COMMISSION REGULATION (EEC) No 2464/84

of 24 August 1984

imposing a provisional anti-dumping duty on imports of certain shovels originating in Brazil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 11 thereof,

After consultation within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

A. Procedure

(1) In October 1983, the Commission received a complaint lodged by the Deutscher Schaufel-Verband eV on behalf of German producers representing a major proportion of the Community production of the shovels in question. The complaint contained evidence of dumping and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of certain shovels made of iron or steel, falling within heading No ex 82.01 of the Common Customs Tariff, corresponding to NIMEXE code ex 82.01-10, originating in Brazil. The Commission then commenced an investigation.

(2) The Commission officially so advised the exporter and importer known to be concerned, the representatives of the exporting country and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing. All the parties concerned made their views known in writing and requested and were granted hearings.

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

EEC producer :

Idealspaten-Bredt KG, Herdecke, Federal Republic of Germany,

non-EEC exporter :

Metalurgica Timboense S/A, Timbo-Santa Catarina, Brazil.

(4) During the course of the investigation the exporter and importer claimed that the complainants were not entitled to lodge a complaint under the terms of Article 4 (5) of Regulation (EEC) No 2176/84. In this context they alleged that the estimate made in the complaint of the German share of total Community production far exceeded the real figure and therefore could not be called a major proportion of Community production.

(5) In this respect the Commission considers that, given the lack of published Community statistics for the product concerned, the complainants made a reasonable attempt at estimating the German share of total Community production. Though certain errors have been pointed out by the exporter and importer in the figures used by the complainants for this purpose, these do not alter the Commission's preliminary view that the collective output of the German producers constitutes a major proportion of the total Community production of the product concerned and that they are therefore entitled to lodge an anti-dumping complaint.

(6) The investigation of dumping covered the period 1 January to 31 December 1983.

B. Normal value

(7) The normal values were established on the basis of the actual prices of domestic sales in Brazil.

C. Export prices

(8) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 348 23. 12. 1983, p. 5.

D. Comparison

(9) The Brazilian exporter argued that, the export price and the normal value were not on a comparable basis, and that appropriate alowances should be made in accordance with Article 2 (10) of Regulation (EEC) No 2176/84 which provides for differences affecting price comparability.

(10) A request was made by the exporter for an adjustment to take account of the fact that quantities exported to the EEC had been much larger than those sold on the Brazilian domestic market. It stated that this adjustment should be made in the form of a theoretical discount which it claimed would be granted if the same quantities were sold domestically as were exported or by taking account of the cost savings made in the production of the larger quantities exported.

The Commission refused this claim for an adjustment on the grounds that an adjustment could not be granted for discounts not actually given and that, though the firm presented information purporting to show the cost savings made in the production of the larger quantities exported, the information as presented was not sufficient to convince the Commission that such an adjustment should be made.

(11) With regard to differences in conditions and terms of sale, adjustments were made for differences in payment terms, commissions, transport and port charges.

(12) The exporter also claimed that an adjustment should be made for the provision for bad debts made by them as required under Brazilian law.

The Commission has rejected this claim as this cost does not bear a direct relationship to the sales under consideration.

(13) The exporter also claimed that an adjustment should be made because Brazilian domestic prices are increased in advance to take account of the inflation which occurs between manufacture and sale. The exporter claimed that such an increase is not necessary for export sales because of the frequent devaluations of the Brazilian currency.

The Commission has rejected this claim as the comparison between domestic and export prices has to be made on the basis of the prices actually paid or payable in respect of transactions which took place at the same time.

E. Margin

(14) The above preliminary examination of the facts shows the existence of dumping, the net weighted average margin being 18,4 %.

F. Injury

(15) With regard to the injury caused by the dumped imports, the evidence available to the Commission shows that imports into the Community of the shovels in question rose from 35 tonnes in 1980 to 369 tonnes in 1983. In the Federal Republic of Germany, the only destination of these imports, this represented an increase in market share from 0,9 % in 1980 to 13,4 % in 1983.

