted average selling prices of their suppliers ;

Whereas export prices were determined on the price actually paid for on-specification products exported to the Community, except for Dow Chemical Company and Monsanto Company, whose exports were made to subsidiary companies in the Community and for which export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of actual costs incurred, as established during the investigation, and a profit margin of 5 % before taxation considered reasonable by the Commission ;

Whereas, however, the Monsanto Company has contested the profit margin used by the Commission and has presented eight different sources of information purporting to show that normal profit on phenol sales is less than 5 % ; whereas five of these sources are not engaged in dealing in phenol whilst one of them is a Community producer who has given completely contradictory information to the Commission ; whereas the remaining two companies who have supplied information are customers of Monsanto Company who, apart from their statements regarding profit margins made to Monsanto Company, refused all cooperation with the Commission in the proceedings ; whereas the Commission has itself requested and received information from independent importers and other sources which indicated that normal profit levels for importers or traders in phenol in the Community may vary between 1 % and 10 % ; the Commission concluded, therefore, that in view of the widely divergent views presented, it is impossible to make a general estimate of profit margins since the amount depends on specific circumstances ; in this context the size and structure of Monsanto's operations in the Community, the degree of capital investment, and the services which they carry out has to be borne in mind and compared with the less sophisticated and more rudimentary organization of smaller brokers or traders ; taking all this into account the Commission considered that the minimum profit level which should be reasonably used would be the average of the range of margins which it obtained as a result of its enquiries ;

Whereas in those cases where producers did not sell directly to the Community the export price was taken as being that at which they sold to traders or dealers for onward export to the Community ;

Whereas the comparisons made for the year 1980 showed that dumping occurred in both halves of the year ; whereas, however, since the most serious injury was shown to have taken place during the last half of 1980, it was considered that the dumping margins established for this period should be determinant in calculating the anti-dumping duty applicable to those companies which exported to the Community during this period ; whereas, for those companies which had only exported to the Community during the first six months of 1980 this latter period was considered to be the investigation period ; whereas account was taken, where appropriate, of differences affecting price comparability such as differences in conditions and terms of sale and differences in level of trade relating in particular to transport, payment terms and selling costs ;

Whereas for those companies which only exported to the Community during the first half of 1980 the following weighted average dumping margins were finally established :

— Allied Corporation : 12·2 %
— ICC Industries Inc. : 10·5 %
— Monsanto Company : 6·5 % ;

Whereas for these companies which exported during both halves of 1980 the following weighted average dumping margins were finally established :

	1st half 1980	*2nd half 1980*
Shell Chemical Company	4·2 %	0
US Steel Corporation	6·2 %	14·1 %

Whereas, for those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the preliminary investigations, dumping was determined on the basis of the facts available ; whereas, in this context, it had to be borne in mind that the complaint alleged dumping margins varying from 25 to 32 % ; whereas, however, the Commission considered that the results

(1) OJ No L 148, 28. 6. 1968, p. 2.

of its investigation provided a more accurate determination of the level of dumping; whereas, therefore, in making its choice between the different dumping margins determined the Commission considered that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the highest dumping margin of 14·1 % determined with regard to an exporter who had fully cooperated;

Whereas with regard to injury caused by the dumped imports to the Community industry, the Commission has re-examined and where necessary revised all the relevant data for 1980;

Whereas imports of phenol of US origin increased from 50 683 tonnes in 1979 to 72 173 tonnes in 1980; whereas it was shown that the majority of the imports during 1980 were made at dumped prices; whereas the share of the free i.e. non-captive market, held by US imports amounted to 20·5 % in 1978, 16·4 % in 1979 and 24·0 % in 1980; whereas the total market share of all these imports rose from 6·7 % in 1978 to 8·8 % in 1980;

