COMMISSION REGULATION (EEC) No 1537/90

of 28 May 1990

imposing a provisional antidumping duty on imports of potassium permanganate originating in the USSR

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 Community (1), and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. PROCEDURE

(1) In May 1989 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (ECCMF) on behalf of a Community producer of potassium permanganate which represents the totality of the Community output of the product in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an antidumping proceeding concerning imports into the Community of potassium permanganate falling within CN Code ex 2841 60 00 (Taric code : 2841 60 00 * 10) and originating in the USSR and commenced an investigation.

(2) The Commission officially so advised the exporter and importers known to be concerned, the representatives of the exporting country and the complainant and gave the parties concerned the opportunity to answer the questionnaires addressed to them, to make known their views in writing and to request a hearing.

(3) The Community producer returned the questionnaire to the Commission duly completed. The exporter in the USSR argued that no potassium permanganate had been exported directly to the Community since 1987. Some importers stated in writing that they had not imported the product in question, either directly or indirectly, from the USSR. One importer informed in writing that he had made imports, directly from Austria, of potassium permanganate originating in the USSR. The other importers did not reply at all to the Commission's questionnaire.

(4) The Community producer, the exporter and the representatives of the exporting country made their views known in writing. The Community producer and the representatives of the exporting country requested and were granted hearings. No submissions were made by processors or consumers of potassium permanganate in the Community.

(5) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following companies :

— Community producer :
Industrial Quimica del Nalon SA, Oviedo, Spain,

— Producer in the country of reference :
Carus Chemical Company, Ottawa, Illinois, USA,

— Importer in the Community :
Grillo Chemikalien GmbH, Duisburg — Hamborn, Federal Republic of Germany.

(6) The investigation of dumping covered the period from 1 July 1988 to 30 June 1989.

B. PRODUCT UNDER CONSIDERATION

(i) Description of the product

(7) The product which is the subject of the investigation is potassium permanganate and, at room temperature, appears as a crystaline solid of rombic shape with a dark purple metallic sheen. It is a compound of manganese, potassium and oxygen whose manufacture requires two basic raw materials : pirolusite ore and caustic potash. By a two step manufacturing procedure the raw materials are converted by oxidation, first to potassium manganate and then to potassium permanganate.

(8) The product is mainly available in three specifications : Technical, Free-Flowing and Pharmaceutical. Technical and Free-Flowing specifications are interchangeable in all uses.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 192, 29. 7. 1989, p. 8.

(ii) **Like product**

(9) The Commission found that potassium permanganate produced in the Community and that which is exported from the USSR are like products in all essential physical and technical characteristics. It also verified that there are no significant differences of this types between the product manufacutred in the USSR and that produced in the United States, which was chosen as reference country (see recitals 11 to 14).

C. DUMPING

(i) **Normal vlaue**

(10) In establishing the existence of dumped imports from the USSR, the Commission had to take account the fact that since the beginning of 1988 all imports of potassium permanganate originating in that country have not been made directly from the country of origin to the Community, but from Austria.

In such circumstances, in accordance with Article 2 (6) of Council Regulation (EEC) No 2423/88, the normal value shall be established on the basis of the comparable price actually paid or payable for the like product on the domestic market of either the country of export or the country of origin. Given that the product in question appears not to be produced in Austria and that it is merely transshipped through this country, the choice of the country of origin seems to be the most appropriate.

(11) Since the USSR does not have a market economy, the Commission had to base its determinations on the normal value in a market-economy country. For this purpose the complainant had suggested the United States which is the only non-EEC market economy country with considerable production. No objection was made to this suggestion.

(12) The Commission verified that in the United States there are no price controls and there is sufficient internal competition as a result of the presence of substantial imports from third countries. In addition, it was confirmed that prices charged by the manufacturer in the United States on its domestic market ware in a reasonable proportion to production costs and included a reasonable profit margin.

(13) Sales considered for calculation of normal value were made to independent customers, and the weighted average of the prices of these sales was calcultated on a six-monthly basis because of a price increase in January 1989. This weighted average was found to be representative of prices on the United States domestic market.

(14) The Commission therefore concluded that it would be appropriate and not unreasonable to determine normal value on the basis of the comparable prices actually paid or payable in the ordinary course of trade for the like product on the United States market.

(ii) **Exort price**

(15) Export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community. However, as imports into the Community declared to have been made during the investigation period only covered a minor proportion of total imports registered in official Community statistics for that period, export prices had to be also based on those official statistics duly adjusted which were considered as facts available in accordance with Article 7 (7) (b) of Council Regulation (EEC) No 2423/88.

(iii) **Comparison**

(16) In comparing normal value with export prices the Commission took account, where circumstances permitted and where there was sufficient evidence, of differences affecting price comparability, in particular differences in selling expenses such as transport, insurance, credit, commissions and salesmen's salaries. All comparisons were effectively made at ex works level.

