# COMMISSION REGULATION (EEC) No 1472/91

of 29 May 1991

**imposing a provisional anti-dumping duty on imports of oxalic acid originating in India or China and terminating the anti-dumping proceeding in respect of imports of oxalic acid originating in Czechoslovakia**

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 originating in countries not members of the European Economic Community [1], and in particular Articles 9, 11 and 14 thereof,

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

WHEREAS:

## A. PREVIOUS PROCEEDING

(1) In May 1987 the Commission published a notice in the *Official Journal of the European Communities* initiating an anti-dumping proceeding concerning imports of oxalic acid originating in China or Czechoslovakia [2].

By Decision 88/623/EEC [3], the Commission accepted the undertakings offered by the Chinese and Czechoslovak producers.

## B. REQUEST FOR A REVIEW AND INITIATION OF THE PROCEEDING

(2) In July 1990 the Commission received, from a group of producers accounting for a large part of Community production, a request for a review, pursuant to Article 14 of Regulation (EEC) No 2423/88, of the abovementioned measures concerning imports originating in China or Czechoslovakia together with a request for a proceeding to be initiated concerning imports of oxalic acid originating in India.

(3) The complainants justified their request for a review on the grounds that Chinese and Czechoslovak exporters other than those covered by the undertakings were exporting to the Community at prices lower than normal value and that in certain cases undertakings had been breached. Considerable margins of dumping were alleged in the complaint concerning India.

It was also claimed that dumped imports originating in the three countries concerned were causing material injury.

(4) The evidence of dumping and injury, in the case of India, and of a change in circumstances, in the case of China and Czechoslovakia, was judged sufficient to justify the initiation of an investigation. The Commission therefore published notices in the *Official Journal of the European Communities* announcing the initiation of an anti-dumping proceeding concerning imports of oxalic acid originating in India and a review concerning imports of oxalic acid originating in China or Czechoslovakia [4].

## C. SUBSEQUENT PROCEDURE

(5) The Commission officially informed the producers, exporters and importers known to be concerned. India's representatives and the complainant. It gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(6) The Community industry concerned, the producer/exporters and certain importers made their views known in writing. The Commission called for and obtained written comments from other Community producers in order to determine trends in Community consumption and its utilization capacity. Some exporters requested and were granted a hearing.

(7) Pursuant to, and in accordance with Article 7 (4) of Regulation (EEC) No 2423/88, those concerned had the opportunity to examine any information supplied to the Commission by anyone conerned in the investigation.

(8) The Commission collected and verified all information it deemed necessary and carried out checks at the premises of the following firms:

— Community producer:

Destilados Agrícolas Vimbodi, SA (DAVSA), Tarragona, Spain

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 137, 22. 5. 1987, p. 4.
[3] OJ No L 343, 13. 12. 1988, p. 34.
[4] OJ No C 216, 31. 8. 1990, p. 2.

— Non-Community producer/exporters :

Punjab Chemicals and Pharmaceuticals Ltd, Chandigarh, India

Excel Industries Ltd, Bombay, India.

(9) The dumping investigation covered the period 1 April 1989 to 31 August 1990 (hereinafter referred to as the 'investigation period').

## D. PRODUCT

(10) The product concerned is oxalic acid, which is sold in the form of a white, crystalline powder and used *inter alia* in the textile, building, metal-working, chemical and pharmaceutical industries. The product falls within CN code ex 2917 11 00.

(11) With regard to whether the imported products and the Community products are all like products, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, the Commission found that their chemical properties and end-use were the same, and the manufacturing process, from a glucide base, also identical. None of those concerned made any comment.

## E. RESULTS OF THE DUMPING INVESTIGATION

### I. Normal value

(a) *India*

(12) Since sales at a profit on the domestic marked greatly exceeded sales to the European Community, the Commission considered domestic sales a suitable basis for the calculation of normal value.

Pursuant to Article 2 (3) (a) of Regulation (EEC) No 2423/88, normal value was provisionally determined on the basis of the comparable weighted average price charged by the exporters concerned for like products sold on the domestic market.

