COUNCIL REGULATION (EEC) No 2024/83

of 18 July 1983

establishing a definitive anti-dumping duty on 4,4'-isopropylidenediphenol 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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission, after consultation of the Advisory Committee set up under the said Regulation,

Whereas :

A. Provisional measures

1. Commission Regulation (EEC) No 163/83 (3) imposed a provisional anti-dumping duty on imports of 4,4'-isopropylidenediphenol (commonly known as 'bisphenol') originating in the United States of America. In view of the counter-arguments presented in particular by the principal United States exporters, US Steel Chemicals, and by General Electric US and General Electric Plastics BV, the Commission notified the exporters concerned of its intention to extend the provisional duty for a period of two months to enable the facts to be finally established. Since the exporters, who accounted for virtually the whole of the trade in question, did not raise any objection, the provisional duty was extended, by Council Regulation (EEC) No 1281/83 (4), for a period not exceeding two months.

B. Procedure for finally establishing the facts

2. Following the imposition of the provisional anti-dumping duty, the principal United States exporter, US Steel Chemicals, Pittsburgh, Pennsylvania, and the European subsidiary of another United States exporter, General Electric Co. (Indiana), requested and were granted a hearing.

These companies and a Community end-user of bisphenol Hoechst Holland NV, Weert, Netherlands, also took the opportunity of making known their views in writing.

3. In the light of the information available to it at that time the Commission sought and obtained further information from the complainant producer, Progelec — on behalf of which the European Council of Chemical Manufacturers' Federations (Cefic) had lodged the initial complaint — and from other non-complainant producers linked with United States exporters, namely General Electric Plastics BV, Shell International Chemical Company, Dow Chemical GmbH and Dow H. und V. GmbH. The Commission also contacted certain Community consumers of the product in question, which then gave their views on the duty.

After undertaking a detailed examination of the information thus collected, the Commission made an inspection visit to the complainant and the premises of Shell ICC, London, United Kingdom.

4. During the further examination of the facts, conducted after the duty had been imposed, the principal parties concerned were informed of the grounds on which definitive determination was envisaged.

5. The arguments put forward by the parties concerned following the introduction of provisional measures dealt primarily with :

— the comparability of the products in question,

— the determination of the dumping margins, in particular with regard to 'off spec',

— the determination of the injury caused by the dumped imports, the main points raised in this respect being the volume of imports in relation to Community consumption, the impact of those imports on the complainant producer's prices and other factors which could also have given rise to the injury in respect of Progelec.

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 23, 26. 1. 1983, p. 9.
(4) OJ No L 136, 25. 5. 1983, p. 12.

C. Like product

6. With regard to standard-quality bisphenol (polycarbonate and epoxy), the argument that bisphenol of this quality sold on the United States market was not a like product within the meaning of Article 2 (12) of Regulation (EEC) No 3017/79, i.e., identical to that exported on to the Community market, has been withdrawn by the United States exporting party.

   The argument put forward instead is that, within the first quality, 'polycarbonate' and 'epoxy' bisphenols are not alike.

7. With regard to 'off spec' bisphenol, the position of the principal United States exporter, US Steel, is completely unchanged, namely that:

   — 'off spec' is a product which cannot be regarded as being similar to standard quality bisphenol,

   — it is a non-reproducible product — since it results from interruptions in the manufacturing process — of a quality very inferior to standard bisphenol,

   — failure to satisfy any one of the criteria generally used in the commercial specifications for first-quality bisphenols was enough to downgrade the product, limit the number of applications and therefore lower its market value,

   — lastly, a very small number of end-users was able to use this product because of its characteristics.

8. The further investigation carried out by the Commission, for both the standard qualities and for 'off spec' bisphenol, showed that:

   (a) from the technical point of view, the main criteria determining the quality of bisphenol were the crystallization point, coloration, the levels of phenol and iron and, lastly, the presence of impurities;

   (b) the commercial specifications relating to these criteria for polycarbonate and epoxy bisphenols were, even in the opinion of the non-complainant producers linked to United States exporters and of the Community consumers of bisphenol, very much the same in the United States of America as in the Community;

   (c) with regard to 'off spec', failure to observe one or other of the commercial specifications relating to these criteria did not necessarily mean, for the end-user, that difficulties would be encountered in using the product but that generally the cost of using it would be higher, varying according to the application and, in particular, according to the impurities;

   the extra cost of using it, although very difficult to quantify, was generally low;

   this 'off spec' was supplied regularly and for a number of six-monthly periods between the end of 1980 and the beginning of 1982 to certain Community consumers and met the specifications agreed to by those consumers, thus contradicting the argument that it was non-reproducible and that each batch was 'unique' in nature;

   a large proportion of the Community end-users is able to use this 'off spec' bisphenol, for a substantial range of applications;

   the United States bisphenol invoiced as 'off spec' is of a quality which could, in certain batches, have been equivalent to that of epoxy-type first-quality bisphenol.

