COMMISSION REGULATION (EEC) No 163/83

of 21 January 1983

imposing a provisional anti-dumping duty on 4,4'-Isopropylidenediphenol originating in 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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 11 thereof,

After consultations within the Advisory Committee set up under the said Regulation,

Whereas in April 1982 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (Cefic) on behalf of Progil-Électrochimie (Progelec), the only Community producer active on the free market — excluding the producers linked with American exporters; whereas this Community producer alone accounts for some 20 % of the Community production of bisphenol A and has a production capacity much greater than the volume of the free market;

Whereas the complaint contained evidence of the existence of dumping and of material injury resulting therefrom; whereas such evidence was considered sufficient to justify initiating a proceeding; whereas the Commission accordingly announced, in a notice published in the *Official Journal of the European Communities* (3), the initiation of an anti-dumping proceeding concerning imports into the Community of bisphenol A, falling within subheading 29.06 B IV of the Common Customs Tariff and corresponding to NIMEXE code 29.06-37, originating in the United States of America and commenced its investigation;

Whereas the Commission officially so advised the exporters and importers known to be concerned, as well as the United States Government;

Whereas the Commission has given all the parties concerned the opportunity to make known their views in writing and to request an oral hearing;

Whereas all the United States exporters — with the exception of Union Carbide Corporation, New York — and all the importers known to be concerned have taken the opportunity to make known their views in writing; whereas the main exporter, United States Steel Corporation, Pittsburgh, Pennsylvania, and one of the importers, Consolco NV, Amsterdam, the Netherlands, have requested and been granted an oral hearing;

Whereas two Community end-users of bisphenol, Scado NV, Zwolle, the Netherlands, and Hoechst Holland NV, Weert, the Netherlands, have taken the opportunity to make known their views in writing;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought to obtain and verify all the information it deemed to be necessary and carried out inspections at the premises of the following undertakings:

— Community producers:

  — Progil-Électrochimie (Progelec), Courbevoie,

  — Shell Chemical International Trading Co., London;

— Exporter:

  — United States Steel Corporation, Pittsburgh, Pennsylvania;

— Importers:

  — Raab Karcher & Cie, Essen,

  — Chimilux, Paris,

  — Usvico Spa, Milan;

Whereas the Commission sought and obtained very detailed information in writing, from the Community complainant producer regarding the question of injury and the causes thereof, from the main United States exporter, United States Steel Corporation, from all the identified importers, and lastly from certain non-complainant Community producers linked with United States exporters; whereas the information thus obtained has, where necessary, been checked by the Commission;

Whereas the period of investigation adopted by the Commission to assess the existence of dumping was the 12 months up to 31 March 1982;

Whereas during that period the imports originating in the United States of America corresponded almost exactly with the exports to the Community effected by United States Steel Corporation;

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

Whereas, in order to establish whether dumping had been carried out by the United States of America the Commission, with a view to establishing the normal value, requested the sole exporter during the investigation period to communicate to it details of its sales on the United States domestic market to customers with which it has no business connections, or details of its production costs ;

Whereas it is necessary to make a distinction, both in the United States of America and in the Community, between two standard qualities of bisphenol, namely the 'polycarbonate' and 'epoxy' qualities ; whereas, in addition, when the production installations are not operating correctly — normally limited to the start-up or re-start-up periods — bisphenol is also produced which does not meet either the 'polycarbonate' or 'epoxy' specifications and is referred to as 'off spec' bisphenol ;

Whereas the United States exporter refused to divulge either the prices for its sales on the domestic market or details of its production costs, maintaining :

— that the standard quality bisphenol sold on the United States market was not a like product within the meaning of Article 2 (12) of Regulation (EEC) No 3017/79 to that exported to the Community market,

— that it was impossible for it to market its 'off spec' bisphenol on the United States domestic market and that all of its 'off spec' production was exported to the Community to be sold there at a price below that of the two standard qualities, a price reflecting, in the exporter's view, the lower quality of the product ; whereas, therefore, a similar product marketed on the United States market did not exist for 'off spec' bisphenol either ; whereas, consequently, the normal value had to be calculated for each of these three categories on the basis of the price of the similar product, in other words, according to the exporter, on the basis of the export prices for United States bisphenol exported to European countries that were not members of the Community (Scandinavian countries and Spain) ;

Whereas, following a detailed examination of the technical specifications of the 'polycarbonate' and 'epoxy' qualities produced by both the exporter in question and the complainant Community producer and also by certain other Community producers linked with United States exporters, the Commission is of the opinion that the few differences noted between the specifications for the United States and Community markets (essentially norms concerning the crystallization point, the levels of phenol, iron and ash and the colouration norm) are minimal ; whereas the said differences could not therefore, on the basis of the information available, justify the conclusion that the bisphenol sold in the United States of America does not have characteristics closely resembling those of the product sold in the Community ; whereas, in addition, a thorough examination of the results of the analyses carried out by the United States exporter on each consignment of 'polycarbonate' and 'epoxy' bisphenol exported to the Community during the investigation period has strengthened the Commission's conviction that the standard quality bisphenol sold on the United States market is indeed a product similar to that exported to the Community ;