(b) *China and Czechoslovakia*

(13) In order to establish whether imports originating in China or Czechoslovakia were being dumped, the Commission, pursuant to Article 2 (5) of Regulation (EEC) No 2423/88, had to take account of the fact that they were not market economy countries. It had therefore to base its calculations on the normal value in a market economy country.

The complainants had proposed India as a comparable country. The Commission throught this a reasonable choice in that oxalic acid was manufactured by an identical process and that there was competition on the Indian market. Since neither the Chinese nor the Czechoslovak producer/exporters objected, the Commission used India as a basis for its provisional calculations.

### II. Export prices

(14) Export prices were generally established on the basis of the prices actually paid or payable for products sold for export to the Community.

(15) Since the Chinese exporters and all but one of the importers failed to cooperate, the export prices were provisionally established, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88, on the basis of the facts available, in this case the data given in the complaint. These prices tally with those given by the one importer which did cooperate.

### III. Comparison

(16) Pursuant to Article 2 (9) and (10) of Regulation (EEC) No 2423/88, the Commission compared normal value with export prices, in each case making due allowance in the form of adjustments for differences affecting price comparability, e.g. transport, insurance and handling charges, credit terms and ancillary costs.

Export prices were compared, transaction by transaction, with normal value at the ex-factory stage.

### IV. Dumping margins

(17) A preliminary examination of the facts showed that dumping was taking place. The margin varied from one exporter to another. The individual dumping margins established for each exporter represent the difference between the normal value established and the price, duly adjusted, of each consignment exported to the Community. On this basis, the provisional average dumping margins, expressed as a percentage of the total cif value of imports of the product in question during the investigation period, are :

(a) India

— Punjab Chemicals and Pharmaceuticals Ltd 6,48 %

— Excel Industries Ltd 6,56 %

(b) China 20,32 %

(c) Czechoslovakia 0,01 %.

## F. INJURY

### Preliminary comment

(18) In the case of Czechoslovakia, the Commission took into consideration not only the fact that the low dumping margin had been influenced partly by the level of the price undertaking offered by the Czechoslovak exporter, but also that this exporter had for some ten years respected its undertakings and sold at prices appreciably higher than those laid down in the undertaking currently in force. In the absence of any evidence to suggest that this exporter might subsequently change its trading behaviour, the Commission concluded that this exporter posed no immediate threat to the Community industry and that this country should therefore be removed from the examination of injury.

### I. Volume, market share and price of imports

In order to establish the impact of imports of oxalic acid originating in India or China, the Commission took account of the following:

(a) *Volume and market share of dumped imports*

(19) Figures available to the Commission show that imports of oxalic acid originating in India or China rose from 1 406 tonnes in 1986 to 3 689 tonnes in 1989, an increase of 162 %. During the first eight months of 1990, the volume was 2 092 tonnes. If these figures are extrapolated to cover the whole of 1990, a 15 % drop in exports is revealed; this should, however, be set against a 28 % drop in Community consumption.

(20) In terms of the Community's apparent consumption of oxalic acid, which, after stabilizing at about 18 500 tonnes from 1986 to 1988, in 1989 increased by 15 % to 21 400 tonnes, the market share held by the imports in question climbed in the same period from 7,5 to 17,2 %. In 1990 Community consumption fell back to 15 500 tonnes, 28 % down on 1989, while the market share of the imports in question rose from 17,2 to 20,3 %.

(b) *Price of imports*

(21) Evidence available to the Commission shows that during the first eight months of 1990 the average unit price of imports originating in India, which had risen by 68 % from 1986 to 1989, was 46,8 % down on the previous year, reaching its lowest level since 1986. Community prices were undercut by an average of 27,2 % during the first eight months of 1990.

(22) Since China did not give satisfactory answers to the questionnaire, the Commission based its provisional calculations on the facts available, i.e. the data given in the complaint; the prices used tally with those supplied by the only importer to cooperate.

Thus the Commission established that undercutting averaged 25,05 % during the first eight months of 1990.

### II. Cumulative effect

(23) In order to establish whether dumped imports were causing material injury, the Commission examined whether there was a case for aggregating imports of oxalic acid originating in India and China. The Commission found that the imported products were so alike as to be interchangeable, that they were in competition on the Community market, that they were distributed through the same networks and that they held considerable shares of the market. The Commission therefore found that the imports in question should be aggregated.

