COMMISSION REGULATION (EEC) No 2221/85

of 29 July 1985

imposing a provisional anti-dumping duty on imports of basic chromium sulphate originating in Yugoslavia

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 consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Procedure

1. In July 1984 the Commission received a complaint lodged by the European Federation of Chemical Manufacturers' Federations (CEFIC) on behalf of a producer representing a major proportion of Community production of basic chromium sulphate and 100 % of the production of this product in Italy. 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 basic chromium sulphate falling within Common Customs Tariff subheading ex 28.38 A IV, corresponding to NIMEXE code ex 28.38-49 and originating in Yugoslavia and commenced an investigation.

2. The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainant and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

3. Both Yugoslav producers known to the Commission made their views known in writing. None of the Yugoslav exporters who act as agents on behalf of the producers, made known to the Commission in the course of the proceeding, expressed their views. None of the interested parties have requested a hearing.

4. No submissions were made by or on behalf of Community purchasers or processors of basic chromium sulphate.

5. The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out an investigation at the premises of the EEC producer concerned Luigi Stoppani SpA, Milan (Italy).

6. With a view to obtaining and verifying the information relating to the Yugoslav producers, Zorka (Subotica) and Zupa Hemijska Industrija (Krusevac), the Commission conducted an investigation in Belgrade, not at the premises of the producers, but, upon the proposal of the Yugoslav producers, in the offices of a professional association. The Commission's representatives were not given the opportunity to obtain and verify all relevant information.

7. The investigaton of dumping and price undercutting covered the period from 1 April to 30 September 1984.

B. Normal value

8. It was found that, with respect to the product concerned destined for the domestic market, both Yugoslav producers only transformed the raw material supplied to them by their customers, whom they charged for the transformation of the raw material into basic chromium sulphate. The price charged on the domestic market for this transformation service by the producers of the product exported to the Community could not be considered to be the comparable price actually paid or payable in the ordinary course of trade of the like product intended for consumption in the exporting country in accordance with Article 2 (3) (a) of Regulation (EEC) No 2176/84.

9. In view of this it was necessary to have recourse to one of the other methods provided for by Regulation (EEC) No 2176/84 to establish normal value. No opportunity was given to the Commission to verify all the relevant data relating to the cost of production and the margin of profit in Yugoslavia.

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 276, 16. 10. 1984, p. 5.

Furthermore, both producers were requested to submit information concerning the comparable price of the like product exported from Yugoslavia to third countries. However, the Yugoslav producers refused to submit any evidence on this matter. It was therefore imposssible to determine the normal value in accordance with Article 2 (3) (b) (i) or (ii) of Regulation (EEC) No 2176/84.

10. Consequently, it is considered appropriate to determine normal value in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84 on the basis of the facts available, i. e. the domestic price appearing in the complaint which has been verified as far possible by the Commission on the basis of other information available to it. The attention of the Yugoslav producers was drawn to this possible course of action on several occasions.

C. **Export price**

11. 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**

12. In comparing normal value with export prices the Commission took account, where appropriate and to the extent of the evidence available, of differences in conditions and terms of sale such as transport, insurance, forwarding costs and commissions.

13. All comparisons were made at ex-works level.

E. **Margins**

14. Normal value was compared with the export prices of each export transaction. The above preliminary examination of the facts shows the existence of dumping in respect of Zorka and Zupa Hemijska Industrija. The dumping margins vary according to the exporter, the weighted average margin for each of the exporters being as follows :

— Zorka : 17,0 %

— Zupa Hemisjka Industrija : 14,3 %

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 from Yugoslavia of basic chromium sulphate increased from 2 342 tonnes in 1981 to 3 620 tonnes in 1982 and to 4 258 tonnes in 1983. During the first nine months of 1984 these imports amounted to 1 995 tonnes, which corresponds to 2 660 tonnes on an annual basis. With regard to the imports of the product concerned originating in Yugoslavia into Italy they increased from 1 227 tonnes in 1981 to 2 900 tonnes in 1982. In 1983. these imports amounted to 4 195 tonnes and during the first nine months of 1984 to 1 909 tonnes, which corresponds to 2 545 tonnes on an annual basis.

16. The development of the imports originating in Yugoslavia into the Community corresponds to an increase in the market share held by the product concerned originating in Yugoslavia in the Community from 5,7 % in 1981 to 9,9 % in 1982 and to 11,5 % in 1983. The market share held by the Yugoslav product amounted to 8,2 % during the first nine months of 1984. With regard to the market share held by the Yugoslav product on the Italian market, it increased from 6,2 % in 1981 to 16 % in 1982 and to 21,9 % in 1983. During the first nine months of 1984 it amounted to 16,6 % the market share held by other Community producerson the Italian market having increased from 27,9 % in 1983 to 32,3 % during the first nine months of 1984.