Whereas a proportion of the bisphenol originating in the United States of America imported by the Community was invoiced by the United States exporter as being 'off spec' bisphenol — i.e. not corresponding to the 'polycarbonate' or 'epoxy' specifications ; whereas the suggestion put forward by the United States exporter that the normal value for this type of bisphenol should be the export prices to certain third countries is unacceptable to the Commission since it is quite possible that such sales themselves involve dumping ;

Whereas, therefore, in the complete absence of any data from the United States exporter on its domestic sales or its production costs, both as regards the 'polycarbonate' and 'epoxy' qualities and the sales invoiced as 'off spec', the Commission had no alternative but to establish the normal value on the basis of the data available, namely :

— for bisphenol meeting the 'polycarbonate' or 'epoxy' specifications, to take the normal value indicated in the complaint — namely the estimated United States ex-works price for bisphenol of the epoxy quality, normally cheaper than the polycarbonate quality, packed in bags (as are the exports to the Community) — a normal value which was, moreover, not challenged by the United States exporter,

— for the bisphenol invoiced as 'off spec', the production costs of which can be considered as identical to those of the above standard qualities — again to take the normal value indicated in the complaint ;

Whereas, as regards the export price, the Commission took the price actually paid or to be paid for exports to the Community, as verified in the exporter's documents ; whereas a number of standard adjustments were made, in agreement with the exporter, so as to calculate an export price at the ex-works stage ; whereas the Commission accordingly took account, on the basis of verified information, of the terms of payment, the transport costs up to the Community frontier and ancillary costs such as insurance premiums and warehousing costs ;

Whereas, as regards the other exporting undertakings of which the Commission was informed, the preliminary results of the investigations were as follows :

— General Electric Co. (Indiana) has not exported any bisphenol to the Community since 1979, but its European subsidiary, General Electric Plastics BV has a captive use for this product,

— Shell Chemical Co. (Texas) has not exported any bisphenol since 1980, but its European subsidiary, Shell International Chemical Company Limited, has captive uses and is active on the Community free market,

— Dow Chemical Co. (Michigan) has not exported to the Community since 1978, but its European subsidiary, Dow Chemical (Nederland) BV has a captive use for bisphenol and is active on the Community free market ;

Whereas the determination of dumping was therefore carried out on the basis of a comparison between the normal value as defined above at the ex-works stage and the export prices on the main Community markets at the same stage during the period of investigation ; whereas the comparison was carried out for both the 'polycarbonate' and 'epoxy' qualities and for bisphenol invoiced as 'off spec' ; whereas a monthly comparison was carried out, using the weighted averages where appropriate ;

Whereas, in the light of the information in its possession, the Commission did not find any differences between the technical characteristics of the bisphenol sold on the United States market and that exported to the Community which could significantly affect the comparability of the prices ; whereas, in any event, the United States exporter did not put forward any arguments or evidence demonstrating the need for a price adjustment ;

Whereas the preliminary examination of the above facts revealed that dumping was being practised in respect of the imports covered by the investigation, originating in the United States of America ;

Whereas the extent of the dumping varied according to the Community Member State of destination ; whereas the dumping margins, being equal to the difference between the normal value as defined above and the export prices of bisphenol to the Community, amounted to the following percentages of the cif free-at-Community frontier price, not cleared through customs : weighted averages of 49·1, 47·4, 25·3 and 23·5 % for sales on the French, Netherlands, Italian and German markets respectively, or, for the Community as a whole, weighted averages of 22·9 % for the 'polycarbonate' quality, 29·6 % for the 'epoxy' quality and 83·1 % for the bisphenol invoiced as 'off spec', with an overall weighted average of 40·0 % for all imports of United States bisphenol into the Community during the period of investigation, lastly, a maximum margin of dumping of 88·5 % for certain transactions ;

Whereas, for those exporters who neither replied to the Commission questionnaire nor made themselves known in the course of the preliminary investigation, the margin of dumping was determined on the basis of the facts available ; whereas the Commission considered that the results of its investigation provided an appropriate basis for determination of the level of dumping and that, in addition, it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the figure of 40·0 %, the level calculated for the main exporter at whose premises the Commission had been able to carry out certain checks ;

Whereas, with regard to the injury caused to the Community industry by the dumped imports, the evidence available to the Commission shows that the total volume of imports into the Community of bisphenol originating in the United States of America went from (*) tonnes in 1978 to (*) tonnes in 1980 and (*) tonnes in 1981, and rose again to (*) tonnes for the first six months of 1982 ; whereas the average annual rate of increase of such imports was therefore 58 % over the period 1978 to 1982 ; whereas, correlatively, the share of the free market held by these imports increased considerably, from 2·9 % in 1978 to 20·1 % during the first six months of 1982 ;

Whereas the penetration of the dumped imports varied according to the Member State ; whereas penetration was particularly great in France, reaching 47·9 % of the free market during the first quarter of 1982 ;

Whereas the Community industry, the injury to which has to be established, does not include the producers linked with United States producers ;

Whereas a thorough examination of the prices of imports of bisphenol originating in the United States of America, at the free-at-Community frontier stage, revealed that prices on the Community market were pushed down between the first quarter of 1980 and the first quarter of 1982, which obliged the Community industry to align its prices on those of the United States imports and prevented it from bringing in the price increases that would have been introduced otherwise in the light of the increase in its cost prices ;

(*) Confidential figures.

