COMMISSION REGULATION (EEC) No 2450/87

of 12 August 1987

imposing a provisional anti-dumping duty on imports of mercury originating in the Union of Soviet Socialist Republics

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], as amended by Regulation (EEC) No 1761/87 [2], and in particular Article 11 thereof,

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

Whereas :

A. PROCEDURE

(1) In October 1986 the EEC Liaison Committee for the Non-Ferrous Metal Industries lodged a complaint with the Commission on behalf of Minas de Almadén y Arrayanes SA, Madrid, a firm accounting for 90 % of the Community production of mercury. The complaint included evidence of dumping and consequent material injury which was considered sufficient to justify the initiation of a proceeding. The Commission therefore published a notice in the *Official Journal of the European Communities* [3] announcing the initiation of an anti-dumping proceeding concerning imports into the Community of mercury originating in the USSR, put up in flasks of a net capacity of 34,5 kilograms (standard weight) or other, falling within subheading 28.05 D of the Common Customs Tariff, corresponding to NIMEXE codes 28.05-71 and 28.05-79 ; it then commenced investigations. The Commission also published a notice under Article 13 (4) (b) of Council Regulation (EEC) No 2176/84 concerning allegations by the complainant that the importer was or should have been aware that the exporter was dumping and that such dumping would cause injury [4].

(2) The Commission officially informed the exporter, the importers known to be concerned and the complainant and gave interested parties the opportunity to make known their views in writing or request a hearing.

(3) The Community producer, the exporter and five importers made known their views in writing.

(4) A number of Community buyers of the product submitted comments.

(5) The Commission gathered and checked all information it considered necessary to make a preliminary assessment of dumping, and carried out inspections at the premises of the following companies :

Community producer

Minas de Almadén y Arrayanes, SA, Madrid, Spain ;

Community importers

— Lambert Metals Ltd, London, United Kingdom,

— Comsup Trading, London, United Kingdom,

— Derby and Co. Ltd, London, United Kingdom ;

Producer in reference country

Placer US Inc., San Francisco, United States ;

Producer/exporter

The Commission also visited the premises of Raznoimport London, representing the Soviet exporter Raznoimport Moscow.

The Commission sought and received detailed written submissions from the complainant Community producer, the exporter and the importers and checked the information thus received where necessary.

(6) The investigation of dumping and price differences related to the period 1 July 1986 to 28 February 1987.

(7) This proceeding has no bearing on the investigations being carried out under Council Regulation No 17 [5], concerning possible price agreements between producers in the Community and in third countries.

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No C 53, 28. 2. 1987, p. 5.
[4] OJ No C 67, 14. 3. 1987, p. 3.
[5] OJ No 13, 21. 2. 1962, p. 204/62.

B. DUMPING

B. 1. Normal value

(1) In determining whether the imports from the USSR, which does not have a market economy, had been dumped, the Commission had to take as its basis the normal value of the product in a market economy country. The complainant suggested using the selling price in the Community of the same product originating in Algeria.

(2) The Soviet exporter argued that this was unacceptable because the selling price of Algerian mercury was too high, the complainant Community producer having entered into a price agreement with the Algerian producer. Since in addition there was no established world market price for mercury, the exporter contended that the prices published in the *London Metal Bulletin* (LMB), a specialist non-ferrous metals publication, were generally accepted as a good guide to the price of mercury on the free market, and should be taken as a basis for establishing normal value.

(3) The Commission was unable to accept the exporter's proposal; in the case of exports from a country which does not have a market economy, normal value is to be determined on the basis of the market price or constructed value in a market economy third country. It also had reason to believe the reference prices in the *London Metal Bulletin* did not cover production costs in market economy countries.

(4) The choice of Algeria was also criticized by one of the importers on the grounds that its production costs were too high, that there was a close relationship with the Community producer, and that the country did not have a true market economy. The importer suggested using the United States of America as a reference country.

(5) In any case, the Algerian producer failed to respond to the Commission's request for cooperation.

(6) The Commission therefore selected the United States of America as reference country, in particular because of the similarity of the product and production conditions and the competitive situation on the US market; in addition, all the US producer's sales of mercury are on the domestic market. Accordingly, the Commission concluded that it was appropriate and not unreasonable to calculate the normal value on that basis. It noted, however, that the prices to which mercury was actually sold to users in the United States of America were lower than the production costs as defined in Regulation (EEC) No 2176/84, and therefore decided to base normal value not on domestic selling prices but on constructed value.

B. 2. Export price

(7) Export prices were taken to be the prices actually paid or payable for exports to the Community.