(17) These comparisons show the existence of dumping in respect of imports into the Community of potassium permanganate originating in the USSR, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. In view of the necessity of using official Community statistics for the determination of export prices the later had to be compared to normal value on a monthly average basis. The margins of dumping calculated as a percentage of monthly average export prices, cif at Community border, before customs duty, vary during the investigation period from 33,3 % to 77,7 %, and have a weighted average of 42,3 %.

D. INJURY

(18) For the assessment of the injury caused by the dumped imports, it was considered appropriate to take into account not only imports of potassium permanganate originating in the USSR, but also dumped imports of this product originating in Czechoslovakia, which were subject to a review proceeding terminated by the Council imposing a definitive antidumping duty [1]. In fact, imports from both countries, concerned the same product, were subject to a common investigation period and

[1] OJ No L 42, 16. 2. 1990, p. 1.

commercial policies of exporters in these countries were similar. On this basis, there are enough grounds for a comulation of imports of potassium permanganate originating in the USSR and Czechoslovakia.

(19) The evidence available to the Commission shows that imports into the Community of potassium permanganate originating in the USSR rose from only 20 tonnes in the period from July 1986 to June 1987, to 257 tonnes in the following twelve months and amounted to 218 tonnes during the investigation period (from July 1988 to June 1989). The Community market share held by these imports increased over the same periods from 0,6 % to 6,6 % and reached 8,1 % during the investigation period.

With regard to imports from the USSR and Czechoslovakia taken together, they increased from 213 tonnes in the period from July 1986 to June 1987, to 597 tonnes in the following twelve months and amounted to 395 tonnes during the investigation period. The development of these imports assessed in the light of the Community consumption of potassium permanganate over the same periods, leads to a combined market share held by imports from these two countries which rose from 6,9 % to 15,1 % and reached 14,6 % during the investigation period.

(20) The prices of the imports from the USSR undercut the prices of the Community producer during the investigation period by an average of nearly 11 %. The low level of import prices forced the Community producer to sell the product in the Community market at prices which either did not cover the Community producer's costs of production, particularly in Germany in which the imports concerned have been concentrated since the beginning of 1988, or did not allow (in other Community countries) to make a reasonable profit. The prices of these imports not only denied the Community producer prices increases which normally would have occurred, but obliged the Community producer to decrease its prices since the end of 1987 in an attempt to maintain its sales level and market share.

(21) As far as the situation of the Community producer is concerned, account had to be taken of the following factors:

(a) The Community producer had been forced to have periodic production shutdowns as a result of the low price level of the imports from the USSR and Czechoslovakia. Consequently capacity utilization of the Community producer has decreased during the last three years, to a very low level of 33 %. In addition, stocks over that period amounted on average to nearly 900 tons equivalent to more than seven month's sales.

(b) Although sales by the Community producer of potassium permanganate in the Community market increased slightly from 829 tonnes in the period from July 1986 to June 1987, to 903 tonnes in the following twelve months, they amounted to nearly 515 tonnes during the investigation period. This trend of sales, compared with that of Community consumption, showed, over the same period i.e. July 1986 to June 1989, a decline in the market share held by the Community producer from 27,1 % to 19 %.

(c) The combined effect of this price suppression and despression on the Community producer has been increased losses and a resultant continued precarious financial situation.

(d) Despite the continuous production shutdowns suffered by the potassium permanganate division of the Community producer, employment for the people working in that division has, until now, been maintained through transferring these employees to other areas of the company during the production shutdowns. However, should the degenerating financial situation of the potassium permanganate operation not rapidly improve, it would put at risk the continuity of the employment.

(22) In the light of the trends of the relevant economic factors referred to above, it appears that the situation of the Community producer has been adversely affected. This is especially demonstrated by a loss of profitability, sales and market share. In these circumstances, it is concluded that the Community industry is suffering material injury.

E. CAUSALITY

(23) As far as the causal link between the dumped imports and the material injury is concerned, the Commission found that there is a clear parallelism and simultaneity between the increase in the volume of dumped imports from the USSR and Czechoslovakia and the loss of market share and profitability of the Community producer.

Since potassium permanganate is a price sensitive product, the low price level of imports concerned has an immediate effect on the Community producer as shown in recitals 20 and 21 above. The increase of the Community market share held by imports from the USSR and Czechoslovakia taken together also corresponds to the decrease in the market presence of the Community producer.

(24) The Commission considered whether the injury has been caused by other factors such as changes in demand, a fall in exports by the Community producer to third countries or an increase in imports not subject to antidumping measures.