Whereas, despite the alignment of the complainant Community producer, the resale prices of the United States imports were up to 2 % lower than the prices charged by the said Community producer; whereas, moreover, the resale prices of these imports were lower than the minimum level required to enable the Community industry to cover its production costs;

Whereas, having regard to the impact of such imports on the Community industry, it emerges from the information verified by the Commission that the complainant producer's production of bisphenol fell from (*) tonnes in 1979 to (*) tonnes in 1981 and to (*) tonnes during the first quarter of 1982, a reduction of more than 25 % in the annual rate of production between 1979 and the beginning of 1982; whereas that reduction in production was greater than the estimated percentage drop in consumption on the free market in the Community during the same period; whereas the average rate of utilization of production capacity fell from (*) in 1979 to (*) in 1981 and to (*) for the first three months of 1982;

Whereas the massive intrusion on the Community market in 1980 of United States bisphenol — whose share of the free market increased from 3·6 % in 1979 to 20·8 % in 1980 — coincided with a drastic decline in the Community industry's sales; whereas, during 1981 and the first quarter of 1982, the complainant Community producer, despite alignment of its prices on the resale prices of the dumped imports, was only able to bring its sales up to a volume still 7·9 % below that achieved in 1979;

Whereas any increase in the market share held by the complainant Community industry has been limited by the penetration of the dumped imports;

Whereas the pressure on the Community industry's selling prices brought about by these imports and the drop in production have considerably eroded its profitability, to the extent that the complainant Community producer suffered financial losses in respect of bisphenol in 1980 and 1981;

Whereas the Commission has examined the other factors which, individually or collectively, also prejudice Community production; whereas it has in particular considered the prices and volume of imports against which there is no allegation of dumping and the trend of the demand for bisphenol in the Community;

(*) Confidential figures.

Whereas the volume of imports originating in countries not accused of dumping was low during the investigation period and indeed fell from approximately 2 600 tonnes in 1979 to 1 200 tonnes in 1981 and only rose to 1 300 tonnes during the first half of 1982; whereas, in addition, according to the information available to the Commission, the bulk of these imports do not appear on the Community free market;

Whereas the evidence available to the Commission shows that the demand for bisphenol on the Community free market fell from approximately 25 000 tonnes in 1979 to 22 000 tonnes in 1980 (a drop of 12 %) and subsequently remained stable; whereas, although this reduction in free consumption undoubtedly had some impact on the Community industry, the losses of sales suffered by the complainant producer in 1980 (13·5 % below the 1979 level) were far in excess of the drop in demand, and coincided with the massive arrival on the Community free market of United States bisphenol; whereas, in addition, it has been clearly established that the contraction of the free market since 1979 has hit the Community industry harder than it has imports of United States bisphenol;

Whereas, therefore, while recognizing that certain factors other than dumped imports have clearly caused injury to the Community industry, the Commission is convinced, on the basis of the evidence in its possession, that the injury caused during the investigation period by the increase in dumped imports and by the resulting downward pressure on prices, judged in isolation, must nevertheless be considered substantial;

Whereas, in these circumstances and in order to prevent injury being caused during the investigation, the interests of the Community call for immediate action involving the imposition of a provisional antidumping duty on imports of bisphenol originating in the United States of America; whereas the Commmission considers that a duty of 37·6 %, amounting to less than the margin of dumping established, should suffice to eliminate the injury caused to the Community industry by the dumped imports, the duty being based on the price required to ensure that the Community industry no longer has to sell its bisphenol at a loss and can make a reasonable profit;

Whereas, in this context, the Commission examined the effect of possible protective measures on derived products mainly incorporating bisphenol; whereas the examination of the said effect and the rate of the provisional duty did not lead to any different conclusions;

Whereas General Electric Co. offered an undertaking not to sell in future at a price lower than the normal value prevailing at the time of exportation ; whereas Shell Chemical Co. also made known its intention to give a price undertaking ; whereas the Commission considers that these undertakings cannot be accepted ;

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 4,4'-Isopropylidenediphenol falling within subheading 29.06 B IV of the Common Customs Tariff and corresponding to NIMEXE code 29.06-37, originating in the United States of America.

2. The provisional duty shall be 37·6 % of the free-at-Community frontier price, not cleared through customs.

The free-at-Community frontier price, not cleared through customs, shall be net if the terms of sale provide that payment shall be made within 30 days following the date of consignmnt ; it shall be increased by 1 % for each month for which payment is deferred.

3. The provisions in force with regard to customs duties shall apply to the provisional 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.

Article 3

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, this Regulation shall be applicable until the adoption by the Council of definitive measures, and in any event for a maximum period of four months.

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

Done at Brussels, 21 January 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President