COMMISSION REGULATION (EEC) No 2054/91

of 11 July 1991

imposing a provisional anti-dumping duty on imports of dihydrostreptomycin originating in the People's Republic of China

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 11 thereof,

After consultation within the Advisory Committee in accordance with the abovementioned Regulation,

Whereas :

A. PROCEEDING

(1) In April 1990, the Commission received a complaint from the European Council of Chemical Manufacturers' Federations (Cefic) (hereinafter referred to as 'the complainant') on behalf of the only Community producer of dihydrostreptomycin (hereinafter referred to as 'DHS') concerning imports of that product originating in the People's Republic of China and Japan.

(2) The complaint contained evidence of the existence of dumping and of the resulting major injury, which was sufficient to justify the opening of an investigation. The Commission therefore announced, in a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning the product in question, which falls within CN code 2941 20 10.

(3) The Commission officially notified the exporters and importers known to be concerned, and also the complainant, of the initiation of the proceeding. It also gave the parties concerned the opportunity to make their views known in writing and request a hearing. The Chinese and Japanese exporters requested and obtained a hearing.

(4) The Commission requested and received detailed written comments from the Community producer, the exporters, including the Chinese exporters, namely China National Medicines & Health Products, Import & Export Corporation, Sichuan Branch, Chengdu and Shanghai Fourth Pharmaceutical Works, Shanghai, members of the China National Medicines & Health Products, Beijing, and certain importers. The Commission verified all the information which it considered necessary for a preliminary determination of dumping and conducted on-the-spot checks on the Community producer, Rhône-Poulenc Biochimie, Antony, France, the Japanese producer, Meiji Seika, Tokyo, Japan, and three independent Community importers, Marcel Quarré, Paris, France, Helm AG, Hamburg, German and Siemsglüss und Sohn, Hamburg, Germany.

(5) The investigation period set by the Commission for determining dumping was from 1 July 1989 to 30 June 1990.

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

1. Product under consideration and like product

(6) The product for which the notice of initiation of a proceeding was issued is DHS, an anti-infective obtained by hydrogenating streptomycin, a first-generation antibiotic, used particularly for veterinary purposes and falling within CN code 2941 20 10.

(7) The DHS exported by Chinese and Japanese producers to the Community and the DHS sold by the Community producer have the same chemical formula, $C_{42}H_{88}N_{14}O_{36}S_3$. These DHS are interchangeable. The Commission therefore considered that the DHS produced in the People's Republic of China and Japan on the one hand and in the Community on the other were like products.

2. Community industry

(8) The Commission ascertained that the Community producer on whose behalf the complaint had been submitted manufactured all the Community output of the like product. The Commission therefore

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 186, 27. 7. 1990, p. 33.

considered that this producer constituted the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88

C. DUMPING

1. Normal value

(9) For the Japanese producer, the normal value was calculated on the basis of the average price charged on the domestic market. All the sales were taken into account, including sales to a customer in which Meiji Seika has a very small holding. These sales were considered to have taken place as normal commercial transactions, since the prices charged were comparable with those charged to other customers. The prices were net of any rebate or discount directly linked with DHS sales.

(10) As regards the determination of the normal value of DHS from China, the Commission had to take into account the fact that the People's Republic of China does not have a market economy and, therefore, had to find a country which could serve as a reference for calculating the normal value. The complainant had proposed that for this purpose the price of DHS on Japan's domestic market should be taken as a reference, pointing out that Japan was the only market economy country outside the Community where DHS was manufactured and sold. The Chinese exporters contested this choice, referring to the differences between the People's Republic of China and Japan in terms of level of economic development, currencies, and the conditions regarding production costs. The same exporters said that there were other countries which would provide a suitable reference basis. They were unable, however, to back up their statements by giving details of producers in those countries. The Commission had been informed that DHS was produced in Hong Kong but the Hong Kong authorities said there was no producer of DHS there and so any DHS coming from Hong Kong had actually originated elsewhere. Since there was no alternative, the Commission had provisionally to use Japan as reference country.

11) The investigation revealed, however, that the price charged on Japan's domestic market did not represent the right basis. The Japanese producer has a monopoly on his domestic market, and the result is that prices are very high, since profit is not subject to the constraints of competition. It would therefore be unreasonable to make Chinese exporters bear the consequences of this particular economic situation in Japan.

(12) On the other hand, Japan's production costs are not affected by this monopoly. The Commission therefore considered it appropriate to base the normal value for the People's Republic of China on the constructed normal value in Japan.

