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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2322/85

of 12 August 1985

imposing a definitive anti-dumping duty on imports of glycine originating in Japan

THE COUNCIL 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 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Provisional action

1. The Commission, by Regulation (EEC) No 997/85 (1), imposed a provisional anti-dumping duty on imports of glycine originating in Japan.

B. Subsequent procedure

2. Following the imposition of the provisional anti-dumping duty the Japanese producers known to the Commission and the main Community producer concerned requested, and were granted, an opportunity to be heard by the Commission. The Japanese producers, the main Community producer concerned and a major user of the product concerned also made written submissions making known their views on the duty.

3. The Japanese producers also requested to be informed of certain facts and essential considerations on the basis of which the Commission intended to recommend definitive action, and these requests were granted.

4. The Council examined the provisional findings of the Commission as described in Regulation (EEC) No 997/85.

C. Normal value

5. The Council decided that normal value should be determined on the basis of the monthly weighted average domestic prices of those producers who exported to the Community and who provided sufficient evidence concerning prices actually paid in the ordinary course of trade for the like product intended for consumption in Japan.

6. The exporters claimed that because of the differences in the quantities sold on the domestic market and for export to the Community, the normal value should be based on a restricted sample of transactions which most resembled the quantities sold in the export transactions.

   The Council agreed with the Commission that the claim that the normal value should be based on a restricted sample of transactions which allegedly most resembled the quantities exported was tantamount to a claim for due allowance to be made for differences in quantities and that such allowance should only be granted in conformity with the objective criteria laid down in Article 2 (10) (b) of Regulation (EEC) No 2176/84.

7. One exporter also argued that domestic sales of glycine for pharmaceutical uses should be excluded from the basis for calculating the normal value because it was alleged that this type of glycine had to meet several additional specifications and was therefore not a like product.

   However, this request cannot be granted, because it has not been proved that glycine for pharmaceutical uses has characteristics different from glycine used for other applications. In fact, no satisfactory evidence has been submitted showing that the requirement that glycine for pharmaceutical uses must be pyrogene-free does not apply also to glycine used for other applications. Both grades are therefore to be considered to be like

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 107, 19. 4. 1985, p. 8.

products within the meaning of Article 2 (12) of Regulation (EEC) No 2176/84, whether they are sold for pharmaceutical purposes or for any other use. In any event, the exporter in question sold the product concerned for pharmaceutical applications both on the domestic market and for export to the Community.

D. Export price

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

E. Comparison

9. In comparing normal value with export prices account was taken, where appropriate, of differences affecting price comparability.

10. One exporter concerned claimed an allowance for differences in physical characteristics in respect of glycine sold for pharmaceutical purposes on the domestic market and the product exported to the Community.

This argument is rejected because, although the sale price of the product sold for pharmaceutical applications was higher than the average sale price of all glycine, no evidence whatsoever was submitted to show that the difference in price was due to any difference in physical characteristics.

11. In addition, both exporters claimed an allowance for differences in quantities, in accordance with Article 2 (10) (b) (i) of Regulation (EEC) No 2176/84, for price discounts in respect of sales made on the domestic market. No satisfactory evidence was submitted, however, that price discounts had in fact been granted, or that they had been made freely available in the normal course of trade.

12. Both exporters also claimed allowances in order to take account of differences in conditions and terms of sale.

With regard to Yuki Gosei Kogyo, allowances were granted for special rebates, sales commissions, salaries paid to salesmen, credit terms and transport. Allowances were not granted for warehouse charges, storage expenses, packing machinery, personal expense for the development of applications of glycine and the administrative costs for forwarding in the domestic market because these expenses were not considered to bear a direct relationship to the sales under consideration within the meaning of Article 2 (10) (c) of Regulation (EEC) No 2176/84.

With regard to Showa Denko, allowances were granted for commissions, freight, insurance, stevedoring charges, loading charges, salesmen's salaries and ancillary costs and payment terms. Allowances were not granted for warehousing, inventory costs and personal expenses for pre-sale technical assistance and servicing because they were not considered to bear a direct relationship to the sales under consideration within the meaning of Article 2 (10) (c) of Regulation (EEC) No 2176/84. For technical assistance given after the sale no evidence was provided to support the claim.

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

F. Margins

14. The examination of the facts shows the existence of dumping in respect of Yuki Gosei Kogyo Co. Ltd and Showa Denko KK, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

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

— Yuki Gosei Kogyo : 33,4 %,

— Showa Denko KK : 41 %.

For those exporters who did not make themselves known in the course of the investigation, dumping was determined on the basis of the facts available. In this connection, the Council considered that the results of the investigation provided the most appropriate basis for determination of the margin of dumping and that it would constitute a bonus for non-cooperation and would create an opportunity for circumvention of the duty to hold that the dumping margin for these exporters was any lower than the highest dumping margin of 41 % determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

G. Injury

16. With regard to the injury caused by the dumped imports, the Council noted that no fresh evidence had been submitted and therefore the Council confirms the findings of the Commission as described in recitals 19 to 26 of Regulation (EEC) No 997/85.

