COMMISSION REGULATION (EEC) No 699/88

of 15 March 1988

imposing a provisional anti-dumping duty on imports of oxalic acid originating in Taiwan and South Korea

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 abovementioned Regulation,

Whereas :

A. PROCEDURE

(1) In March 1987, Destillados Agrícolas Vimbodí (DAVSA), a manufacturer accounting for a large proportion of total Community production of oxalic acid, lodged with the Commission an anti-dumping complaint concerning imports of oxalic acid from Taiwan and South Korea. The complaint included evidence of dumping and resultant material injury, which was considered sufficient to justify the initiation of an anti-dumping proceeding. As a result, the Commission announced in a notice published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding and an investigation concerning imports of oxalic acid from Taiwan and South Korea.

(2) The Commission officially notified the producers/exporters and importers known to be concerned, the representatives of the exporting countries, the complainant and other Community producers, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(3) Most of the Community producers and known producers/exporters and importers made their views known in writing. A number of them requested and obtained hearings.

(4) Certain firms which buy or use the product also put forward observations.

(5) The Commission collected and verified all the information which it considered necessary for a preliminary assessment of the facts and carried out checks at the premises of the following companies in particular :

(a) *Community producers :*

— Destilados Agrícolas Vimbodí SA, Tarragona (Spain),

— Rhône Poulenc Chimie de Base, Courbevoie (France),

— Societé française Hoechst, Paris (France) ;

(b) *Producer/exporter :*

Uranus Chemicals Co. Ltd, Hsin Chu (Taiwan) ;

(c) *Importer :*

Transol Chemiehandel GmbH, Essen (Federal Republic of Germany).

(6) The investigation into dumping and price differences covered the period from 1 November 1986 to 30 April 1987.

B. DUMPING

I. Taiwan

(a) *Normal value*

(7) Normal value was based on the weighted average of comparable prices actually paid or payable in the ordinary course of business for like products intended for consumption on the Taiwanese market.

(b) *Export price*

(8) The export prices were based on prices actually paid or payable for the product sold for export to the Community.

(c) *Comparison*

(9) In comparing normal value with export prices, the Commission made allowance, where appropriate, for differences affecting price comparability, such as credit terms and transport, insurance, handling and ancillary costs. These differences were duly taken into account once it was established that claims justified. All comparisons were made on an ex-works basis.

[1] OJ No L 201, 30. 7. 1984, p. 1.
[2] OJ No L 167, 26. 6. 1987, p. 9.
[3] OJ No C 137, 22. 5. 1987, p. 5.

(d) *Dumping margin*

(10) Preliminary investigation of the facts outlined above revealed the existence of dumping, the dumping margin being equal to the difference between the normal value and the price on export to the Community, duly adjusted. Export prices were compared, transaction by transaction, with the normal value. The weighted average dumping margin, using the free-at-Community-frontier price, was 50,99 %.

II. South Korea

(a) *Normal value*

(11) As the producers/exporters were not cooperative, the normal value was established, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, on the basis of the facts available, in this case the price payable on the Korean domestic market as indicated in the complaint.

(b) *Export price*

(12) As the producers/exporters were not cooperative, the export prices were determined, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84, on the basis of the facts available from the Community's official statistics.

(c) *Comparison*

(13) As the producers/exporters were not cooperative, the only adjustments made to normal value and export prices were based on information suplied by the complaint.

(14) By checking against information in its possession, the Commission established that the amounts indicated in the complaint were reasonable.

(d) *Dumping margin*

(15) Examination of the facts, ascertained as shown above, revealed dumping of oxalic acid originating in South Korea.

(16) The dumping margin was taken as the amount by which the normal value, duly adjusted, exceeds the export price to the Community, duly adjusted. On the basis of the free-at-Community-frontier price, the dumping margin is 66,05 %.

C. INJURY

I. Volume and price of imports

(a) *Volume*

(17) Information at the Commission's disposal indicated that imports from South Korea and Taiwan rose from zero in 1984 to 198 tonnes in 1985 and 1 885 tonnes in 1986. In the first four months of 1987, they amounted to 917 tonnes. The total market share held by these imports rose during the same period from 0 % in 1984 to 0,89 % in 1985 and 9,18 % in 1986.

(b) *Prices*

(18) The evidence at the Commission's disposal also shows that the price of the imports was 12 % to 14 % lower than the Community producers' prices in 1985 and 31 % to 33 % lower in 1986. During the reference period, price undercutting was between 18 % and 27 %.

II. Impact on the industry concerned

(a) *Community industry*

(19) The Community industry on which the impact of dumped imports was investigated is that referred to in point 1.