It should be noted, however, that because import statistics are not available for shovels only, that consumption figures used to calculate market shares include significant quantities of spades and therefore the Brazilian share of the German market is understated.

(16) With regard to the prices at which the product in question has been resold on the German market the Commission has found that these are approximately 50 % below those charged by the German producers.

(17) With regard to the quality of the dumped shovels, the exporter and importer have claimed that they are inferior to those sold by the German producers. Conflicting evidence on this point has been submitted by both sides to the Commission.

The Commission is not convinced by the evidence presented by the exporter and importer in support of their allegations that the dumped product is of inferior quality but has, provisionally decided that, even if this argument was accepted and an adjustment made, the remaining price difference between the dumped product and the German shovels would still exceed the dumping margin provisionally established.

(18) The Commission has provisionally established that the extremely low prices and the sharply increased volume of the dumped imports has been a material factor in the reduction in output of 35 %, the reduction in sales of over 30 % and the significant decrease in market share suffered by the complainant producers between 1980 and 1983.

In addition, these imports have caused price depression which was particularly evident in 1983 and, consequently, the largest complainant producer moved from profitability in 1980 to the position of suffering heavy losses in 1983. With regard to the smaller producers, the Commission has noted that the situation is even more serious as they tend not to sell such a wide product mix as the main producer and depend for their continued survival on a stable market for shovels and sales at price levels which are sufficient to cover costs. In this respect the Commission has noted that one of the smaller producers has recently gone bankrupt.

(19) The Commission has also investigated whether the injury suffered by the complainant producers has been caused by factors other than the dumped imports, such as the trend in demand and the volume and prices of other imports.

The Commission's examination of these factors shows that while demand fell in the Federal Republic by 25 % between 1980 and 1983, Brazilian imports rose from an insignificant quantity in 1980 to the extent that exports from Brazil to that Member State in 1983 exceeded those from any country.

With regard to other imports which originate mainly in Eastern Europe, the Commission found that their volume, with the exception of exports from the German Democratic Republic, declined in line with the fall in demand and consequently their market share remained stable between 1980 and 1983. It was also found, from the information available, that these imports were, in general, priced at the cif Community frontier level above those originating in Brazil. Moreover, imports from Eastern Europe into the Federal Republic are subject to quantitative restrictions.

During the course of the preliminary investigation the exporter and importer alleged that, as the increased Brazilian market share in Germany had been gained at the expense of imports from Eastern Europe, any action against Brazilian imports would only lead to increased imports from these sources. In this respect the Commission's investigation showed that the increased Brazilian market share was gained almost exclusively at the expense of Community producers and that, given that the market share of Eastern European imports has remained stable over the last four years, there is no evidence to support the exporter's and importer's allegations.

The Commission also investigated claims that Italian shovels were being sold at particularly low prices in Germany and found that the Italian share of the German market has decreased by almost 45 % in the last four years. It also found from the available information that Italian shovels are, at the cif German frontier level, priced considerably above those originating in Brazil.

(20) Therefore the sharp increase in the dumped imports and the prices at which they are offered for resale in the Community have led the Commission to find that the effects of the dumped imports of certain shovels originating in Brazil must be regarded as a cause of material injury to the Community industry concerned.

G. Community interest

(21) After having considered both the interests of the Community and the dumping and the injury provisionally established, the Commission has come to the conclusion that action should be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty.

H. Rate of duty

(22) Having regard to the extent of the injury caused, the duty should correspond to the margin of dumping provisionally established.

(23) A period should be fixed within which the parties concerned may make their views known in writing and request an oral hearing,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of shovels made of iron or steel falling within heading No ex 82.01 of the Common Customs Tariff and corresponding to NIMEXE code ex 82.01-10, originating in Brazil.

2. The amount of the duty shall be equal to 18,4 % of the cif price duty unpaid.

3. The provisions in force concerning customs duties shall apply.

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 2176/84 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 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 2176/84 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, 24 August 1984.

For the Commission

Étienne DAVIGNON

Vice-President