9. In view of these results the Commission is therefore convinced that all types of bisphenol marketed in the Community, whether of United States or Community origin, are products having at least 'characteristics closely resembling' one another.

   They are therefore indeed 'like products' within the meaning of Article 2 (12) of Regulation (EEC) No 3017/79.

D. Dumping

10. The principal United States exporter, US Steel, persisted in its refusal to divulge the prices for its sales on the domestic market or details of its production costs.

11. Since no new argument has been put forward regarding standard-quality bisphenol (polycarbonate and epoxy), the preliminary establishment of dumping is now regarded as final. The weighted average dumping margins, expressed as a percentage of the cif price free-at-Community frontier, not cleared through customs, are 22,86 % for polycarbonate quality and 29,61 % for epoxy quality.

12. With regard to bisphenol invoiced as 'off spec', in respect of which the Commission investigation has confirmed that it was indeed a like product with respect to the other types of bisphenol marketed in the United States and the Community, account must be taken, when establishing the

normal value, of the extra costs which may be involved for the end-user in employing bisphenol which does not completely satisfy the first-quality standards because of certain differences in the physical characteristics of the product.

The Commission has therefore endeavoured to determine the effect of those differences on the market value of 'off-spec' bisphenol in the United States. In view of the total lack of cooperation from the main exporter in question, referred to in point 10 above, and of the similarity of the US Steel and Progelec technologies, the Commission has therefore adjusted the 'off-spec' normal value in the light of the best information available. On the basis of the accounting principle followed by the complainant, for its second quality, namely that only the variable production costs are, in addition to a reasonable profit margin, charged to the substandard products — and by applying to the normal value of US $ 1 168,45 per tonne for first-premium-quality United States bisphenol the appropriate adjustment at the ex-works stage — the normal value for 'off spec' has been established at US $ 939,97.

On the basis of this normal value the average dumping margin for 'off spec' bisphenol finally amounts to 51,65 %.

13. Given the revision of the dumping margin for 'off spec' bisphenol, the overall average dumping margin for all the qualities together comes to 34,12 % for all United States bisphenol exports to the Community during the period covered by the investigation.

E. **Injury**

14. In the light of the information collected and verified after the provisional duty was imposed, a detailed review was undertaken of the Commission's provisional conclusions via an analysis of the bisphenol market.

This review confirmed the analysis of the injury set out in Regulation (EEC) No 163/83 and made it possible to be more specific about certain points relating to :

(i) the actual size of the free and captive markets, which made it possible for the market shares held by the various firms to be calculated exactly ;

(ii) the impact of United States imports on the complainant producer's prices ;

(iii) the role played by producers linked with United States exporters ;

(iv) generally speaking, the possible causes, other than dumped imports, of the injury affecting Progelec.

15. The Community's imports of bisphenol originating in the United States of America went from an average value of ... (*) in 1978/79 to ... (*) in 1980, fell again to ... (*) in 1981, to increase again to ... (*) in 1982, of which ... (*) was for the first six months alone.

Correlatively, the share of the total market (sales on the free market and internal use) (i.e., some 130 000 tonnes) accounted for by these imports rose from 0,61 % in 1978 to 3,73 % in 1980 and stood at 1,60 % in 1981 and 2 % in 1982. Since virtually all the imports from the United States were intended for the free market, which is the market on which the complainant operates, penetration of the product originating in the United States was also measured with reference to the free market in the Community : 2,70 % in 1978, 3,03 % in 1979, 16,23 % in 1980 — corresponding to US Steel's arrival on the Community market at the end of 1979 — 8,16 % in 1981 — which reflects US Steel's production difficulties that year — and a further increase to 16,6 % during the first half of 1982, when the effect of the notice initiating this proceeding had not yet been felt.

16. With regard to the impact of United States imports on the complainant producer's prices, it was alleged by the principal United States exporter that prices on this market were determined exclusively by the interrelation between Progelec — as the principal European supplier of bisphenol on the free market but which does not produce resins — and the other non-complainant European producers, Dow and Shell — which themselves are integrated downstream (resins) to a very large extent, with the result that they are principally interested in resins rather than bisphenol itself.