(24) The Indian producer/exporters claimed that, since their share of the Community market was relatively small, their exports to this market should not be aggregated with others. The Commission, observing that Indian exporters held more than 9 % of the market, not only considers this market share far from negligible, but finds that it is increasing all the time. Consequently, the Commission considers that these exports must be aggregated with those of the other parties concerned in the proceeding.

## III. The state of the Community industry

The Commission examined whether dumped imports had materially affected the Community industry concerned.

(a) *Community production*

(25) Community production increased by 4,6 % from 1986 to 1989. The Community's extrapolated 1990 output was down 9,9 % on the previous year, falling to a level below that of 1986.

(b) *Capacity utilization*

(26) In the course of 1990 extrapolated capacity utilization, which had fallen from 80,5 to 77,3 % between 1986 and 1989, fell to 69,6 %.

(c) *Community sales and market share*

(27) Sales by the Community industry were found to have risen by 9,3 % from 1986 to 1989. In 1990 (extrapoled), they were down 28,2 % on 1989.

(28) The Community industry saw its market share drop from 17,2 to 16,3 % between 1986 and 1989, despite a 15 % increase in Community consumption. During the investigation period, this market share dropped a little further to 16 %.

(d) *Stocks*

(29) The Community industry increased its stocks considerably between 1986 and 1989 (up 157 %). By the end of the investigation period, they were found to have increased still further, by almost 341 %.

(e) *Prices*

(30) Examination of the facts available showed that the anti-dumping measures in force had led to an appreciable increase (21,7 %) in prices on the Community market between 1986 and 1989. Prices in the investigation period were down 1 % on the previous year, a decline which acquired momentum in the first eight months of 1990 and attained 3 %.

(f) *Financial results*

(31). The position of the Community industry, which had seen its profits recover in 1988 and 1989 under the influence of anti-dumping measures taken against some countries, worsened and it again recorded losses during the investigation period.

(g) *Employment*

(32) In 1988 the level of employment in the Community industry, which had previously been rising steadily, fell back to its 1986 level.

## IV. Conclusions on the current state of the Community industry

(33) The evidence above shows that imports of oxalic acid originating in India or China increased from 1986 to 1989 at a markedly faster rate than overall consumption, increasing by 162 % against the 15 % increase in Community consumption.

Extrapolated figures for 1990 show Community consumption down by 28 % on the previous year, while imports fell by only 15 %.

Consequently, the market share held by the imports concerned rose from 7,5 % in 1986 to 17,2 % in 1989 and 20,3 % in the first eight months of 1990.

In 1989 the state of the Community industry, which had from 1986 to 1988 increased its production, capacity utilization and stocks as a result of anti-dumping measures against certain countries, began to decline; this downturn became more pronounced during the investigation period. Its sales increased by only 9,3 % between 1986 and 1989, while Community consumption rose by 15 %. Extrapolated figures for 1990 show that the downturn in Community consumption was accompanied by a 28 % drop in sales. In 1990 sales prices, which had until 1989 been rising steadily, began to fall, with the result that a trading loss was registered during the investigation period. It should be noted that the Community industry had made a small profit in 1988 and 1989.

Other indicators, such as employment and returns on investment, also point to a deterioration in the situation of the Community industry since 1989.

(34) In view of the above, the Commission concludes, for the purposes of its preliminary examination, that there has been material injury to the Community industry, within the meaning of Article 4 (2) of Regulation (EEC) No 2423/88.

## G. CAUSATION

### I. Import of dumped imports

(35) When trying to gauge the extent to which the dumping had been the cause of material injury to the Community industry, the Commission found that the Community industry's loss of market share coincided with the growth in the market share held by Indian and Chinese exporters.

(36) The fall in import prices in 1990 exerted a downward pressure on prices in the Community. The Community industry was therefore forced to sell at less than cost price, without, however, being able to stop further considerable erosion of its market share. This brought an increase in production costs, which in turn provoked further losses. The Commission therefore considers that there is a direct causal link between the material injury to the Community industry and undercutting on the Community market by Indian and Chinese exporters.

