I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 385/90

of 12 February 1990

imposing a definitive anti-dumping duty on imports of potassium permanganate originating in Czechoslovakia and definitively collecting the provisional anti-dumping duty imposed on those imports

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 12 thereof,

Having regard to the proposal submitted by the Commission after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Previous procedure

(1) Following a complaint lodged by the European Council of Chemical Manufacturers' Federations (ECCMF) on behalf of a Community producer whose output represents the entire Community production of potassium permanganate, 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 corresponding from 1 January 1988 to CN code ex 2841 60 00 (Taric code : 2841 60 00 * 10), originating in Czechoslovakia, the German Democratic Republic and the People's Republic of China, and commenced an investigation.

(2) Following the investigation which established, by Commission Regulation (EEC) No 2495/86 (3), the existence of dumping and injury, the Czechoslovak exporter, Chemapol Foreign Trade Co. Ltd, one exporter from the People's Republic of China and the exporter from the German Democratic Republic offered price undertakings.

(3) Under the terms of the undertaking given by the Czechoslovak exporter, the abovementioned firm undertook to increase its export price by an amount considered sufficient to eliminate the injury caused by dumping. This undertaking was accepted by the Commission by Decision 86/589/EEC (4).

B. Breach of the undertaking and reopening of the proceeding

(4) The Commission, having received a request from the complainant to investigate the non-compliance of the price undertaking, obtained evidence showing that potassium permanganate exported by Chemapol was again being imported into the Community market at a very low price, which indicated that the price undertaking was being breached and resulted in material injury to the Community producer, and decided (5), having regard the Czechoslovak exporter, to reopen the anti-dumping proceeding concerning imports of potassium permanganate originating in Czechoslovakia.

C. Provisional action

(5) The Commission, on the basis of the price violation and the injury resulting therefrom, withdrew its acceptance of the undertaking given by the Czechoslovak exporter and, by Regulation (EEC) No 2535/89 (6), imposed a provisional anti-dumping duty on imports of the product concerned originating in Czechoslovakia. That duty was extended for a maximum period of two months by Regulation (EEC) No 3844/89 (7).

D. Subsequent procedure

(6) The Commission officially informed the exporter and importers known to be concerned, the representatives of the exporting country and the

(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.
(5) OJ No C 216, 22. 8. 1989, p. 7.
(6) OJ No L 245, 22. 8. 1989, p. 5.
(7) OJ No L 374, 22. 12. 1989, p. 1.

Community producer of the reopening of the proceeding 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.

(7) The Community producer and the Czechoslovak exporter returned the duly completed questionnaire to the Commission and made known their views in writing. Only four importers sent replies to the Commission's questionnaire, while the rest either answered that they were not concerned by the proceeding or, in most cases, did not reply at all.

However, replies sent by the exporter and importers, which made themselves known, covered only a part of the imports into the Community of potassium permanganate originating in Czechoslovakia registered in the official Community statistics. Therefore, dumping and the resulting injury had to be determined on the basis of facts available, in accordance with Article 7 (7) (b) of Council Regulation (EEC) No 2423/88. Thus, official statistics were used to fill the gap shown, in that respect, by imports reported in the replies obtained from the exporter and importers.

(8) Upon request, the Community producer and the Czechoslovak exporter were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive duty and the definitive collection of the amounts secured by way of a provisional duty. The Czechoslovak exporter was also granted a period within which representations could be made. Comments made by the Community producer and the Czechoslovak exporter were considered prior to the Commission finalizing its conclusions.

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

(a) *Community producer :*

— Industrial Química del Nalón SA, Oviedo, Spain ;

(b) *Producer in the country of reference :*

— Carus Chemical Company, Ottawa, Illinois, USA ;

(c) *Importers in the Community :*

— Hachemie — Hamburger Chemische GmbH, Hamburg, Federal Republic of Germany,

— Grillo Chemikalien GmbH, Duisburg-Hamborn, Federal Republic of Germany.

(10) The Commission's investigation of dumping covered the period 1 July 1988 to 30 June 1989.

E. Product under consideration

I. *Description of the product*

(11) The product which is subject of investigation is potassium permanganate and, at room temperature, appears as a crystaline solid of rhombic 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.

(12) The product is mainly available in three grades : technical, free-flowing and pharmaceutical. Technical and free-flowing grades are interchangeable in all uses.

