COMMISSION REGULATION (EEC) No 1745/88

of 21 June 1988

imposing a provisional anti-dumping duty on imports of paracetamol originating in the People's Republic of China

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 consultation within the Advisory Committee, as provided for under that Regulation,

Whereas :

A. Proceeding

(1) By Decision 82/543/EEC (3) the Commission accepted the price undertaking given by Sinochem and terminated the anti-dumping proceeding opened in 1981 in respect of imports of paracetamol originating in China.

In April 1987, an application was made for a re-examination, on the basis of Article 14 of Regulation (EEC) No 2176/84, by the European Council of Chemical Manufacturers' Federation (ECCMF) on behalf of the Community manufacturers which account for most of the Community's paracetamol production. This application included an indication to the effect that the decentralization of China's export structures and consequent use of regional companies meant that the undertaking accepted in 1982 was no longer sufficient and that Chinese exporters were once again dumping their products and causing major injury to the Community industry concerned.

After publishing an opinion on the forthcoming expiry of the undertaking (4), in September 1987 the Commission initiated a re-examination proceeding on the basis of Articles 14 and 15 of the abovementioned Regulation (5). Following this decision, the measures then in force remained applicable pending the outcome of the re-examination.

The product being dumped is paracetamol, an analgesic which has various pharmaceutical uses. It falls within CN code 2924 29 30.

(2) The Commission officially informed the exporter concerned, the importers known to be concerned, the representatives of the exporting country and the complainants that a re-examination proceeding was being initiated. The Commission requested the parties directly concerned to reply to the questionnaires addressed to them, and gave them the opportunity to express their points of view in writing and request a hearing.

(3) Two Community producers completed the questionnaire and returned it to the Commission. One dealer connected with the exporter returned the questionnaire by the required deadline, but it was incomplete. This dealer also presented his point of view in writing on behalf of the exporter, and requested and obtained a hearing.

(4) The Chinese exporter also sent a partial reply to the questionnaire, and suggested to the Commission that the form of the 1982 undertaking should be changed.

(5) Consequently, for those parties which did not reply to the questionnaire or did not respond in any other way, the conclusions were drawn up, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, on the basis of the information available, which in this case was the information obtained from the complainant and official Community statistics.

(6) The Commission assembled and checked all the information which it considered necessary and conducted an investigation on the premises of two Community producers : Hartington Chemicals, Chesterfield, United Kingdom, and Rhône-Poulenc, Paris, France.

The Commission requested the Community producers, the Chinese exporter and the importers known to be concerned to present detailed comments in writing and carried out the necessary checks on the information received.

(7) The Commission's investigation covered the period from 1 January to 31 July 1987.

B. Dumping

(8) In order to establish that imports from China were dumped, the Commission has had to take account of the fact that China does not have a market economy within the meaning of Article 2 (5) of Regulation (EEC) No 2176/84 and has had to use one of the methods of calculating the normal value defined in that Article. The complaint had

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 167, 26. 6. 1987, p. 9.
(3) OJ No L 236, 11. 8. 1982, p. 23.
(4) OJ No C 193, 22. 7. 1987, p. 2.
(5) OJ No C 236, 2. 9. 1987, p. 2.

suggested that the United States of America be used as a reference in calculating the normal value, on the grounds that the United States had the lowest domestic prices, compared with the prices charged on their domestic markets by Indian and Indonesian producers, also referred to in the complaint. The Commission took as a basis for calculating the normal value the prices charged by two US producers on their national market, after checking these prices during an on-the-spot investigation on these companies' premises. The Chinese exporter called this choice into question but did not propose any alternative.

(9) The Commission made sure that the US producers concerned manufactured paracetamol similar in quality to the paracetamol imported from China In the United States, there is sufficient competition since there are three producers; and since a substantial amount is imported. It was also established that the levels of prices charged by US producers enable them to make a reasonable, but not excessive, profit.

(10) Consequently, the normal value was calculated on the basis of the prices charged on the United States domestic market, as verified by the Commission.

(11) The export prices were determined on the basis of the prices which were or would actually be paid for the products exported to the Community.

(12) In comparing the normal value with the export prices, the Commission took account, where circumstances permitted and where sufficient proof was provided, of the differences affecting the comparability of the prices, and in particular the differences in marketing conditions and periods for payment. All comparisons were made at the ex-works stage.

(13) Comparison revealed that products exported from China to the Community during the reference period had been dumped. The dumping margin calculated as a percentage of the cif price of the imported product at the Community frontier, not including customs duty; is, as a weighted average, 56 %.

