COMMISSION REGULATION (EEC) No 2535/89

of 2 August 1989

imposing a provisional anti-dumping duty on imports of potassium permanganate originating in Czechoslavakia

THE COMMISSION 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 10 (6) thereof,

After consultations within the Advisory Committee established by that Regulation.

Whereas :

A. Procedure

(1) Following a complaint lodged by the European Council of Chemical Manufacturers' Federations (ECCMF) on behalf of a Community producer of potassium permanganate whose output constitutes the totality of the Community production of the product in question, the Commission published a notice in the *Official Journal of the European Communities* (2) announcing the initiation of an anti-dumping proceeding concerning imports into the Community of potassium permanganate falling within CN code ex 2841 60 00 originating in Czechoslovakia, the German Democratic Republic and the People's Republic of China, it then commenced an investigation.

(2) Following the investigation, which established the existence of dumping and injury, a provisional duty was imposed by Commission Regulation (EEC) No 2495/86 (3) on imports originating in those countries. The Commission, by Decision 86/589/EEC (4), subsequently accepted an undertaking which was offered *inter alia* by the Czechoslovakian exporter — Chemapol Foreign Trade Co. Ltd.

(3) The Commission received afterwards a request from ECCMF to investigate the non-compliance of the price undertaking which resulted mainly from the study of the available official statistics. Furthermore, evidence was obtained showing that Chemapol appears to have exported potassium permanganate to the Community at a price much lower than that stipulated in the undertaking. The Commission subsequently granted the Czechoslovakian exporting company a hearing.

B. Violation of the undertaking

(4) The analysis of the official statistics suggests that the undertaking has been violated.

(5) Moreover, from the evidence obtained by the Commission it has been confirmed that the Czechoslovakian exporter invoiced the product concerned to the Community, through an independent customer, at a price considerably lower than that stipulated in the price undertaking.

(6) The exporter did not dispute the statistics or the evidence of violation, but said that its independent customer had agreed not to seil the product in the Community and that in spite of this agreement the product was sold into the Community as the exporter was not able to control the activities of all its customers. However, in the price undertaking under consideration, the exporter agreed not to export potassium permanganate to the Community, either directly or indirectly, through a subsidiary, a branch or an agent of the company, or any third party or entity, at less than a certain price, cif Community frontier. Accord to the clear wording and the purpose of this undertaking, the mere export of the product concerned to the Community, in breach of the price stipulated, constitutes a violation of the undertaking. It is immaterial that the exporter's customer did not respect the alleged agreement, according to which the product should not be sold in the Community.

C. Reopening of the proceeding

(7) The Commission considers that in these circumstances the facts should be reviewed. It has therefore reopened the investigation.

D. Provisional measures

(8) In the light of the evidence available to it confirming the price violation, the Commission considers that acceptance of the undertaking given by Chemapol Foreign Trade Co. Ltd should be withdrawn. In addition, on the basis of the facts established by the investigation showing the injury caused, it is in the interests of the Community to impose a provisional anti-dumping duty forthwith

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 63, 18. 3. 1986, p. 5.
(3) OJ No L 217, 5. 8. 1986, p. 12.
(4) OJ No L 339, 2. 12. 1986, p. 32.

on all imports of potassium permanganate originating in Czechoslovakia, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88.

E. **Rate of duty**

(9) According to that Regulation, the anti-dumping duty should be set on the basis of the facts established before the acceptance of the undertaking. Therefore, provisional duty shall be set either at a rate equivalent to the amount by which the free-at-Community-frontier price, not cleared through customs, to the first importer in the Community falls below, ECU 2,30 net per kilogram, or at 21 % of that price, whichever is the higher, in conformity with Regulation (EEC) No 2495/86,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission's acceptance of the unertaking given by Chemapol Foreign Trade Co. Ltd on 26 November 1986 is hereby withdrawn.

Article 2

1. A provisional anti-dumping duty is hereby imposed on imports of potasium permanganate originating in Czechoslovakia and falling within CN code ex 2841 60 00.

2. The duty shall be equal to either the amount by which the free-at-Community-frontier net price per kilogram, not cleared through customs falls below ECU 2,30, or 21 % of that price, 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 product 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 2423/88, the parties concerned may make known their views in writing and aply 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 its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2423/88, 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.

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Done at Brussels, 2 August 1989.

For the Commission

Frans ANDRIESSEN

Vice-President