COMMISSION REGULATION (EEC) No 2553/84

of 4 September 1984

imposing a provisional anti-dumping duty on imports of oxalic acid originating in Brazil, accepting an undertaking offered by the exporter in the German Democratic Republic of oxalic acid and terminating the proceeding regarding imports of oxalic acid from the German Democratic Republic and Spain

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 Articles 9, 10 and 11 thereof,

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

Whereas :

A. Procedures

(1) In February 1984 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations on behalf of producers of oxalic acid whose output constitutes a major proportion of Community production of the product 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 oxalic acid originating in Brazil, the German Democratic Republic (GDR) and Spain falling within subheading ex 29.15 A I of the Common Customs Tariff, corresponding to NIMEXE code ex 29.15-11, and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of Brazil and Spain and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

All known exporters concerned and some importers made their views known in writing. All such exporters have requested and have been granted hearings.

Submissions were also made by certain Community purchasers of oxalic acid.

(3) 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 :*

Rhône Poulenc, Paris, France ;

— *non-EEC producers :*

— Destilados Agrícolas Vimbodí SA, Tarragona, Spain,

— Explo Industrias Químicas e Explosivos SA, Lorena, Brazil ;

— *EEC importers :*

— Proimex, Milan, Italy,

— Faravelli, Milan, Italy.

The Commission requested and received detailed written submissions from the complainant Community producers, the exporters and several importers and verified the information therein to the extent considered necessary.

The investigation of dumping covered the period from March 1983 to February 1984.

B. Normal value

(4) Normal value was provisionally determined for the Spanish and Brazilian products on the basis of the domestic prices of those producers who exported to the Community. In both cases the Commission was satisfied that these prices were representative and covered all costs of production.

(5) In order to establish whether the imports from the GDR were dumped, the Commission had to take account of the fact that this country does not have a market economy and the Commission

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 67, 8. 3. 1984, p. 7.

therefore had to base its determinations on the normal value in a market-economy country; in this connection, the complainants had suggested the Spanish market. No objection was made to this suggestion.

The Commission is satisfied that between the GDR and Spain there are no extraordinary differences in production processes or scale of production and that in Spain price levels are in a reasonable proportion to appropriate costs.

The Commission therefore concluded that it would be appropriate and not unreasonable to determine normal value on the basis of Spanish domestic prices.

C. **Export price**

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

D. **Comparison**

(7) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability and in particular variations in payment terms. Comparisons were made as nearly as possible at the same time. This was particularly relevant for the Brazilian product in view of the extremely high rate of inflation in Brazil and the frequent devaluations of the Cruzeiros *vis-à-vis* the US dollar in which currency the export transactions were made.

All comparisons were made at an ex-works level.

E. **Margins**

(8) The above preliminary examination of the facts shows the existence of dumping in respect of the Brazilian and GDR exporters, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

These margins vary according to the exporter concerned, the weighted average margin for each of the exporters investigated being as follows:

— Brazil	57,9 %,
— GDR	15,2 %.

Spanish imports were found not to have been dumped.

(9) For those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the preliminary investigation, dumping was determined on the basis of the facts available. In this connection the Commission considered that the results of its investigation provided an accurate basis for determination of the level of dumping and that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the dumping margin determined with regard to exporters who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

F. **Injury**

(10) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports to the Community from Brazil and the GDR of oxalic acid increased from less than 1 200 tonnes in both 1980 and 1981 to approximately 2 000 tonnes in both 1982 and 1983 with a consequent increase in market share held by the exporting countries from 6 to 18 % in the same period.

The resale prices of these imports undercut the prices of the Community producers during the investigation period by approximately 15 % and were consistently lower than those required to cover the costs of Community producers and provide a reasonable profit.

(11) The consequent impact on the Community industry concerned has to be seen in the light of the effect of the anti-dumping measures taken with regard to Chinese [1] and Czech [2] imports in 1982 and to the cessation of production at the same time of an important EEC producer. The effect of these circumstances has led to an increase in the complainants' production, but since capacity utilization remains at below 50 % the resultant high unit cost combined with competition from increasing volumes of dumped imports has led to continued losses from the sale of oxalic acid in the Community.

(12) The Commission has considered whether injury has been caused by other factors such as the volume and prices of undumped imports and the stagnation of demand. However, consumption in the Community increased by 15 % between 1981 and 1983 while imports from countries not concerned with this proceeding declined during this period. The prices of these imports were

[1] OJ No L 148, 27. 5. 1982, p. 37.
[2] OJ No L 148, 27. 5. 1982, p. 51.

generally higher than those of the dumped imports although not necessarily reaching the level of the Community producers. Thus, the substantial increase in dumped imports from the countries concerned and the prices at which they are offered for sale in the Community led the Commission to determine that the effects of the dumped imports of oxalic acid originating in Brazil and the GDR, taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

G. Community interest

(13) Community processing industries have argued that the introduction of protective measures against Spanish imports of oxalic acid would not be in the Community interest because it would make them less competitive. Since, however, as a result of the preliminary investigation, anti-dumping measures will not be taken with regard to Spain and in view of the particularly serious difficulties facing the Community oxalic acid producing industry, the Commission has come to the conclusion that it is in the Community's interest that action be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should, in the case of Brazilian imports, take the form of a provisional anti-dumping duty.

H. Rate of duty

(14) Having regard to the extent of injury caused, the rate of such duty should be less than the dumping margin provisionally established but adequate to remove the injury caused by the dumped Brazilian imports.

(15) It was considered that if a duty exceeding the price undercutting practised by the Brazilian exporter were imposed, the effect might be that this exporter would be displaced from the market without relief to the Community industry as the Brazilian exports would be replaced by other low-priced non-member country suppliers. In these circumstances it is considered to be in the Community's interest that the rate of the duty be 17,6 %.

I. Undertaking and termination

(16) The GDR exporter concerned, having been informed of the main findings of the preliminary investigation, offered an undertaking concerning its exports of oxalic acid to the Community.

The effect of the said undertaking will be to increase import prices to the Community to the level necessary to eliminate the dumping.

(17) In these circumstances, the undertaking offered is considered acceptable and the proceeding may, as it concerns the GDR, be terminated without imposition of anti-dumping duties.

In view of the finding of no dumping regarding imports of oxalic acid originating in Spain, the proceeding as it concerns that country, may also be terminated without imposition of anti-dumping measures.

No objection to this course was raised in the Advisory Committee.

(18) 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 imports of oxalic acid originating in Brazil and falling within subheading ex 29.15 A I of the Common Customs Tariff, corresponding to NIMEXE code ex 29.15-11.

2. The amount of the duty shall be equal to 17,6 % of the price per tonne net, free-at-Community-frontier, before duty.

The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period for payment.

3. The provisions in force concerning customs duties shall apply for the application of 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

The undertaking given by AHB Chemie, Berlin in connection with the anti-dumping proceeding concerning oxalic acid originating in the German Democratic Republic is hereby accepted.

Article 3

The anti-dumping proceeding concerning imports of oxalic acid originating in the German Democratic Republic and Spain is hereby terminated.

Article 4

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 5

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, Article 1 of this Regulation 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, 4 September 1984.

For the Commission

Wilhelm HAFERKAMP

Vice-President