H. Community interest and rate of duty

17. Both Japanese producers and a major Community user further argued that the imposition of a definitive anti-dumping duty would not be in the interest of the Community, mainly because it would enable the main Community producer to raise its sale prices unreasonably in a market where there are virtually only three suppliers or to undercut the Japanese prices so that the Japanese product would disappear from the market.

Having weighed the particularly serious difficulties at present facing the Community industry against the alleged adverse effects which could result from protective measures, the Council has come to the conclusion that it is in the Community's interest that action be taken.

18. In view of the probable effect on the competitive situation and structure in the Community market characterized by the presence of essentially one Community producer and two non-Community firms, it is considered in the Community's interest to take protective measures without fully eliminating the injury determined to have been suffered by the main Community producer during the period under investigation, but considered adequate to enable the said producer to operate economically the plant at which regular production of the product concerned started only at the beginning of 1984. It is therefore considered appropriate to confirm the rate of the provisional anti-dumping duty imposed by Regulation (EEC) No 997/85. Furthermore, the main Community producer informed the Commission that he did not object either to the imposition of a definitive anti-dumping duty at the same level as the provisional anti-dumping duty or to the imposition of the same duty on both companies.

19. In these circumstances, the Council considers that a definitive anti-dumping duty of 14,5 % of the price per tonne net, free at Community frontier, before duty, should be imposed on imports of glycine originating in Japan.

I. Undertakings

20. Yuki Gosei Kogyo Co. Ltd (Tokyo) and Showa Denko KK (Tokyo) offered undertakings concerning their exports of glycine to the Community.

21. After consultation these undertakings were not accepted by the Commission. The grounds on which this decision was taken were communicated by the Commission to Yuki Gosei Kogyo Ltd and Showa Denko KK.

J. Observations of Japanese producers on the Commission's proposed definitive determinations

22. Yuki Gosei argued that the imposition of the same amount of anti-dumping duty on both Japanese companies would be discriminatory because it would allow Showa Denko, a company with a higher dumping margin and a lower export price than Yuki Gosei, to sell at prices lower than those of Yuki Gosei. Furthermore, it was argued that the Commission's intention to reject the price undertaking was based on an incomplete analysis of both the nature of the price undertaking offered and of the market for glycine.

These arguments are rejected for the following reasons :

(a) The Commission noted that a disparity existed between the average export prices charged by Yuki Gosei and Showa Denko during the period under investigation. However, this disparity had not been created by the Commission, but by the companies themselves.

Imposing the same amount of anti-dumping duty with regard to the product manufactured by both companies will mean that the difference between the prices at which the two exporters' goods will be sold in the Community will remain essentially the same, unless the companies decide to alter their pricing policy. It was not considered in the interests of the Community (see recital 18) to take protective measures which would fully eliminate the injury or which would tend to reduce competition in the Community market. It is not an objective of the anti-dumping rules to bring about an aligment of the export prices to the Community.

(b) The decision to impose the same anti-dumping duty on both companies was based on a thorough analysis of the nature of the price undertaking offered and of the glycine market. In a market where only a limited number of companies are competing with each other an alignment of prices resulting from undertakings of the kind offered by the Japanese companies, i.e. to respect the same minimum price, would reduce competition.

This effect, it is considered, would be less likely to occur as a result of the imposition of the same anti-dumping duty, because existing differences in the prices charged in different transactions by the two companies (due among other things to variations resulting from exchange rates, commissions and transport costs) could continue. Furthermore, information with regard to the future role of other Community producers, new entrants or substitute products which could possibly have led to a different conclusion was not available.

23. Showa Denko mainly argued that the ground for the imposition of a definitive anti-dumping duty, i.e. the competitive situation and the structure of the Community market, is not valid because competitive considerations would be a valid basis for refraining from any protective measures at all but not for rejecting a price undertaking.

This argument should be rejected because when examining whether or not the interests of the Community call for Community intervention, the Commission clearly came to the conclusion that in view of the facts as finally established with regard to the gravity of dumping and injury resulting therefrom (see recitals 18, and 19 to 26 of Commission Regulation (EEC) No 997/85 confirmed by the present Regulation), action had to be taken. However, it was considered not to be in the Community's interest to accept the undertakings offered because of the effect these price undertakings could have in this case on the competitive situation and structure of the glycine market.

K. Collection of provisional duty

24. It is considered that the dumped imports of glycine originating in Japan have caused material injury to the Community industry concerned. Therefore, the amounts secured by way of provisional anti-dumping duty should be definitively collected in their entirety,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of glycine falling within Common Customs Tariff subheading 29.23 D IV corresponding to NIMEXE code 29.23-77 and originating in Japan.

2. The amount of the duty shall be 14,5 % 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 reduction of one month in the period for payment.

3. The provisions in force with regard to customs duties shall apply.

Article 2

The sums secured by way of provisional anti-dumping duty under Regulation (EEC) No 997/85 shall be definitively collected.

Article 3

This Regulation shall enter into force on the day following 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, 12 August 1985.

For the Council

The President

J. POOS