17. The weighted average resale prices of these dumped imports undercut the prices of the Italian producer during the period under investigation by up to 16 %.

18. The production of the Italian producer decreased by 2,1 % and 3 % in 1982 and 1983 respectively. During the first nine months of 1984 it decreased by another 0,5 %. The capacity utilization of the Italian producer decreased from 70,6 % in 1981 to 69,1 % in 1982 and to 67,0 % in 1983. During the first nine months of 1984 it dropped further to 66,7 %.

19. The stocks held by the Italian producer increased by 272 % betweeen 1981 and 1982 when the market share held by the Yugoslavian product on the Italian market increased most. i. é. from 6,2 % to 16 %. In 1983 the stocks held by the Italian producer remained at the same level as in 1982. Although the stocks of this product decreased by 19 % towards the end of the first nine months of 1984, they remained 200 % above the 1981 level.

20. The sales of the Italian producer on the Italian market decreased by 30 % between 1981 and 1982. In 1983 they decreased by 12,3 % and during the first nine months of 1984 by an estimated 16,2 %. The Italian producer would have been even more affected had he not been able to make significant increases in his sales outside the Community. However, these sales were made at less attractive prices than those realized on the domestic market and consequently affected the profitability of the Italian producer.

21. The market share of the Italian producer on his domestic market decreased from 70,0 % in 1981 to 53,3 % in 1982 and to 46,0 % in 1983. During the first nine months of 1984 it further decreased to 44,9 %.

22. Since 1983 the Italian producer started realizing a smaller profit on his sales of the product concerned on the Italian market, mainly because he was not able to increase his sales prices in order to keep up with his increased costs, and his total sales of the product concerned even resulted in losses.

23. Furthermore, in order to meet the competition from the Yugoslavian product the Italian producer decided to start selling, as of 1982, significant quantities of his own product packaged in neutral bags at prices comparable to the import prices but considerably lower than the prices charged for the product sold under his own brand name. Furthermore, the Italian producer started, as of 1983, purchasing from an importer in another Member State and reselling the Yugoslav product in order to protect his customer base. However, in 1984 the Italian producer ceased this practice because he was unable to cover the distribution costs of these goods in view of the particularly low prices charged by several Italian importers who imported the Yugoslav product directly from Yugoslavia. Despite the import and resale of the Yugoslav product by the Italian producer, the latter was not able to maintain the market share of his own production (i. e. excluding imported goods).

24. With regard to the impact on the other main Community producer of the product concerned, who has a production capacity comparable to that of the Italian producer and who in 1983 had an estimated market share of approximately 20 % on the Italian market, it was found that his average sales price in Italy decreased by approximately 5 % during the period 1982 to 1983. Furthermore, during the first nine months of 1984 this producer had to align his sales prices of the product concerned in Italy to the level of the resale prices of the Yugoslav product.

25. The Commission has considered whether the abovementioned problems faced by the Italian producer who represents a major proportion of the Community industry have been caused by factors other than those relating to the dumped imports, such as the increase in sales made by other Community producers on the Italian market. However, the substantial increase in dumped imports between 1981 and 1983 and the prices at which they were offered for sale in Italy, the part of Community market in which these imports were mainly made, led the Commission to determine that dumped imports of basic chromium sulphate, originating in Yugoslavia taken in isolation, have to be considered as being a major source of the problems faced by a major proportion of the Community industry concerned and that these imports were, therefore, through the effects of dumping, causing material injury to that industry. The trend of diminished imports of the Yugoslavian product during the first nine months of 1984 is not considered a sufficient reason for not taking any action.

G. Community interest

26. In view of the particularly serious difficulties facing the Community 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 take the form of a provisional anti-dumping duty.

H. Rate of duty

27. Having regard to the extent of the injury suffered by the Italian producer, the rate of such duty should be less than the margins of dumping provisionally established. The problems which the Italian producer was facing were not exclusively due to the dumped imports. The level of the diminished Yugoslav imports and the increased sales on the Italian market by another Community producer make it appropriate to impose the rate of anti-dumping duty which it is considered will eliminate that proportion of the Italian producer's difficulties which is regarded as attributable to the injury caused by the dumping.

28. Having taken into account, on the one hand, the selling price necessary to provide an adequate profit to the Community industry and, on the other hand, the purchase price of the importer who supplied information to the Commission and his costs and profit margin, the Commission determined the amount of duty necessary to eliminate the injury caused by the dumped imports to be 10 %.

29. 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 basic chromium sulphate falling within Common Customs Tariff subheading ex 28.38 A IV corresponding to NIMEXE code ex 28.38-49 and originating in Yugoslavia.

2. The amount of the duty shall be equal to 10,0 % 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 respective increase or reduction of one month in the period for payment.

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 logdging 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 in writing 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 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, 29 July 1985.

For the Commission

Willy DE CLERCQ

Member of the Commission