(25) Consumption of potassium permanganate in the Community decreased, during the investigation period, by nearly 24 % when compared to the consumption in the previous 24 months. This trend in consumption could only explain in part the decrease in sales by the Community producer, but not the reduction of its market share. Thus, in that period, while imports from the USSR and Czechoslovakia taken together not only remained stable but gained a Community market share which increased from 6,9 % in the period from July 1987 to June 1988, to 14,6 % during the investigation period, sales by the Community producer in the Community market decreased by 40 %, thus distinctly fast than Community consumption and consequently its market share in the Community also decreased significantly.

(26) Exports by the Community producer to third country markets, which were mainly concentrated in the United States, have remained stable in volume and value, since 1987, and, therefore, could not explain the Community producer's loss of profitability.

(27) Regarding imports not subject to anti-dumping measures, since 1987, they have rapidly increased, reaching a market share of 45,6 % on the Community market during the investigation period. More than 80 % of this market share is held by imports from the United States, Taiwan and Hong Kong.

As regards imports from the United States they have been made at prices far higher than those for the product originating in the USSR and Czechoslovakia and there is no evidence of dumping.

Concerning imports from Taiwan and Hong Kong which taken together held during the investigation period a Community market share of nearly 18 %, they have been excluded from the present proceeding pending the outcome of the Commission invesigation, already in progress, concerning the origin of these imports. There are indications, as potassium permanganate is apparently not produced in these countries, that these imports may originate in countries for which anti-dumping measures are in force.

Given the above market share, injury may also have been caused by exports made by Taiwan and Hong Kong. However, the imports from these two countries would only have contributed in part to the critical situation found and would not affect the considerable injurious impact of dumped imports originating in the USSR and Czechoslovakia, which taken in isolation have to be considered as causing material injury.

(28) In view of the increase in the Community market share held by the dumped imports originating in the USSR and their adverse effects on the Community prices for such a price sensitive product, it has to be concluded that these imports taken in isolation have had a discernible injurious impact on the Community producer and thus contributed to the material injury caused by dumped imports from the USSR and Czechoslovakia.

F. COMMUNITY INTEREST

(29) On the basis of the serious difficulties facing the Community producer concerned, failure to adopt measures to eliminate the injurious effects of the dumped imports originating in the USSR, would put at risk the industry's survival, with resulting adverse consequences for employment.

In addition, the multiple uses of potassium permanganate in environmental, agricultural and other, sometimes strategic fields, makes it advisable for the Community to protect the sole remaining Community producer against the threat to its existence from unfair imports. Moreover, the measures envisaged would have a negligible effect on prices for users in the Community in respect of final products in which potassium permanganate is incorporated.

Therefore, it is concluded that it is in the Community's interest that action should be taken to prevent injury being caused to the Community industry directly concerned during the proceeding, and this action should take the form of a privisional anti-dumping duty.

G. RATE OF THE DUTY

(30) The Commission took into account the minimum ex-factory selling price necessary to cover the Community producer's cost of production and to provide an adequate profit which was determined on the basis of a reasonable return on the investments made by the Comunity producer, and was in proportion to profits made by the manufacturer of the product in the reference country. It also considered the cif at-Community-frontier price, for the imports concerned and determined the amount of duty necessary to eliminate the injury to be 46 %.

However, the elimination of the injury through an increase of import prices up to the level of such minimum Community price would imply exceeding the margin of dumping found during the investigation period. Consequently, the injury can only be removed up to a level not exceeding the dumping margin of 42,3 % (see section C, recital 17). Moreover, in order to prevent increased

dumping, as well as injury, through further decreases in export prices, it is considered that the appropriate form of the duty to be imposed should be that of a variable duty.

Therefore, the injury shall be removed at the level of the dumping margin found and the amount of the variable duty shall be based on a reference minimum price of ECU 2,15/kg. This minimum prices is slightly lower than that applicable to imports from Czechoslovakia because of a different distribution in exports to the Community made by Czechoslovakia and the USSR during the two semesters covered by the investigation period (see recital 13).

(31) A period should be fixed within which the parties concerned may make their views known and request a hearing.

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional antidumping duty is hereby imposed on imports of potassium permanganate falling within CN code ex 2841 60 00 (Taric code 2841 60 00 * 10) and originating in the USSR.

2. The amount of the duty shall be equal to the amount by which the price, per kilogram net, free-at-Comunity-frontier, not cleared through customs, is less than ECU 2,15.

The said free-at-Community-frontier price, not cleared through customs, shall be net if the actual terms and conditions of sales provide that payment shall be made within 30 days of the date of dispatch ; it shall be lowered by 1 % for each month by which payment is actually deferred.

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 2

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 apply to be heard by the Commission within one month of 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 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.

Done at Brussels, 28 May 1990.

For the Commission

Frans ANDRIESSEN

Vice-President