Consequently, it was alleged by US Steel that United States imports had not influenced free market prices in the Community at all, as the company's policy had been to align itself on the prices established by competition between Progelec, Dow and Shell.

(*) Confidential figures.

A comparison of the selling prices charged by the complainant producer and the non-complainant producers at the delivered-to-customer stage, in each of the principal Member States concerned with the prices of the dumped United States products clearly showed :

— that the massive intrusion of United States bisphenol on the Community market at the end of 1979 depressed prices throughout 1980 to a level which, in absolute terms, was 15 % below their previous level ; that, during 1980, the prices at which the United States imports were resold were more often than not 3 to 5 % below the prices charged by the complainant, despite the downward alignment of the latter's prices ; that United States bisphenol prices were, from the second quarter of 1980 to the last quarter of 1981 inclusive, below the minimum level required for the Community industry to cover its production costs, despite the reduction in the costs of its raw materials (benzene) throughout 1980 ; that the other non-complainant producers, which were integrated as regards resins — and hence less vulnerable than the complainant on the free market — evidently chose not to engage in a process of pushing down prices and consequently generally maintained their prices above those of US Steel and the complainants,

— that, as from the last quarter of 1980, the increase in the costs of supplying benzene, the raw material from which the complainant's bisphenol is derived, was such on the Community market that the complainant was unable to maintain its prices at the depressed level they had reached as a result of the competition from the United States in 1980 and had no alternative but to try and reflect its higher production costs in its selling prices ; this rise in prices in 1981 coincided with a temporary reduction in exports from the United States ; that, however, the increase in prices by the complainant was less than would have been warranted by the rise in its cost prices ; that during 1981 the prices at which United States imports were resold were more often than not 2 to 5 % below the prices charged by the complainant ; that, consequently, it was not until the first quarter of 1982 that the complainant ceased to sell its bisphenol at a loss.

It is therefore quite clear, in particular because of the price undercutting noted, that the part played by bisphenol imports from the United States — in respect of which dumping had been proved — was not a passive one on the free market in the Community. Although, until the middle of 1981, the general trend of the bisphenol market reflected the variations in the price of benzene and although subsequently the demand for epoxy resins exerted an underlying influence, it is nevertheless true that the fall in bisphenol prices during 1980 and up until the beginning of 1981 would not have occurred — at least not to the same extent — in the absence of the dumped imports from the United States. Since the integrated producers — Dow and Shell — were producers of resins rather than of bisphenol it was not in their commercial interests to lower their prices on the free market to a level which would enable their consumers — i.e., resin producers — to attack them on the market for their own resins.

17. With regard to the other factors also capable of causing injury to the complainant it was alleged by the United States party that, in general, Progelec's financial difficulties stemmed from the role played by the non-complainant producers, Dow and Shell, on the bisphenol market from the angle of both prices and production capacity or from that of the competition on non-Community markets.

(i) With regard to prices it has already been stated that in 1980 and for most of 1981 the attitude of the non-complainant producers had been not to get involved in pushing down prices. This was reflected in the fall in their share of the total market, which declined from 45,09 % in 1979 to 38,43 %, to rise again to only 42,11 % in 1981.

(ii) With regard to production capacity, which, it is alleged had become excessive before the arrival of US Steel as a result of the installation in Europe of non-complainant producers linked with United States producers, it should be noted that the average plant utilization rate was 71,6 % in 1979. However, with the flood of imports from the United States in 1980, this rate fell to 58,9 %, to climb back to only 60,8 % in 1981.

(iii) Lastly, it must be stressed that the competition from non-complainant producers affecting Progelec's sales outside the Community has steadily declined since 1979 as these companies' extra-Community exports fell from ...(*) in 1979 to ...(*) in 1980, ...(*) in 1981 and ...(*) in 1982, i.e., a 64,6 % fall in four years.

18. It was also alleged that, of the possible causes of injury to Progelec other than the imports in question, the decline in demand for bisphenol in the Community was at the root of the complainant's difficulties.

In this connection, information checked by the Commission shows that demand for bisphenol on the free market in the Community has declined to a much lesser extent than was initially estimated at the time of the provisional determination. Thus total sales on the free market fell from 29 414 tonnes in 1979 to 28 190 tonnes in 1980 (i.e., by 4,16 %) and to 27 271 tonnes in 1981 (only 7,28 % down on 1979).

Correlatively, the volume of the complainant producers' sales fell by 12,50 % in 1980 compared with 1979, despite the alignment of its prices on those of imports from the United States, and its market share fell from 49,13 % in 1979 to 44,87 %.