### II. Impact of other factors

In order to establish whether the Community industry had been injured by imports originating in India or China, the Commission examined whether other factors could have contributed to the injury caused to the industry.

(37) The Commission found that rising Community consumption between 1986 and 1989 was accompanied by a 17 % increase in imports from countries other than India and China ; in 1990, however, these were 51 % (extrapolated figures) down on the year before, i.e. by more than the equivalent of the downturn in Community consumption. Imports from India and China did not follow this trend. Having increased faster than Community consumption between 1986 and 1989, in 1990 they fell less quickly than Community consumption.

(38) While the market share of countries other than Indian and China dropped from 41,1 % in 1986 to 28,6 % in 1990, that of the two countries in question climbed from 7,5 to 20,3 % in the same period.

(39) The Commission found that whereas exporters other than those in India and China had raised their prices by 15,5 % between 1986 and the first eight months of 1990, prices of exports originating in India or China had fallen by an average of 18,1 %.

(40) The Commission concluded by investigating whether the injury to the complainant might to some extent have been caused by other Community producers.

Finding that oxalic acid was only a marginal product to the Community producers which had not complained, that their sales on the Community market were generally in decline, that one of these producers sold the bulk of its proudction to the other, which then sold on the Community market at prices markedly higher than those charged by the complainant, the Commission concluded that the complainant could not have been injured by the activities of these producers.

(41) In the circumstances, the Commission found that, taken in isolation, the volume of dumped imports originating in India or China and the prices at which the product was sold in the Community had to be considered the cause of injury to the Community industry concerned.

## H. COMMUNITY INTEREST

(42) The Commission considers that, without suitable measures to protect it from the material injury caused by dumped imports, the survival of the Community industry is threatened by the collapse of its market share and profit margins. Imposition of an anti-dumping duty will admittedly push up prices for oxalic acid, but the short-term benefit to the user and the consumer from low prices is offset by the restriction of competition, which leads to higher prices in the long term. Falling prices must be a consequence of fair competition and not of dumped imports.

(43) The Commission took note of the fact that China, despite its undertakings, has continued to dump, contributing to the injury suffered by the Community industry and nullifying the measures taken to defend it. This behaviour suggests that simply maintaining in force existing measures would aggravate the situation of the Community industry.

(44) The Commission therefore considers that the Community interest calls for the introduction of defense measures in the form of provisional anti-dumping duties.

## I. PROVISIONAL DUTY

(45) The Commission established the level of provisional duty by comparing the cif price charged in the Community by the exporters concerned with the price considered necessary to remove the injury, based on the costs of the industry concerned plus a 10 % profit margin. This margin was established on the basis of a reasonable return on investment.

(46) The duty on the cif price level established equals the provisionally established dumping margin ; the difference between the price deemed necessary for the Community industry and the export price charged by the exporters in question was higher.

This calculation enabled the following provisional anti-dumping duties to be established :

— India : in view of the minimal differences in the dumping margins established for each of the two exporting companies, which are connected, the duty has been rounded off at 6,5 % ;

— China : 20,3 %.

(47) A period should be allowed for the parties concerned to make known their views in writing and request a hearing. It should be pointed out that all the findings on which this Regulation is based are provisional and calculations may be revised should the Commission propose a definitive duty.

## J. TERMINATION OF THE ANTI-DUMPING PROCEEDING CONCERNING CZECHOSLOVAKIA

(48) In view of the conclusions regarding the non-existence of dumping by Czechoslovakia, and the behaviour of the Czechoslovak exporter, the Commission considers, in the circumstances, that the review should be terminated without defence measures being imposed,

HAS ADOPTED THIS REGULATION :

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of oxalic acid falling within CN code ex 2917 11 00 and Taric code 2917 11 00 * 00, originating in India or China.

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

— 6,5 % for imports of oxalic acid originating in India, and

— 20,3 % for imports of oxalic and originating in China.

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*

The review concerning Czechoslovakia is hereby terminated.

*Article 3*

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and request a hearing by the Commission within one month of 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 13 of Regulation (EEC) No 2423/88, 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, 29 May 1991.

*For the Commission*

Jean DONDELINGER

*Member of the Commission*