II. *Like product*

(13) The Commission found that potassium permanganate produced in the Community and that exported from Czechoslovakia are like products in all essential physical and technical characteristics. It also verified that there are no differences between the product manufactured in Czechoslovakia and that produced in the United States which was chosen as reference country (see recitals 15 and 16).

(14) The Council concludes that Czechoslovak imports are like products to potassium permanganate produced in the Community and the United States.

F. Dumping

(15) In establishing the existence of dumped imports from Czechoslovakia, the Commission had to take account of the fact that Czechoslovakia is not a market economy country and therefore had to base its calculations on the normal value of the product in a market economy country. For this pupose the complainant had suggested the choice of the United States as reference country. Since for the previous proceeding the United States had also been chosen as reference country, the Commission retained the complainant's suggestion and considered that the basis for comparison should once again be the selling price of the product on the United States market. The Czechoslovak exporter did not oppose this choice.

(16) The Commission verified that in the United States there are no price controls and there is sufficient competition as a result of the presence of substantial imports from third countries ; in addition, it was verified that prices charged by the US manufacturer on its domestic market are in a reasonable proportion to production costs and allow a profit margin. Therefore, the Council confirms the Commission's choice concerning the basis for determining the normal value.

(17) Normal value was established 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.

(18) Sales on the American market considered for calculation of normal value were made to independent customers, at a comparable level of trade to export sales, at a profit and in substantial quantites. The weighted average of the prices of these sales were therefore considered to be representative of those on the American domestic market.

(19) Export prices were determined, in general, on the basis of the prices actually paid or payable for the product sold for export to the Community. However, for 24 % of the exports taken into account, export prices were based, for the reasons given in recital 7, on official Community statistics duly adjusted.

(20) 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 quantities, delivery, payment terms and other selling expenses. All comparisons were effectively made at ex-works level.

(21) These comparisons show the existence of dumped exports to the Community during the investigation period. The margins of dumping, calculated cif at Community frontier, before customs duty, based on cash payment terms, vary according to the export transaction and the importing Member State, and have a weighted average of 19,6 %. The Council confirms this definitive dumping margin.

G. Injury

(22) The evidence available to the Commission shows that imports into the Community of potassium permanganate originating in Czechoslovakia, in spite of the existing undertaking, rose from 131 tons in 1987 to 384 tons in 1988, and amount to 166 tons on an extrapolated annual basis for 1989. Consequently, the exporting country's share of the Community market increased from 3,3 % in 1987 to 11,4 % in 1988 and reached 6,6 % during the first six months of 1989. These imports were concentrated on the markets of the Federal Republic of Germany and France, which account for 94 % of the volume of imports from Czechoslovakia into the Community since 1987.

(23) Regarding prices of the imports concerned, their low level forced the Community producer to sell the product in the Community market at prices which either did not cover on average the Community producer cost of production, in Community countries on which the imports concerned were present, or did not allow the said producer, in other Community countries, to make a reasonable profit. Import prices not only deprived the Community producer of price increases which normally would have occurred, but obliged the Community producer to decrease its prices in an attempt to hold its sales and market share.

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

(a) the material injury suffered by the Community producer as a result of imports originating in Czechoslovakia up to the end of 1986 was initially alleviated by the price undertaking given by the Czechoslovak exporter at that time.

However, afterwards, potassium permanganate originating in that country was released for free circulation in the Community at prices clearly breaching the price agreed. Therefore, the relief of the Community industry did not last. Capacity utilization of the Community producer has remained, on average, during the last three years at the very low level of 33 %. In addition, stocks cumulated and reached 1 200 tons in June 1989, equivalent to one year sales ;

(b) Community producer sales of potassium permanganate in the Community decreased from 1 209 tons in 1987 to 713 tons in 1988 and to 402 tons on an extrapolated annual basis for 1989. This development of sales, compared with that of Community consumption, shows a market share held by the Community producer which decreased from 25,9 % in 1987 to 21,2 % in 1988 and to 16 % during the first six months of 1989 ;

(c) the combined effects of suppression and depression of Community prices by import prices have increased losses incurred by the Community producer, which continues to be placed in a precarious financial situation ;

(d) despite the continuous production shutdowns suffered by the potassium permanganate division of the Community producer, employment for the 33 people working in that division has, until now, been maintained through transferring these employees to other divisions of the company during the production shutdowns. However, should the degenerating financial situation of the potassium permanganate operation continue and not be rapidly improved, it would

put at risk the continuity of the employment for these people.

(25) 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 witnessed by a loss of profitability, sales and market share. In these circumstances, it is concluded that the Community industry is suffering material injury. The Council confirms this conclusion.

