COUNCIL REGULATION (EEC) No 1306/89

of 11 May 1989

imposing a definitive anti-dumping duty on imports of light sodium carbonate originating in Bulgaria, the German Democratic Republic, Poland and Romania

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 15 thereof,

Having regard to the proposal from the Commission, presented after consultation within the Advisory Committee as provided for by that Regulation,

Whereas :

A. PROCEDURE

(1) In February 1983 the Council adopted Regulation (EEC) No 273/83 imposing a definitive anti-dumping duty on imports of light sodium carbonate originating in Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union [2]. In June 1986 it adopted Regulation (EEC) No 1946/86 [3] extending the scope of the initial Regulation. In November 1987 [4] the Commission gave notice of the impending expiry of the anti-dumping duty.

(2) Following publication by the Commission in November 1987 of the notice of expiry of the measures in force, in January 1988 the Commission received a request for a review from Cefic (European Council of Chemical Manufacturers' Federations) accounting for almost all Community production of the product in question. The complaint contained evidence that the expiry of the measure would result in renewed injury ; that evidence was judged sufficient to justify the initiation of an investigation. The Commission therefore gave notice in the *Official Journal of the European Communities* [5].

(3) The product in question is light sodium carbonate with a specific weight of less than 0,700 kg/dm³ in the form of powder or grains of less than 0,4 mm in diameter, with or without added sand. It falls within CN codes ex 2836 20 00 and ex 3823 90 98.

(4) The Commission officially advised the exporters and importers known to be concerned and the complainants, and gave interested parties the opportunity to make known their views in writing and to request a hearing.

(5) The Community producers, the exporters and some importers made known their views in writing.

(6) The exporters from Romania, Poland, the German Democratic Republic and Bulgaria as well as three importers asked for an opportunity to make known their views orally and their request was accepted.

(7) The Commission gathered and verified all information it deemed to be necessary to establish whether there was dumping, injury or the threat of injury, and carried out investigations at the premises of all the Community producers :

— Solvay, Belgium,
— Solvay, France,
— Rhône-Poulenc, France,
— Solvay, Italy,
— Chemische Fabrik Kalk, Germany,
— Matthes & Weber, Germany,
— Deutsche Solvay, Germany,
— Akzo, Netherlands,
— ICI, United Kingdom,
— Solvay, Spain,
— Soda Povoa, Portugal,

and of the main importers concerned :

— Brenntag UK Ltd, United Kingdom,
— Helm AG, Germany,
— Megachem, Germany.

(8) The Commission also visited the premises of a producer in the reference country, *viz.* Alcali SA, Monterrey, Mexico.

(9) The investigation into dumping and price differences covered the period from 1 January 1987 to 31 May 1988.

B. DUMPING

I. Normal value

(10) In order to establish whether the imports from Bulgaria, the German Democratic Republic, Poland, Romania and the Soviet Union were being dumped, the Commission, in view of the fact that these countries do not have market economies, was

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 32, 3. 2. 1983, p. 1.
[3] OJ No L 169, 26. 6. 1986, p. 1.
[4] OJ No C 317, 28. 11. 1987, p. 5.
[5] OJ No C 162, 21. 6. 1988, p. 9.

obliged to establish the normal value in a market-economy country. The complainants had suggested that it use the selling prices of the like product on the Japanese market.

(11) Some exporters argued against this suggestion on the grounds that certain essential cost factors, in particular the need to import raw materials, meant that prices on the Japanese domestic market were high. In any case, the four Japanese producers approached by the Commission refused to cooperate.

(12) The exporters also disagreed with the choice of Austria as a reference country because its only producer was protected by price controls and a system of import licensing which kept prices on the domestic market high.

(13) The Commission then approached a Canadian producer, which refused to cooperate.

(14) A number of exporters said normal value should be based on Community producers' prices. However, Article 2 (5) (c) of Regulation (EEC) No 2423/88 restricts this approach to cases where reference to a non-member country would fail to provide an adequate basis.

(15) In the end the Commission selected Mexico as reference country, in the light of:

— the availability of domestic raw materials,

— its use of a similar manufacturing method, the 'Solvay process', producing sodium carbonate by synthetic rather than natural means,

— the fact that its sodium carbonate is of a quality equivalent to that of the exporting/producing countries concerned in this investigation,

— the fact that production there is on a large scale,

— the state of competition on the domestic market, with two local producers and substantial imports from the United States, imports being free of quantitative restrictions and subject to a customs duty of 10 %, proportionally similar to that of the Community; Mexican prices are close to those of Community manufacturers and appear to allow profits to be made which do not appear to be excessive,

— the fact that sales on the Mexican market are large enough to use as a reference basis; the Mexican producers of sodium carbonate sell virtually their entire output on the domestic market.

The Commission therefore concluded that it was appropriate and not unreasonable to use this as a basis for calculating normal value.

(16) Accordingly it established normal value on the basis of the average selling prices, net of all direct discounts and rebates charged in 1987 and the first five months of 1988 on the domestic market of Mexico for light sodium carbonate bagged or in bulk. Prices were calculated in US dollars in order to neutralize the inflationary effect of Mexico's currency.