Whereas this increase in imports amounted to approximately 47 % in the first half of 1980 and 34 % in the second half of 1980 compared with the same periods in 1979; whereas the Community producers' share of the free market fell from 78·1 % in 1979 to 52·5 % in the first half of 1980 as a result of the increased imports; whereas this increase in imports at mainly dumped prices led to severe price depression on the Community market; whereas despite assertions to the contrary by US Steel the Commission has established that the selling prices of US producers undercut EEC producers during every month of 1980 and that undercutting was most severe during the second half of 1980; whereas despite its attempts to meet low prices from US suppliers in the second half of 1980 the Community industry only regained part of the free market lost in the first six months of the year and finished the year 1980 with only 69·4 % of this market; whereas as a result of the above Community producers suffered very heavy losses or greatly reduced profits; whereas the Commission found that for the majority of these producers the average profit before tax of 1.5 % on turnover earned in 1979 became a loss of 10 % on turnover in 1980;

Whereas production of phenol in the Community fell from 944 639 tonnes in 1978 to 816 781 tonnes in 1980 and capacity utilization fell from 72 % to 59 % during the same period;

Whereas the Commission has considered the injuries caused by other factors which, individually or in combination, are also affecting the Community industry; whereas it has determined that whilst total consumption in the Community has diminished from 913 904 tonnes in 1978 to 820 020 tonnes in 1980, production has fallen more than could be accounted for by the decrease in consumption; whereas meanwhile free market consumption has increased during the same period from 298 000 tonnes to 301 000 tonnes; whereas moreover, whilst imports from countries other than that named in the complaint have increased, from 3 512 tonnes in 1978 to 19 950 tonnes in 1980, they have been at considerably lower volume than those from the United States of America and have been at prices similar to those obtained by the Community industry; whereas the volume of non-dumped imports represented only 31 % of total imports of phenol for 1980;

Whereas the impact of the non-dumped imports on the phenol market in the Community and the effect of the contraction in demand have been isolated from the impact of the dumped imports; whereas the substantial and sharp increase of imports of dumped phenol since 1978, and in particular in 1980, and the extremely low prices at which the product has been offered for sale in the Community in the second half of 1980 by American exporters has led the Commission to conclude that the injury caused to the Community industry concerned by the dumped imports taken in isolation should be regarded as material;

Whereas, in these circumstances, protection of the Community's interests call for the imposition of a definitive anti-dumping duty on imports of phenol originating in the United States of America which, having regard to the extent of the injury caused, should be equal to the dumping margins established, and for the definitive collection up to the rates definitely determined, of the amounts secured by way of provisional anti-dumping duty;

Whereas, prior to the introduction of the provisional anti-dumping duty, the Commission accepted an undertaking entered into by Dow Chemical Company; whereas it is, consequently, appropriate to continue to exclude import of the products manufactured and exported by this company from the application of the anti-dumping duty;

Whereas United States Steel Corporation meanwhile has undertaken to cease its exports to the Community; whereas the Commission considers this undertaking to be acceptable; whereas it is consequently appropriate to exclude the imports of the products manufactured and exported by this company from the application of the duty; whereas another American producer, General Electric Co. (Massachusetts), which has never exported to the EEC, offered an undertaking not to export in the future at a price below the prevailing normal value at the time of export; whereas the Commission considers this undertaking to be acceptable; whereas it is, consequently, appropriate to exclude for the future the products manufactured and exported by this company from the application of the duty,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on phenol falling within Common Customs Tariff subheading ex 29.06 A I and corresponding to NIMEXE code ex 29.06-11, originating in the United States of America.

2. This duty shall not apply to phenol manufactured and exported by Dow Chemical Company, General Electric Company, Georgia Pacific Corporation, Shell Chemical Company and United States Steel Corporation.

3. The rate of the duty shall be 14·1 % on the basis of the customs value determined in accordance with Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (1), except for exports made by the following companies for which the rate of duty shall be :

— Allied Corporation :	12·2 %
— ICC Industries Inc. :	10·5 %
— Monsanto Company :	6·5 %.

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

Article 2

The amounts secured by way of provisional duty pursuant to Regulation (EEC) No 2017/81 shall be definitively collected up to the rates set out in paragraph 3 of Article 1 above.

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 January 1982.

For the Council

The President

L. TINDEMANS

(1) OJ No L 134, 31. 3. 1980, p. 1.