COMMISSION REGULATION (EEC) No 997/85

of 18 April 1985

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

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 Council of Chemical Manufacturers' Federations (CEFIC) on behalf of a producer of glycine whose output was said to constitute all 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 glycine falling within subheading 29.23 D IV of the Common Customs Tariff, corresponding to NIMEXE code 29.23-77, originating in Japan, 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) The exporters known to the Commission and most of the known importers made their views known in writing. The exporters and some of the importers requested and were granted hearings.

(4) Both exporters requested the opportunity to meet the complainant for the purpose of presenting their opposing views. The Commission was prepared to grant this request but the exporters withdrew it after they had been informed that the complainant was only prepared to attend such a meeting without users being present.

(5) Submissions were made by some of the main Community users of glycine.

(6) 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 :

(a) *the complainant :*

Tessenderlo Chemie SA, Brussels ;

(b) *a former Community producer :*

Société de Produits Chimiques Industriels (SPCI), Paris ;

(c) *non-EEC producers/exporters :*

— Yuki Gosei Kogyo Co. Ltd, Tokyo,

— Showa Denko KK, Tokyo.

In the course of the investigation it was established that Rexim SA (France) is also a producer of glycine, but so far only of a small quantity.

(7) The investigation of dumping covered the period 1 April to 30 September 1984.

B. Normal value

(8) Normal value was provisionally 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.

(9) 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.

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[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No C 265, 4. 10. 1984, p. 5.

The Commission is of the opinion, however, that this claim that the normal value should be based on a restricted sample of transactions which allegedly most resemble the quantities exported is 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.

(10) 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 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.

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, of differences affecting price comparability.

(13) 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 sales price of the product sold for pharmaceutical applications was higher than the average sales price of all glycine, no evidence whatsover was submitted to show that the difference in price is due to any difference in physical characteristics.

(14) 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.

(15) 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 werehousing, 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.

(16) All comparisons were made at ex-works level.

E. Margins

(17) The above preliminary 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.

(18) 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 : 41,0 %.

For those exporters who did not make themselves known 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 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.

F. Injury

(19) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from Japan of glycine increased from 778 tonnes in 1980 to 1 444 tonnes in 1981 ; in 1982 the imports amounted to 1 017 tonnes and increased to 1 318 tonnes in 1983 ; during the first nine months of 1984 these imports reached 1 148 tonnes corresponding to 1 531 tonnes on an annual basis. This development corresponds to a consequent increase in market share held by the exporters from 42,4 % in 1980, to 53,7 % in 1984 ; in the years between 1980 and 1984 the market share had reached even higher levels, exceeding 60 % in 1981 and 1983.

(20) The weighted average resale prices of these imports undercut the prices of Tessenderlo Chemie during the investigation period by up to 18 %. Furthermore, the resale prices of these imports were lower than those required to cover the costs of this Community producer and provide a reasonable profit.

(21) With regard to the consequent impact of the dumped imports on the Community industry, it has been determined that Tessenderlo Chemie started regular production at the new plant at the beginning of 1984. This meant that the production capacity of the Community industry increased from approximately 1 000 tonnes to approximately 3 000 tonnes on an annual basis compared to a yearly consumption of approximately 2 000 tonnes in the Community. It has also been determined that Tessenderlo Chemie was unable , during the first nine months of 1984, to reach a capacity utilization of more than 53 % or to increase its production to an economic level. In this respect it is reasonable to consider that, to the extent that Tessenderlo Chemie was unable to reach a higher capacity utilization due to the impossibility of selling more glycine on the Community market, such a situation is attributable to the dumped imports.

(22) It has also been determined that the market share of the Community producers decreased from 47 % in 1980 to 44,7 % during the first nine months of 1984 ; however in 1981 it amounted to only 32,8 % and in 1982 and 1983 to approximately 35 %. In this respect it has been found that Tessenderlo Chemie was able to limit its loss of market share — of which the dumped imports took advantage — only by incurring price suppression in that it was unable to raise its prices to a level which was sufficient to cover its costs of production, which reflected a reasonable amount for depreciation of the new installations, and that it consequently suffered financial losses.

(23) With regard to Tessenderlo Chemie, the exporters argued that it made an extraordinarily unwise investment decision because the capacity of the new plant, namely 3 000 tonnes per year, largely exceeds annual consumption within the Community, estimated at approximately 2 000 tonnes.