B. 3. Comparison

(8) In comparing normal value with export prices, the Commission took account, as circumstances required and where adequate evidence was available, of differences affecting price comparability, such as payment terms, transport costs, insurance and packaging.

All comparisons were made at the ex-works stage and for each transaction in respect of the quantities actually brought into the Community.

B. 4. Dumping margins

(9) Preliminary examination of these facts indicates that goods were being dumped by the exporter Raznoimport Moscow.

The dumping margin is the difference between the normal value as established and the price of exports to the Community.

The margins differ depending on the date of the transaction and are calculated cif at Community frontier (Rotterdam), excluding customs duties. The weighted average dumping margin is 147 %.

C. INJURY

(1) According to the information available to the Commission, Community imports of mercury originating in the USSR increased from zero in 1983, 1984, 1985 and the first half of 1986 to 198 tonnes in the second half of 1986 alone, taking the exporting country's share of the Community market over that period from nil to approximately 22 % for the second half of 1986 (or 11 % for the whole of 1986 on an annual basis). To date 198 tonnes have entered the Community, out of a total of 730 tonnes sold to Community importers in the second half of 1986, part of which is still stored in customs warehouses in Rotterdam.

(2) The Soviet exporter penetrated the Community market within a very short space of time and with a considerable volume of goods, using methods which exerted strong downward pressure on selling prices on the Community market from the second half of 1986.

The Commission examined the prices at which the imports from the USSR were sold in the Community and found that they were on average from 17 % to 54 % lower than the Community industry's prices during the period covered by the investigation, still further below the prices charged by the Community producer before the Soviet product

appeared on the market, and lower than the price the Community producer would have to charge to cover his costs and make a reasonable profit. To examine prices at the same level of trade, the Commission compared the Soviet exporter's prices, including customs duty, invoiced cif Rotterdam to international traders with the Spanish producer's delivered prices invoiced to the user, minus handling, storage and transport costs and the international traders' overheads, administrative and selling costs together with a reasonable profit margin.

(3) The Community obtains mercury not only from the USSR and Spain, but also from Algeria, China, Turkey and Finland. While the Community industry maintained its market share in 1986 at the cost of heavy financial losses to the producer, the USSR penetration of the market was achieved at the expense of other third country exporters to the Community, whose total market share declined from 40 % in 1985 to 29 % in 1986.

(4) The Commission also examined whether the dumped imports had affected output, capacity utilization, stocks or employment, and found that Community output had fallen by 9 %, leading to a drop in capacity utilization. The volume of sales had been maintained in 1986, as a consequence of which the level of stocks had fallen. Available employment figures showed a fall of 7 %. However, the Commission does not consider that these comparatively minor fluctuations are significant for a finding of injury.

(5) In terms of financial results, on the other hand, the Community industry, after trading profitably in previous years, made significant losses in 1986, especially in the second half of the year, largely because of the appearance on the Community market of mercury from the USSR.

In order to penetrate the market and ensure rapid sales, the Soviet exporter operated through international traders, the prices of the transactions generally being fixed not at the time of the conclusion of the sales contract, but on the basis of the indicative prices for spot deals published in the LMB for the month in which delivery was to take place. The LMB indicative prices are based on information supplied by a small number of traders and reflect only a fraction of spot sales. Owing to the lack of transparency and narrowness of this market, the relatively few spot deals influence the prices of forward contracts, which account for almost 80 % of mercury sales, including those of the Community producer.

The Soviet exporter's sales to international traders of substantial quantities of mercury on the terms described above led to a significant weakening of prices. The trader having contracted with the exporter for the largest amount (515 tonnes), moreover, partly to cover his commercial operations and partly on a speculative basis, published a series of advertisements in the LMB offering the mercury at prices which were increasingly low and in each case below the indicative prices published in that periodical. Given the size of the contract, which had been revealed in an article published in the LMB, this technique tended to depress spot prices which enabled the trader to purchase from the Soviet exporter on favourable terms and led to a general weakening of mercury prices, thus forcing the Community producer and other third country exporters to the Community to follow suit by lowering their own prices.

In the Commission's view the Soviet exporter, so far from being a passive victim of the price fluctuations, exerted a considerable influence on the market price by means of his sales to two international traders of considerable quantities of mercury on the above terms. The fact that the exporter did not control the price or final destination of the product does not detract from his responsibility; the sale through international traders of such substantial quantities of mercury within such a short space of time on the terms described above, on a market where demand is inelastic, was bound to affect prices and encourage speculation.