II. Export price

(17) Wherever possible, export prices were determined on the basis of the prices actually paid by independent Community importers to the exporters concerned. The Commission checked over 70 % of Community imports.

Export prices were established in respect of consignments brought into the Community both for actual consumption and for inward processing. Regulation (EEC) No 2423/88 does not exclude consideration of goods exported to the Community under these arrangements. Inability to take imports for inward processing into account for the purpose of calculating export prices would leave the anti-dumping proceeding open to abuse in that the firms involved could easily decide subsequently to release the products for consumption in the Community, something which it would be difficult for the Commission or the Member States to prove. Furthermore, there is a possibility that Community producers could be injured by these imports on which customs duties have been temporarily suspended either because of their indirect effect on Community prices or because they reduce the outlets available to producers.

III. Comparison

(18) In comparing the normal value with the export prices, the Commission took account, where circumstances warranted it and sufficient evidence was available, of differences affecting price comparability; appropriate adjustments were made for payment and delivery terms, transport and insurance costs and different types of packing.

All comparisons were made at the ex works stage.

IV. Dumping margins

(19) Comparisons of the normal value and the export prices for 1987 and 1988 showed that imports from the countries covered by the investigation were being dumped, the dumping margin being the difference between the normal value and the price of exports to the Community.

Expressed as a percentage of the free-at-Community-frontier price, the margins were : 58 % and upwards in the case of Poland, 67 % and upwards in the case of Bulgaria, 35 % and upwards for Romania and 64 % and upwards for the German Democratic Republic.

There was no evidence of any imports into the Community from the Soviet Union later than 1984.

C. INJURY

(20) In the case under consideration, what the Commission had to decide was whether the expiry of dumping measures already in force would lead to renewed injury.

I. Present situation

(21) Since the entry into force of the anti-dumping duties, exports to the Community from the countries in question have been limited. Before 1983 they had taken 17 % of the market. Since then, the market share has fallen to 4 % and remained steady at that level. These imports include transactions under the inward processing arrangements, which similarly have the effect of taking sales from Community producers and exercise downward pressure on their prices.

(22) Over the same period the Community sodium carbonate market experienced a marked contraction. Community consumption of light sodium carbonate, which stood at 1 800 000 tonnes in 1982, fell by almost 20 % in the three years after that. This prompted a major restructuring and rationalization of the Community industry, including reduction of total (dense and light) sodium carbonate production capacity, which fell from 7 300 000 tonnes in 1982 to 6 700 000 tonnes in 1988 with the closure of several production units, whereas the East European countries' output appears to have remained constant over the period 1983 to 1988. The Community market has continued to shrink since 1985, albeit more slowly.

(23) The contraction of the market is due among other things to restrictions imposed on the use of light sodium carbonate in the manufacture of other products. Community consumption of light sodium carbonate fell from 1 600 000 tonnes in 1985 to 1 460 000 tonnes in 1987, resulting in a decline in the Community industry's sales from 1 500 000 tonnes to 1 250 000 tonnes and a fall in output from 1 754 000 tonnes to 1 500 000 tonnes.

(24) The Commission has established that the import prices were on average from 6 to 20 % lower than those of the Community industry over the period covered by the investigation, i.e. from 15 to 40 % net of the anti-dumping duties.

The volume of imports being modest, this undercutting has only a limited effect on the general level of prices. In a number of specific instances, however, particularly on the British and German markets, Community producers have been obliged to match the lower prices of East European goods on the Community market, which barely enables them to cover their production costs.

(25) The financial situation of the Community industry has improved but remains uncertain. Part of the industry is achieving fairly satisfactory results, but some firms are operating at only a small profit or a loss. The relative improvement is attributable partly to restructuring, which has kept capacity utilization at about 80 % — the minimum required for continuous production, given the difficulty of storing the product — and partly by the effect of the anti-dumping duty on imports, but above all by the currently low level of energy prices, the major factor affecting production costs ; it should be noted that the rate of depreciation of the plant is often low, which discourages the investment necessary for continued efficiency, a particularly serious problem in this capital-intensive industry.

To sum up, while the industry's situation has improved since the duties were imposed, it remains precarious and dependent on the trend of raw material prices.

II. Threat of injury

(26) In order to see whether, in these circumstances, the expiry of the anti-dumping measures might lead to the renewed occurrence of material injury to Community producers, the following factors were considered :

(a) The exporting countries under consideration together account for 11 million tonnes of production capacity, a substantial proportion of

the world total. At the moment their aggregate output is around 9 million tonnes, with domestic consumption around 8 million tonnes. With consumption tending to fall, larger amounts are becoming available for export. Unlike the Community countries, Eastern Europe is keeping production capacity and exports at a very high level; according to the information available, Bulgaria's exports in recent years have averaged around 70 % of its annual production of one million tonnes, with Romanian exports over the same period running at about 50 % of production, Poland around 40 % and East Germany 30 %. The Soviet Union produces 5 million tonnes, much of which is used to meet domestic demand, but it has considerable export capacity. With the opening of new production units throughout the world, East European countries could lose some of their traditional outlets. Realistically, therefore, we can foresee the possibility of substancial additional exports form these countries to the Community even if, as some of them claim, trade among Comecon members in stepped up. They could also expand production by using existing plant more intensively.