(26) As far as the dumped imports originating in Czechoslovakia are concerned, there is a clear parallelism and simultaneity between the increase in their volume and the loss of the market share and profitability of the Community producer. Since potassium permanganate is a price-sensitive product, the price decrease of the Czechoslovak imports resulting from the violation of the undertaking had an immediate effect on the Community producer as shown permanganate recital 23. The increase of the Community market share held by imports originating in Czechoslovakia also corresponds, to a certain degree, to the decrease in the market presence of the Community producer.

(27) The Commission has considered whether 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 anti-dumping measures.

Consumption of potassium pemanganate in the Community decreased by nearly 40 % when comparing consumption during the first six months of 1989, extrapolated at an annual basis, to that in 1987. However, this development in consumption could explain the decrease in sales of the Community producer but not the reduction of its market share. Thus, in that period, while imports from Czechoslovakia increased by almost 27 %, sales of the Community producer in the Community market decreased distinctly faster than Community consumption, and consequently its market share and profitability in the Community respectively decreased by 38 and 50 %.

Exports by the Community producer to third country markets, in particular to the United States, has remained stable, in volume and value, since 1987, and, therefore, could not explain the Community producer's loss of profitability.

Imports not subject to either anti-dumping measures or investigations, since 1987, have increased faster than the Community consumption and reached a market share of 54 % on the Community market during the first six months of 1989. More than 90 % 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 Czechoslovak product and there is no evidence of dumping.

Imports from Taiwan and Hong Kong have been excluded from the present proceeding pending the outcome of the Commission investigation, already in progress, concerning the origin of these imports. There are indications, as potassium permanganate is not likely to be produced in these countries, that these imports may originate in countries for which anti-dumping measures are in force.

Given the above, injury may also have been caused by imports originating in countries not concerned by the proceeding. However, these imports would only have contributed in part to the material injury found and would not affect the injurious impact of dumped imports originating in Czechoslovakia (see recital 26).

In these circumstances, it can be concluded that the dumped imports originating in Czechoslovakia in violation of the undertaking have had a discernible and material injurious impact on the Community industry. The Council confirms this conclusion.

H. Community interest

(28) 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 Czechoslovakia would put at risk the industry's survival, with the resulting adverse consequences on employment. In addition the multiple uses of potassium permanganate in environmental, agricultural and other, sometimes strategic, fields, make it necessary for the Community to keep the sole remaining Community producer. 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.

(29) The Czechoslovak exporter, having been informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive duty, offered to keep in force the previous undertaking. However, given the breach of the undertaking, its renewal would not afford the Community producer sufficient and reliable protection and would discriminate against exporters of the product concerned in other third countries honouring the undertakings given to the Commission.

Therefore, the Council has come to the conclusion that it is in the Community's interest that action should be taken to eliminate the injury caused to the Community industry directly concerned, and this action should take the form of a definitive anti-dumping duty.

I. Rate of the duty

(30) Having taken into account, on the one hand, the ex-factory selling price necessary to provide an adequate profit to the Community producer and, on the other hand, the cif at-Community-frontier price, before customs duty, for the imports concerned, the Commission determined the amount of the duty necessary to eliminate the injury to be 25,4 %. However, the elimination of the injury through an increase of import prices up to the level of such injury threshold would imply exceeding the margin of dumping found during the investigation period. Consequently, the injury can only be removed at a level not exceeding the dumping margin of 19,6 % (see recital 21). Moreover, since the previous undertaking was breached, and 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 would be that of a variable duty. Therefore, the Council concludes that the injury shall be removed at the level of the dumping margin found and that the amount of the definitive duty shall be the amount by which the price, per kilogram net, free at Community frontier, not cleared through customs, is less than ECU 2,20.

J. Collection of the provisional duty

(31) For the reasons set out in recitals 15 to 27, the Council also considers that the amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 2535/89 shall be definitively collected to the extent of the amount of the duty definitively imposed. Therefore, provisional anti-dumping duties collected or securities received for potassium permanganate which are not covered by the definitive anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION :

Article 1

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

2. The amount of the duty shall be equal to the amount by which the price, per kilogram net, free at Commuinity frontier, not cleared through customs, is less than ECU 2,20.

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.

Article 2

The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 2535/89 shall be collected to the extent of the amount of the duty definitively imposed.

The amounts collected or secured which are not covered by the definitive duty shall be released.

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, 12 February 1990.

For the Council

The President

A. REYNOLDS