(6) From May 1983 to May 1986 (when rumours of the 515 tonne Soviet mercury contract were first heard) there had been a slight downturn in the dollar prices published in the LMB. The Community producer's dollar prices, which on average were regularly above the LMB quotations, remained comparatively stable during that period until the end of 1985, but began to slide in the first half of 1986.

The Community operator managed to operate profitably until the beginning of 1986. Had it not been for the Soviet exports, it can thus be assumed that the trend of his prices in the second half of 1986 would have been similar to the earlier period.

(7) From June 1986 (the date of the first Soviet contracts) through July 1986 (the first sales of Soviet mercury) to October of that year, prices fell by over 50 %.

The inescapable conclusion is that the Soviet exports led to a general collapse of mercury prices. In order to find a buyer the Community producer was forced to sell at less than cost price. This involved considerable financial loss but allowed him to recover part of his costs. Yet the Soviet exports were still undercutting the Community producer's prices by some 35 % in the second half of 1986.

(8) Since customer loyalty is not absolute and price is a factor, the Community producer — who unlike the Soviet exporter sells 92 % of his output to users and only 8 % to traders — was forced by the undercutting to alter his terms of sale ; whereas previously, 80 % of sales were under long-term contracts, users have moved over to spot purchases, increasing the Community producer's uncertainty about future sales.

(9) The Commission considered whether injury had been caused by other factors such as the depreciation of the dollar, the underlying downward trend of mercury prices, or imports of mercury from other third countries.

The Commission found that the first two of these factors had contributed, though to a lesser extent than the Soviet exports, to the worsening financial results of the Community producer. However, it has used a method of calculation designed to isolate the injury attributable to dumped imports.

The Community imported some 272 tonnes of mercury from Algeria in 1986, as against 289 tonnes in 1985. As in previous years, some of these imports were by users and some by international traders, in the form of either spot deals, long-term contracts or compensation deals. Prices on these transactions were in line with market trends ; sales were spread over the whole year, and no one transaction on a single contract or sale to a single dealer involved any substantial quantity. Thus Algerian exports cannot have been responsible for the collapse in mercury prices in 1986.

Community imports from other third countries were down in 1986, and the quantities involved were comparatively small : imports form China were down from 106 tonnes in 1985 to 58 tonnes in 1986, imports from Turkey from 63 tonnes in 1985 to 23 tonnes in 1986, and imports from Finland from 70 tonnes in 1985 to 15 tonnes in 1986.

(10) The sharp rise in imports from the USSR and the prices at which the product was sold in the Community lead the Commission to conclude that the dumped imports of mercury originating in the USSR taken in isolation must be held to be the cause of material injury to the Community industry concerned.

D. COMMUNITY INTEREST

(1) No comment was forthcoming from users of the product. Since any reasonable increase in the price of mercury has only negligible repercussions on the use of mercury e.g. in the manufacture of chlorine or in the nuclear sector, or on products incorporating mercury, such as batteries or pesticides, consumer interests are sufficiently safeguarded.

(2) In the light of the particularly severe problems encountered by the Community's only viable producer of mercury, and the economic and social importance of this activity, the Commission concludes that it is in the Community interest to take action, and that in order to prevent further injury being caused while the processing is under way, this should take the form of a provisional anti-dumping duty.

E. RATE OF DUTY

(1) The duty should be set at a rate lower than the dumping margin provisionally established, but sufficient to eliminate the injury caused, having regard to the extent of the said injury.

(2) In order to determine the level of duty provisionally required to eliminate the injury to the Community producer, the Commission has taken the following factors into account:

— the average margin by which the Soviet product undercut the Community producer's prices in the Community,

— the price the Community producer could have obtained on the Community market had it not been for the sudden appearance on that market of large quantities of Soviet mercury.

After detailed consideration of these factors the Commission has opted for a specific duty, in view of the nature of the product, its liability to price fluctuation, and the fact that specific duties, already in use in the Community, are easier for the customs authorities to administer. In the light of the above considerations, the Commission has decided to impose a duty of 70 ECU per flask of a net capacity of 34,5 kilograms (standard weight) or 2,03 ECU per kilogram net of mercury originating in the USSR.

(3) A time limit should be set within which interested parties may put forward their views or request a hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of mercury falling within subheading 28.05 D of the Common Customs Tariff, corresponding to NIMEXE codes 28.05-71 and 28.05-79, originating in the USSR.

2. The duty shall be 70 ECU per flask of mercury of a net capacity of 34,5 kilograms (standard weight), or 2,03 ECU per kilogram net of mercury.

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

4. Release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to payment 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, interested parties 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 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, 12 August 1987.

For the Commission

Manuel MARÍN

Vice-President