COUNCIL REGULATION (EEC) No 3687/87

of 8 December 1987

imposing a definitive anti-dumping duty on imports of mercury originating in the Soviet Union and definitively collecting the provisional anti-dumping duty imposed on such imports

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], as amended by Regulation (EEC) No 1761/87 [2], and in particular Article 12 thereof,

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

Whereas :

A. Provisional duty

(1) Commission Regulation (EEC) No 2450/87 [3] imposed a provisional anti-dumping duty on imports of mercury originating in the USSR.

B. Subsequent procedure

(2) Following imposition of the anti-dumping duty, the Community producer requested and was granted a hearing with the Commission. The Soviet exporter 'Raznoimport' made written submissions within the period laid down by Regulation (EEC) No 2450/87, to which the Commission replied.

At its request, the Soviet exporter was also informed of the essential facts and considerations on which the Commission had based its conclusions and on the basis of which it intended to propose the imposition of a definitive duty and the definitive collection of the amounts secured by way of provisional anti-dumping duties. The exporter made certain submissions within the period granted following the meeting at which this information was provided.

(3) The Soviet exporter referred to an investigation being carried out under Regulation No 17 [4] concerning possible price agreements between producers established in the Community and in third countries. The Soviet exporter considered that such an investigation indicated that the Community mercury producer was not competitive and that the price on the Community market was artificially high. However, the Soviet exporter submitted no evidence in support of its allegations.

It is the Commission's view that this proceeding has no bearing on the investigations being carried out under Regulation No 17 concerning possible price agreements between producers established in the Community and in third countries. The object of an anti-dumping proceeding is not, and could not be, to condone or encourage restrictive commercial practices, and the initiation of such a proceeding in no way restricts a firm's right to invoke the provisions of Articles 85 and 86 of the Treaty. Moreover, if an infringement of Articles 85 and 86 is discovered and a proceeding is initiated under Council Regulation No 17, the Commission may review the present proceeding in accordance with Article 14 (1) of Regulation (EEC) No 2176/84.

C. Dumping

(4) The Soviet exporter repeated its initial suggestion that the indicative prices for spot deals published in the London Metal Bulletin (LMB) be used for the calculation of normal value.

That proposal is not acceptable. 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 ; furthermore, the investigation showed that during the reference period the indicative prices published in the LMB, which take account only of spot deals and reflect only a fraction of such deals, did not cover production costs in market-economy countries.

(5) The Commission based its calculation of normal value on the constructed value — determined by adding together the cost of production and a reasonable margin of profit, as defined in Article 2 (3) of Regulation (EEC) No 2176/84 — of the like product manufactured by Placer US Inc., San Fran-

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No L 227, 14. 8. 1987, p. 8.
[4] OJ No 13, 21. 2. 1962, p. 204/62.

cisco, an independent producer in the United States of America, and set out its reasons for choosing this method in point B.1 (3) and (6) of Regulation (EEC) No 2450/87. No new evidence has justified any change to the preliminary findings.

(6) Export prices were taken to be the prices actually paid to the Soviet exporter by independent Community importers of mercury which had actually entered the Community. The Soviet exporter claimed that the mercury it exported was sold to international traders and that it had no control over the final destination of the mercury.

The investigation showed that the exporter's terms of sale were cif to a Community port. Furthermore, it should be pointed out that, for the purposes of Community rules, the determining factor is the effect of an exporter's behaviour, not the search for intentions that could lain behind such behaviour.

(7) The Soviet exporter has supplied no new evidence concerning the calculation of dumping since the provisional duty was imposed. The preliminary findings concerning dumping by the exporter are therefore confirmed.

D. Injury

(8) It has been confirmed that Community imports of mercury originating in the Soviet Union increased from nil to nearly 200 tonnes in the second half of 1986, equivalent to a market share of 22 % for that period (or 11 % for the whole of 1986 on an annual basis). The mercury imported from the Soviet Union was sold in the Community at prices from 17 % to 54 % lower than the prices charged by the Community producer, as indicated in point C of Regulation (EEC) No 2450/87.

(9) The Soviet exporter claimed that it merely sold at the prices quoted by LMB and that the price collapse on the Community market could not therefore be attributed to the prices it charged.

However, the investigation showed that the Soviet exporter's sales through international traders on the terms described in point C of Regulation (EEC) No 2450/87 of substantial quantities of mercury over a short period, on a narrow market with inelastic demand, regardless of price, led to a chain reaction and a general collapse of mercury prices. The Community producer was thus forced, in order to maintain its market share, to lower its prices to a level which no longer allowed it to cover its production costs thus leading to considerable financial losses. Community imports of mercury originating in the USSR thereby caused material injury to the Community producer.

(10) The Soviet exporter claimed that the injury suffered by the Community producer was due to two other factors : the depreciation of the United States dollar and the underlying downward trend of mercury prices.

As regards the depreciation of the dollar, the Commission limited itself to examining the trend of the selling prices of the Spanish product expressed in dollars, as explained in point C of Regulation (EEC) No 2450/87. It thus ensured that its calculation of injury was not distorted by the effects of currency fluctuations.

(11) As regards the underlying downward trend of mercury prices, the Commission found that the Community producer's prices, expressed in dollars, were stable until the end of 1985 and fell by some 6 % to 8 % in the first six months of 1986. Had it not been for the Soviet sales at dumped prices it can be assumed that, given the inelastic demand for mercury and the underlying market trend, the Community producer's prices would have continued to fall at the same rate as before. Thus the Community producer's prices would have fallen by a further 8 % or so in the second half of 1986. This factor would have had only a minor impact on the fall in prices, but it was nevertheless taken into account for the calculation of injury.

(12) The price of the dumped Soviet mercury, taken in isolation, undercut the Community producer's selling prices by an average of about 35 % during the second half of 1986 and caused prices to slump by up to 50 % or more in the second half of 1986. Taking into account the depreciation of the United States dollar and the underlying downward trend of mercury prices, the Commission was able to estimate the injury caused directly by the Soviet exporter's prices.

(13) The Commission also examined to what extent the Algerian producer's sales had contributed to the injury suffered.

The investigation showed that like the Community producer, the Algerian producer sold mercury in small quantities to a large number of customers, both final consumers and international traders, in spot deals, forward contracts and compensation

deals, and in the second half of 1986 was likewise forced, in order to find a buyer, to align its prices on those charged by the Soviet exporter. The latter did not dispute this. Consequently, the Algerian producer's mercury exports were not the cause of the collapse of the mercury price in 1986.

(14) In conclusion, the sharp rise in imports of mercury originating in the Soviet Union, the prices at which the product was dumped in the Community and the repercussions this had on prices and on the financial situation of the Community producer led the Commission to conclude that the dumped imports of mercury originating in the Soviet union, taken in isolation, must be held to be the cause of material injury to the Community industry concerned.

The Council confirms this conclusion.

E. Community interest

(15) In order to evaluate the Community interest, the Commission took into account the scale of the injury caused solely by the dumped imports from the Soviet Union, which threatened the viability of the only Community producer of a product held to be of strategic importance, and the fact that the said producer found itself threatened by the Soviet producer, the Soviet Union being the world's largest producing country, with a high annual export capacity. The Council agrees with the conclusion, set out in Regulation (EEC) No 2450/87, that in these circumstances the Community interest requires action to be taken.

F. Definitive duty

(16) In view of the characteristics of the world market for the product in question and the competitive situation on that market, the Commission opted, when imposing the provisional anti-dumping duty, for a specific duty. The Council considers it appropriate also to retain that specific duty as the definitive duty.

In view of the impact of dumping by the Soviet exporter on the level of prices on the Community market, the injury to the Community producer may be eliminated by imposing a duty of 70 ECU per flask of a net capacity of 34,5 kilograms (standard weight) or 2,03 ECU per kilogram of mercury, no new evidence having come to light which requires a change in the calculation.

G. Entry into force of duty

(17) In its complaint the Community industry asked for the anti-dumping duty to be imposed with retroactive effect.

Irrespective of whether the importers were or should have been aware that the Soviet exporter was dumping, the Council, while confirming the Commission's finding that this was indeed a case of sporadic dumping, does not consider it necessary to impose an anti-dumping duty with retroactive effect on these imports, particularly given the fact that imports from the Soviet Union during the 90 days preceding the imposition of the provisional duty were negligible.

H. Definitive collection of provisional duty

(18) However, having regard to the serious nature of the dumping and the injury caused, the Council considers that the amounts secured by way of the provisional anti-dumping duty imposed on imports of mercury originating in the Soviet Union 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 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 Soviet Union.

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.

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed by Regulation (EEC) No 2450/87 on imports of mercury originating in the Soviet Union shall be collected definitively.

Article 3

This Regulation shall enter into force on the day following that of 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, 8 December 1987.

For the Council

The President

N. WILHJELM