In 1981 the volume of Progelec's sales was up on 1980 but it stood at a level which was still 7,35 % below that for 1979, and the market share also rose but without returning to its 1979 level.

It is therefore clear that sales lost by the complainant producer in 1980 and, to a lesser extent in 1981, were well in excess of the fall-off in demand and coincided with the arrival of large quantities (4 575 tonnes) in 1980 of United States bisphenol on the free market in the Community.

Moreover, it is clear that the loss of the complainant's market share did not benefit the non-complainant producers, as is shown by the decline in the latter's market share from 45,09 % in 1979 to 38,43 % in 1980. Furthermore, it is probable that one of the factors responsible for this decline in the non-complainant producers' market share is, in addition to the impact of imports from the United States, the decision taken by these producers to process more bisphenol into pre-resins, this being reflected incidentally in the confidential figures which the Commission possesses regarding internal use.

Lastly, it has been clearly established that the moderate contraction of the free market since 1979 has affected the Community industry considerably more than imports of bisphenol from the United States.

19. Consequently, the facts as finally established (points 2 to 18) indicate that the injury caused by dumped imports of bisphenol originating in the United States must, judged in isolation, be regarded as material.

(*) *Confidential figures.*

F. Community interest

20. The principal United States exporter asserted, as did two Community end-users of bisphenol SCADO NV and Hoechst Holland NV, Netherlands, that the imposition of a definitive anti-dumping duty on imports of United States bisphenol would limit the supply possibilities of the consumers — which are also manufacturers of resins — and that in this respect such a definitive decision would be contrary to the interest of the Community.

21. In this context, the Commission re-examined the impact of any protective measures on derived products containing principally bisphenol and came to the conclusion that it was not in the interests of the Community to leave the main non-integrated European producer, the essential supplier of the free market, in a situation where it was totally vulnerable to imports which have been proven to have been dumped and which had caused it material injury. The protection of the interests of the Community industry therefore make it necessary to impose a definitive anti-dumping duty on imports of bisphenol originating in the United States of America.

G. Definitive duty

22. In the light of the facts as finally established and, in particular, the Community industry's production costs, the Commission re-examined the price needed to enable the Community industry to stop selling its bisphenol at a loss and to make a reasonable profit. In this context, it seemed fair to draw a distinction between first-quality products, on the one hand (polycarbonate and epoxy), and, on the other, bisphenol not satisfying the usual standards.

On this basis the Commission came to the conclusion that a definitive anti-dumping duty of less than the amount of the provisional duty should be sufficient to eliminate the injury done to the Community industry by the dumped imports.

H. Undertakings

23. An undertaking was offered by the principal United States exporter, US Steel. The Commission, following consultation felt that it should not, because of the features of the Community bisphenol market and the risks of circumvention, envisage the acceptance of such an undertaking.

24. With regard to the exporting companies which could not, because of the absence of exports during the reference period, be exonerated from the charge of dumping, the Commission determined that it was not appropriate to exclude them from the duty because of the likely impossibility for these companies to export competitively without dumping.

I. Collection of the amounts lodged by way of provisional duty

25. In view of the final establishment of dumping and of the material injury resulting therefrom, the sums lodged by way of security for the 37,6 % provisional anti-dumping duty must be collected up to the amount of the duty definitively imposed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 4,4'-isopropylidenediphenol, falling within subheading 29.06 B IV of the Common Customs Tariff and coresponding to NIMEXE code 29.06-37, originating in the United States of America.

2. The definitive duty shall be fixed, as a percentage of the net free-at-Community frontier price, not cleared through customs, at :

— 14,17 % for the 'polycarbonate' or 'epoxy' qualities,

— 36,65 % for bisphenol having other characteristics.

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 of the date of consignment ; 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 duty imposed in paragraph 1.

4. For the purposes of this Regulation only bisphenol having all the following characteristics will be regarded as bisphenol of 'polycarbonate' or 'epoxy' quality :

— crystallization point (dry basis) $> 155{,}0\ ^\circ C$,

— coloration in solution (25 g of product/35 ml methanol) $\leqslant 100$ APHA/HAZEN,

— phenol level $\leqslant 0{,}10$ %,

— iron level $\leqslant 1{,}5$ ppm,

— other impurities : none.

Article 2

The amounts secured by way of provisional anti-dumping duty in accordance with Commission Regulation (EEC) No 163/83 shall be definitively collected up to the amount of the duties definitively imposed in respect of the different qualities of the product, referred to in Article 1 (2) 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.*

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

Done at Brussels, 18 July 1983.

For the Council

The President

Y. CHARALAMBOPOULOS