However, this argument is rejected by the Commission because the capacity of the plant should not only be considered in the light of domestic consumption in the Community and the development of new applications but also with a view to possible exports to third countries. This is particularly so in view of the fact that the Japanese exporters together have a production capacity of approximately 13 000 tonnes per year compared with a domestic consumption of 4 000 to 5 000 tonnes per year.

(24) It was also argued that evidence concerning Japanese imports prior to 1984 is irrelevant for the proceeding because Article 4 (1) of Regulation (EEC) No 2176/84 requires that injury determinations be made in relation to an established Community industry. In this context it was alleged that the Community industry consists only of Tessenderlo Chemie, which had started producing glycine only in January 1984.

However, it has been established by the Commission that a Community glycine industry has been in existence since 1970 at least.

(25) The exporters also claimed that both SPCI and the existing Community producer should not be considered to be a Community industry for injury purposes since they had themselves imported glycine from Japan.

The claim is rejected, however, because although the term Community industry may be interpreted as referring to the remaining producers where some producers are themselves importers of the allegedly dumped product, it is considered inappropriate to do so in this case. To do so would be unfair to the Community industry, since SPCI decided to purchase the Japanese product *inter alia* in order to protect its customer base, a policy which was continued by the present Community producer in the period following the takeover of the business of SPCI while its new plant was being constructed. Furthermore, it has been determined by the Commission that between 1980 and 1982 SPCI was only able to avoid losing its market share by itself importing certain quantities of the product originating in Japan, while the part of its market share supplied from its own production fell significantly. It has also been determined that as soon as Tessenderlo Chemie started the production at its new plant, it ceased importing the Japanese product.

(26) The Commission has considered whether injury has been caused by other factors such as other imports.

The Commission noted, however, that the market share held by other imports fell from 10,6 % in 1980 to 1,6 % during the first nine months of 1984. The substantial increase in dumped imports and the prices at which they are offered for sale in the Community has led the Commission to determine that the effect of the dumped imports of glycine originating in Japan have to be considered as constituting material injury to the Community industry concerned.

G. Community interest and rate of duty

(27) Some users argued that the adoption of protective measures is not in the interest of the Community because they would become totally dependent on supplies from Tessenderlo Chemie.

However, it has not been established that if protective measures are taken the users will become dependent on Tessenderlo Chemie and will have no possibility of benefiting from different sources of supply. It is not inconceivable that the other Community producer (Rexim) would increase its production or expand its production capacity, particularly taking into account the fact that the consumption of this product is expected to increase significantly because of new applications. Furthermore, the absence of measures may possibly lead to the closure of the plant of Tessenderlo Chemie, the effect of which would be that Community users would depend almost exclusively on the Japanese exporters, whose price behaviour on the EEC market could very well change in order to raise prices to world levels. Finally, the imposition of protective measures is not aimed at the elimination of the imported product from the Community market, but at taking away the negative effects of the unfair pricing practised by exporters from non-member countries.

(28) Some users also argued that a price increase resulting from the imposition of an anti-dumping duty will lead them to use substitute products. However, no supporting evidence has been submitted on this matter.

(29) 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.

(30) Having taken into account the selling price necessary to cover the cost of production of the Community industry and to provide an adequate profit, the Commission calculated the amount of the duty necessary to fully eliminate the injury suffered during the period of investigation as follows :

— with regard to Yuki Gosei : 14,5 % of the price per tonne net free-at-Community-frontier, before duty,

— with regard to Showa Denko : 31,2 % of the price per tonne net, free-at-Community-frontier, before duty.

(31) In view of the probable effect on the competitive situation and structure in the Community market, where there are virtually only three suppliers, of the imposition of a provisional duty on exports of glycine made by Showa Denko of an amount equivalent to approximately the double of the amount of the provisional duty for Yuki Gosei, it is considered that it is in the Community's interests that, at the stage of the provisional measures and without prejudice to the final determinations, the amount of the duty to be imposed on Showa Denko should not exceed the amount of the duty to be imposed on Yuki Gosei.

(32) Therefore the Commission has determined the amount of the provisional anti-dumping duty with regard to Yuki Gosei and Showa Denko at 14,5 % of the price per tonne net free-at-Community-frontier, before duty.

(33) 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 glycine falling within subheading 29.23 D IV of the Common Customs Tariff, corresponding to NIMEXE code 29.23-77, originating in Japan.

2. The amount of the duty shall be equal to 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 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 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, 18 April 1985.

For the Commission
Willy DE CLERCQ
Member of the Commission