(b) As to the possibility that these countries might adopt a more aggressive export policy in the event of expiry of the anti-dumping duties, we would point out that the Community is a nearby market with attractive prices. Moreover, East European countries have been dumping this product for many years, as the high dumping margins found in the course of the initial investigations in 1979 and the review in 1982 show. By this means these countries had gained a sizeable share of the market prior to 1983. The present investigation has shown that the exporters concerned have continued dumping.

In this connection it is significant that these exporters have markedly increased sales to the Community of dense sodium carbonate a product not subject to an anti-dumping duty, at the same price as light, despite the higher production costs. The way in which these countries have acted to evade anti-dumping duties by selling dense sodium carbonate at the price of light for uses where the two products are interchangeable, and switching their marketing policy to the dense product, is an indication of their intention to retain a place on the Community market for this class of products.

(c) An increase in dumped imports would affect the Community industry (mainly located near its outlets, for reasons noted below) in a number of ways.

As the Community market is shrinking, such a development would be bound to cut into domestic sales. This could not be offset by increased sales on third country markets, since the Community industry's scope is restricted by the incidence of transport costs for this high-bulk, low-value product. The drop in sales would result in a decline in production and the utilization of existing capacity.

This would seriously jeopardize the results of the recent restructuring and would inevitably be detrimental to profits and employment in the industry.

Here it should be noted that due to the continuous manufacturing process in use in the industry and the problems of storing the product, sodium carbonate is generally sold to dealers or end users in bulk, under contracts covering a whole year. For a Community producer to lose a single contract, therefore, can amount to a substantial loss of market share.

(27) The Council has accordingly concluded that elimination of the anti-dumping duty could lead to the recurrence of material injury to Community producers.

D. COMMUNITY INTEREST

(28) Since the repercussions of any reasonable increase in the price of light sodium carbonate on the price of goods incorporating or using the product would be negligible, users' interests would not be significantly affected by the imposition of anti-dumping duties. There have in any case been no comments from users.

(29) In view of that fact, given the damaging effects a renewed surge of dumped imports would have on the still vulnerable state of the industry, the Council considers it is in the Community's interest that the duties should remain in force.

E. UNDERTAKINGS

(30) Two exporters of the product, on being informed of the main findings of the investigation, offered undertakings in respect of exports to the Community of light sodium carbonate.

Following consultations within the Advisory Committee the Commission declined to accept the undertakings, informing the exporters of the reason for its decision.

F. NATURE AND LEVEL OF DUTY

(31) In order to prevent evasion of the anti-dumping measures as far as possible, they should take the form of a variable duty based on a minimum price. Different rates of duty should apply according to whether the product is sold loose or in bags.

(32) The duty should be less than the dumping margin, provided a lower rate is sufficient to eliminate injury. Thus the threshold would be equal to a weighted average of Community producers' production costs plus a reasonable profit sufficient to finance the necessary level of investment. In the light of the capital invested by Community producers, the normal rate of return and the risk involved, the Council has concluded that an appropriate profit margin would be 8 %.

On the basis of the above considerations the variable duty will be set at the following rate :

— for light sodium carbonate in bulk, the difference between a net price of ECU 143 per tonne and the net price free-at-the frontier of the importing Member State, not cleared through customs, payable by the first importer,

— for light sodium carbonate in bags of a unit weight of less than 500 kilograms, the difference between a net price of ECU 159 per tonne and the net price free at the frontier of the importing Member State, not cleared through customs, payable by the first importer.

Since the Soviet Union has exported no sodium carbonate to the Community since 1984, its industry should not be subject to the variable duty,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of light sodium carbonate falling within CN codes ex 2836 20 00 and ex 3823 90 98, originating in Bulgaria, Romania, the German Democratic Republic or Poland.

2. The amount of the duty shall be :

— for all imports in bulk, the difference between the net price per tonne, free at Community frontier, not cleared through customs, and the sum of ECU 143,

— for all imports in bags of a unit weight of less 500 kilograms, the difference between the net price per tonne, free at Community frontier, not cleared through customs, and the sum of ECU 159.

3. The free at Community frontier prices shall be net if the conditions of sale provide for payment within 30 days of the date of shipment. They shall be increased or reduced by 0,70 % for each month's increase or decrease in the period for payment.

4. For the purposes of this Regulation, 'light sodium carbonate' means non-compacted sodium carbonate with a specific weight of less than 0,7 kg/dm^3, consisting of powder or grains less than 0,4 mm in diameter.

5. The provisions in force concerning cusltoms duties shall apply.

Article 2

Regulation (EEC) No 273/83 is repealed.

Article 3

This Regulation shall enter into force on the day following 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, 11 May 1989.

For the Council

The President

C. ARANZADI