C. Injury

(14) The Community's imports of paracetamol from China rose from 247 tonnes in 1984 to 956 tonnes in 1986 and 461 tonnes during the first seven months of 1987. These imports go mainly to the United Kingdom, which is the main market for this product, having absorbed 40 % of the Community's imports from China during the first seven months of 1987 and 39 % in 1986.

(15) Sales by the two Community producers which formed the subject of the Commission's investigation have remained at a standstill or decreased since 1985, although their selling prices companies have fallen.

(16) Since the importers did not cooperate, the basis used by the Commission for examining the prices at which the product imported from China was re-sold on the United Kingdom market was the information presented in the complaint. The investigations showed that these prices were, as a weighted average, 8 % lower than Community producers' prices during the reference period and that this undercutting of Community producers' prices prevented them from making a profit.

(17) Furthermore during the first seven months of 1987, the average price of imports from China into the Community was 6 % lower than the level of the price undertaking offered by the Chinese exporter and accepted by the Commission in 1982.

(18) The investigation also revealed that Community producers had invested substantial amounts in 1985, 1986 and 1987 in the modernization of factories, one of which could be considered as among the most efficient in the world. It was not possible to obtain a return on all this investment because of the drop in turnover resulting from the fall in the selling price.

(19) The situation of the Community producers, which was already precarious in 1986, deteriorated greatly during the first seven months of 1987, as seen from their even heavier financial losses; this stems from the combined effect of the drop in their selling prices and their increased costs resulting largely from their investments aimed at greater competitiveness.

(20) The injury caused by imports at dumped prices is the result of imports from China and cannot be attributed to imports from other non-Community countries:

— during the first seven months of 1987, which were taken as the reference period, the average price of imports from China into the Community was lower than the average price of other imports, and in particular the price of imports originating in the country which is the second largest exporter to the Community;

— at a more general level, the sharp rise in imports into the Community from non-Community countries is the result of an increase in China's share of these imports to the detriment of other non-Community countries' shares, despite the anti-dumping measures applicable to imports from China. The percentage of imports from China in relation to all imports

into the Community from non-Community countries rose from 41 % in 1985 to 51 % in 1986, while the percentage of imports into the Community from the second-largest exporter fell from 45 % in 1985 to 41 % in 1986.

(21) Furthermore, in view of production capacity in China, now and in the foreseeable future, and in view of the aggressive marketing tactics adopted by the Chinese exporter in the Community over the last few years, China's exports are likely to continue coming to the Community. In 1986 and 1987, despite the existence of Community anti-dumping measures, China's exports to the Community showed a much greater volume increase than its exports to the United States.

D. Conclusions and Community interest

(22) Given the serious difficulties facing the Community industry concerned, if the measures aimed at countering the harmful effects of dumping were discontinued, this would undermine the production of paracetamol in the Community, and would therefore have an adverse effect on employment in the regions concerned. The impact which the proposed measures would have on prices would be negligible for paracetamol users. Consequently, it has to be concluded that it is in the Community's interest to extend the anti-dumping measures, under Article 15 of the abovementioned Regulation.

In the present situation, however, the extension of the initial undertaking would not give Community producers sufficient protection, and so the measures must be adapted in order to eliminate the injury suffered by the Community industry concerned, and must take the form of a provisional duty.

E. Rate of duty

(23) In order to eliminate the injury caused, it is considered necessary to apply a variable duty levied on the basis of a minimum price which, while remaining substantially lower than the dumping margin, corresponds to the minimum price required to ensure that the Community producer receives an adequate return on his sales. Furthermore, since the injury has continued despite the undertaking given in 1982 by the Chinese exporter, it is considered necessary, in order to ensure that the anti-dumping measures are effective and to avoid any deflection of trade, to introduce, in addition to the variable duty, an *ad valorem* duty of 15 % based on the price undercutting, and under these circumstances the duty collected will in any event be the higher of two, and at least 15 %.

Consequently, the amount of the provisional duty is fixed at an amount equivalent to either the difference between the net free-at-Community-frontier price per kilogram not cleared through customs paid by the first importer into the Community, and the sum of 5 ECU, or to 15 % of this net free-at-Community-frontier price per kilogram not cleared through customs, whichever is the higher,

HAS ADOPTED THIS REGULATION:

Article 1

Decision 82/543/EEC is hereby replaced.

Article 2

1. A provisional anti-dumping duty is hereby imposed on imports of paracetamol falling within CN code 2924 29 30 and originating in the People's Republic of China.

2. The amount of the duty shall be equal either to the difference between the net free-at-Community-frontier price per kilogram not cleared through customs and 5 ECU, or to 15 % of this net free-at-Community-frontier price per kilogram not cleared through customs, whichever is the higher.

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 3

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 4

This Regulation shall enter into force on the day following that of 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, 21 June 1988.

For the Commission
Karl-Heinz NARJES
Vice-President