(b) *Impact on the industry*

(20) Analysis of information relating to the factors listed in Article 4 (2) (c) of Regulation (EEC) No 2176/84 indicated that although the imports in question have had no adverse effect on the production, sales, stocks, capacity utilization, employment or market share of the Community industry concerned, they have nevertheless exerted downward pressure on the industry's prices, preventing it from increasing them in line with the average rate of inflation in 1986 and the first four months of 1987.

(21) Examination of results for the industry concerned shows that, in order to maintain or increase its ales and market share in the EEC, it has been forced to sell its products at a loss. As a result, the industry concerned, which was profitable until 1985, began, from 1986, to suffer losses which worsened considerably during the first four months of 1987, reaching 11,6 % of net turnover.

(c) *Causation*

(22) As regards causation, the Commission noted that the rise in the imports in question between 1984 and the first four months of 1987 coincided with the weakening in prices on the Community market and the deterioration in the profitability of the Community industry concerned. It is, therefore, clear that imports from Taiwan and South Korea were the cause of material injury to the Community industry.

(23) While not disputing the existence of injury, one of the firms importing oxalic acid from Taiwan argued that the injury to the Community industry was caused by imports originating in China, South Korea and Czechoslovakia rather than Taiwan.

(24) However, no convincing evidence for this assertion was supplied. On the contrary, the information available to the Commission shows that imports from Taiwan, which even taken separately are not insignificant, have been sold at prices markedly below the Community industry's costs plus an adequate profit margin. Irrespective of the impact of imports from the countries named by the importer, all of which are in any case covered by anti-dumping proceedings, a causal link between the imports originating in Taiwan and the injury described has been sufficiently established.

(d) *Other factors and conclusion*

(25) The Commission considered whether the injury to the Community industry might have been caused by other factors such as an increase in imports from countries other than those covered by an anti-dumping proceeding.

(26) However, the investigation showed that the volume and price of imports from countries other than those mentioned above had remained stable.

(27) Accordingly, the volume and price of the dumped imports from the two countries under consideration led the Commission to conclude that these imports taken in isolation must be regarded as the cause of material injury to the Community industry concerned.

D. COMMUNITY INTEREST

(28) A number of firms using or processing oxalic acid from Taiwan argued that it would not be in the Community's interests to take defensive measures which would increase the price of the product and hence make their own products less competitive. Some went so far as to say that this would have an adverse effect strong enough to force them to close down production.

(29) None of these users or processors, however, supplied evidence to the effect that the adoption of defensive commercial policy measures would significantly affect their production costs. The fact that some of them have managed to continue production until now despite defensive action taken by the Community in the past casts doubt on the reality or immediacy of a threat that they could halt production or sales.

(30) A number of users stated that the quality of the imports from Taiwan, specifically the low SO_4 content, make this an essential source of supply which they need in order to continue manufacturing their own products.

(31) Irrespective of whether this alone would justify allowing dumped imports into the Community which were causing material injury to an established industry, the information available to the Commission shows that oxalic acid of the same quality as that from Taiwan is available in the Community.

(32) In conclusion, in the light of the problems which have faced and continue to face the Community industry, the Commission finds that it is in the Community's interest to take defensive action by imposing on the imports concerned a provisional anti-dumping duty designed to prevent further injury being caused during the reaminder of the proceeding.

E. PROVISIONAL DUTY

(a) *Rate*

(33) In view of the scale of the injury and of the dumping margins, the Commission does not consider that the provisional duty should be set at a level equivalent to the dumping margin ; a lower duty should suffice to halt the injury being caused by the imports in question.

For this purpose, the Commission has looked at the level of import prices and the amount by which they undercut a Community threshold price which would provide an efficient Community producer with a sufficient return to continue operating.

Taking into account the different prices of Taiwanese and South Korean oxalic acid imports into the Community and the resulting difference in price undercutting margins, the rate of duty on oxalic acid from Taiwan should be higher than that on oxalic acid from South Korea.

(b) *Form*

(34) The Commission considered that to ease customs clearance the provisional duty should take the form of an *ad valorem* duty.

F. FINAL PROVISION

(35) In the interests of sound administration, a reasonable period should be allowed for the parties which have cooperated fully in the investigation to make known their point of view on the findings contained in this Regulation and to request a hearing.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of oxalic acid falling with code 2917 11 00 of the combined nomenclature, originating in Taiwan and South Korea.

2. The amount of the duty, based on the free-at-Community-frontier price, not cleared through customs, shall be:

— 7,07 % for oxalic acid originating in South Korea, and

— 20,21 % for oxalic acid originating in Taiwan.

3. The provisions in force concerning customs duties shall apply.

4. 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, parties which have fully cooperated with the investigation may make known their point of view in writing and apply for a hearing by the Commission within one month from 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, this Regulation 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, 15 March 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission