COMMISSION REGULATION (EEC) No 290/83

of 2 February 1983

imposing a provisional anti-dumping duty on imports of urea ammonium nitrate solution fertilizer 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 provided for under the above Regulation,

Whereas in 1981 the Council, by Regulation (EEC) No 349/81 (3), imposed a definitive anti-dumping duty on imports of urea amonium nitrate solution fertilizer (UAN), originating in the United States of America, the level of duty being 6·5 % ;

Whereas this definitive anti-dumping duty did not apply to UAN exported by Agrico, who were found not to have dumped, nor to certain other exporters of UAN whose offers of price undertakings were accepted by Commission Decision 81/35/EEC (4) ;

Whereas three of these companies have since withdrawn from their price undertakings and the Council, following further investigation by the Commission, imposed definitive anti-dumping duties on those companies by Regulation (EEC) No 101/83 (5) ;

Whereas the Commission has also received a request from the Comité du marché commun de l'industrie des engrais azotés et phosphatés (CMC-engrais) on behalf of Community producers whose collective output constitutes the majority of Community production of the product in question that Regulation (EEC) No 349/81 and Decision 81/35/EEC be subject to review ; whereas this request was supported by evidence of renewed dumping by the United States exporters of UAN and of material injury resulting therefrom, which was considered sufficient to justify re-opening the proceedings ; whereas the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (6), the re-opening of the anti-dumping proceeding concerning imports into the Community of UAN, falling within NIMEXE code ex 31.02-90 and originating in the United States of America, and recommenced an investigation ;

Whereas the Commission officially so advised the exporters and importers known to be concerned as well as representatives of the exporting country ;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to request a hearing ;

Whereas some of the exporters and importers have made known their views in writing and have requested and been granted a hearing ;

Whereas the Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

EEC producers :

— BASF Aktiengesellschaft, Ludwigshafen, Germany,

— Ruhr-Stickstoff AG, Bochum, Germany,

— APC SA (Azote et produits chimiques), Paris, France,

— Compagnie française de l'azote (Cofaz), Neuilly-sur-Seine, France,

— Générale des engrais, Neuilly-sur-Seine, France,

— Société chimique de la Grande-Paroisse, Paris, France,

— Nederlandsche Stikstof Maatschappij, Brussels,

— Unie van Kunstmestfabrieken BV, Utrecht ;

EEC importers :

— Demufert SA, Brussels,

— Ferdis SA, Brussels ;

United States exporters :

— Agrico Chemical Company, Tulsa, Oklahoma,

— Transcontinental Fertilizer Company, Philadelphia, Pennsylvania ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 39, 12. 2. 1981, p. 4.
(4) OJ No L 39, 12. 2. 1981, p. 35.
(5) OJ No L 15, 19. 1. 1983, p. 1.
(6) OJ No C 179, 16. 7. 1982, p. 4.

Whereas the Commission provisionally determined normal value on the basis of the domestic prices of the sole producer, Agrico, who exported to the EEC and who provided sufficient evidence regarding these sales ; whereas the Commission is satisfied with the evidence supplied that these sales were made at price levels above all costs both fixed and variable normally incurred in the course of production ;

Whereas export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community ;

Whereas, in comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting price comparability where claims in this area could be satisfactorily demonstrated ; whereas adjustment was made to take account of differences in terms and conditions of sale and differences in the concentration of nitrogen in the product in question ;

Whereas, for the purposes of arriving at the most appropriate level at which to make the comparison, the Commission took account of the fact that Agrico supplied almost all its domestic customers ex-terminal, these storage terminals being situated in areas of high consumption and being supplied mostly by direct pipeline from the manufacturing plant and also by barge or truck ;

Whereas, additionally, the costs of operating these terminals were treated by Agrico as overheads and accordingly no allowance could be made for these costs ; whereas allowance was, however, made for the cost of transporting the product to the terminal, a similar deduction being made in the case of export sales for the cost of transport from the plant to a fob level ;

Whereas the above preliminary examination of the facts shows the existence of dumping in respect of Agrico's exports to the Community, the margin of dumping being equal to the amount by which the normal value as established exceeds the prices for export to the Community ;

Whereas the weighted average margin for Agrico was 4·14 % ;

Whereas, with regard to injury, the Commission investigation showed that Agrico's export to the Community increased by 203 % during the first four months of 1982 by comparison to the whole of 1981 and that all of the 1982 exports were made at dumped levels in contrast with those of 1981 which were not ; whereas the dumped shipments made by Agrico in 1982 taken on an annual basis accounted for some 9 % of Community consumption ; whereas, furthermore, these dumped imports taken together with the imports dumped by the three companies who were the subject of a Commission investigation following their withdrawal from price undertakings accounted for some 21 % of Community consumption in 1982 ;

Whereas the prices paid in the Community for the dumped products in question significantly undercut the prices of the Community producers ;

Whereas the impact on this Community industry has been that losses continue to be made on UAN sales ;

Whereas, in considering whether injury has been caused by other factors, the evidence available to the Commission shows that certain Community producers situated in the Netherlands have entered the market and increased their sales of UAN, particularly in France ; whereas, however, the investigation has shown that the low level of these producers' prices resulting in considerable losses was due to the fact that they had to compete with the dumped imports ; whereas, accordingly, injury caused by the dumped imports has been sustained by producers throughout the Community and the allegation of the exporters and importers concerned that any injury to French and German producers was solely as a result of increased sales of UAN from other Community producers cannot be supported ;

Whereas the exporters and importers concerned further alleged that the French producers, comprising 43 % of Community production of UAN, could not be considered to have sustained injury in view of the decision of the minister responsible for competition, as published in the French 'Bulletin officiel de la concurrence et de la consommation' of 12 December 1981, requiring an alteration of certain aspects of the French producers pricing policy regarding *inter alia* nitrogen based fertilizers ; whereas they further alleged that although this decision refers to both solid (mainly ammonium nitrate) and liquid (UAN) nitrogen based fertilizers this does not reduce its relevance since ammonium nitrate and UAN are effectively like products ; whereas, however, in its investigation, the Commission sought and verified data relating to production and sales of UAN, which data clearly permitted separate identification of the product concerned ; whereas the Commission is satisfied that in the course of this investigation it received correct information on the particular situation relating to Community producers of UAN ; whereas the Commission, in the light of this information, is satisfied that the dumped imports of UAN from the companies concerned have caused material injury to the Commu-

nity producers, including those in France ; whereas the Commission sees no contradiction between this specific injury finding regarding UAN and the decision of the French authorities which referred to the behaviour of fertilizer producers in relation to a much wider range of both phosphrous and nitrogen based fertilizers ;

Whereas the Commission, for the purposes of reaching a preliminary finding in the review procedure, received no new evidence regarding sales of UAN to the Community by United States exporters other than Agrico and accordingly has no reason to alter its view that the continued application of the existing duty was a requirement for the elimination of injury and the prevention of its recurrence ;

Whereas no representations have been received by the Commission from consumers in the Community ; whereas, in any event, the interest of consumers in the Community is not served in the long run by a Community industry weakened or reduced by persistent dumping ; whereas, in these circumstances, protection of the Community's interests calls for the imposition of provisional anti-dumping duties on urea ammonium nitrate solution fertilizer originating in the United States of America and exported by Agrico which, having regard to the extent of injury caused, should be equal to the dumping margin found ;

Whereas a period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on urea ammonium nitrate solution fertilizer, falling within subheading ex 31.02 C of the Common Customs Tariff and corresponding to NIMEXE code ex 31.02-90, exported by Agrico Chemical Company, Tulsa, Oklahoma.

2. The rate of duty shall be based on 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], and shall be 4·14 %.

3. The provisions in force for the application of customs duties shall apply to 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 by the Commission within one month of the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following 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 a period of 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, 2 February 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President

[1] OJ No L 134, 31. 5. 1980, p. 1.