(13) Meiji Seika's profit margin was exceptional, owing to the special situation of the Japanese market. The Commission therefore estimated the profit margin on the basis of the level considered to be normal in this sector, in view of the fact that DHS is a first-generation, hence already old, antibiotic. The margin estimated in this way was 5 %.

(14) Some of the raw materials used in manufacturing Japanese DHS originate in the People's Republic of China. The investigation showed that the prices invoiced for these transactions bore no relation to the comparable costs of the only other producer in the world (Rhône-Poulenc).

(15) The Commission therefore considered it reasonable to adjust the constructed normal value to take account of the fact that Japanese producers buy these raw materials at a price which is lower than their production cost in a market economy.

2. Export price

(16) The ex-works export price of DHS exported by the Japanese producer was determined on the basis of the prices actually paid or payable for all the export sales to the Community, net of all taxes, discounts and rebates actually granted and directly related to the sales in question.

The ex-works export price of DHS exported by Chinese producers was determined by the same method. The adjustments required to determine the price at ex-works level were estimated on the basis of the Japanese producer's ancillary costs.

D. COMPARISON

(17) The comparison between normal value and export price was made on the basis of the ex-works level for the export price on a transaction-by-transaction basis and for the same stage of marketing. The differences affecting price comparability were taken into consideration in accordance with Articles 2 (9) and 10 of Regulation (EEC) No 2423/88.

(18) The Japanese producer asserted that the normal value should be adjusted in order to take account of the differences in the conditions of sale on the Community and Japanese markets. He pointed out first of all that he had a monopoly on the Japanese market and that the normal value had to be reduced in order to take account of this lack of competition. The Commission did not feel that this argument was justified. Harmful price differentiation was contrary to Community law and international law, irrespective of the reasons. The monopoly situation in Japan did not in itself determine the level of prices on the domestic market. If the exporter exploited his monopoly in Japan in order to charge higher prices on his domestic market than for export, he must bear the consequences of his freely taken decision. Since it causes major injury to Community industry, there is no reason why price differentiation should escape the application of anti-dumping rules.

Meiji Seika also stated that he sold DHS in smaller quantities to a larger number of customers in the Community than in Japan, and that the normal value should therefore be reduced. However, the possible effects of this situation on costs were not revealed. In the absence of sufficient proof, this request for adjustment was rejected.

(19) The Chinese producers asserted that their product was less effective than the DHS produced by Japan or the Community and that, as a result of this difference in the physical characteristics, the normal value had to be reduced accordingly. The results of the analyses supplied in support of this request revealed that a 9 % adjustment of the normal value was justified in the light of the differences in the physical characteristics, namely the lesser effectiveness of DHS produced in China, in so far as price comparability could be affected if no adjustment were made.

E. DUMPING MARGIN

(20) Preliminary examination of the facts reveals that exports of DHS by Japanese and Chinese exporters involve dumping. The dumping margins are equal to the difference between the normal values and the export prices. As regards the People's Republic of China, the Commission has taken into account the fact that the exporters were controlled and represented by a single organization and that the Chinese administration was able to influence export prices. Consequently, a uniform dumping margin has been determined for Chinese exports on the basis of a weighted average. The dumping margins are 76 % of the total cif value at the Community frontier of the imports of DHS from Japan for the Japanese exporter and 47,6 % of the total cif value at the Community frontier of imports of DHS from the People's Republic of China for all Chinese exporters.

F. INJURY

(a) *Total consumption, market volume and share*

(21) DHS consumption in the Community fell from an index 100 (1) in 1985 to an index 81 over the investigation period.

Imports of DHS from Japan declined by 51 % between 1985 and the investigation period. Consequently, their market share dropped from an index 100 in 1985 to an index 52 during the investigation period.

DHS imports from the People's Republic of China increased by 1 450 % between 1985 and the investigation period. Their market share therefore rose from an index 100 in 1985 to an index 1 500 over the investigation period.

Sales by the Community industry fell from an index 100 in 1985 to an index 83 over the investigation period and their market share dropped from an index 100 to an index 87 over the same period. Sales by Community industry have therefore declined significantly.

(b) *Prices*

(22) In order to assess the degree of price undercutting, the Commission considered the ex-works selling price of DHS produced by the Community industry and the cif prices following customs clearance of DHS imported from the People's Republic of China and Japan. The prices considered at these marketing stages have been judged comparable without any adjustments having to be made.

(23) It has emerged from comparison of these prices that producers in the People's Republic of China charged prices 33 % lower than Community prices, after account had been taken of the 9 % difference in the effectiveness of the DHS from China. The prices charged by the Japanese producer were not any lower than the Community producer's prices.

(1) The information concerning injury is given in the form of indices, for reasons of confidentiality.

(24) The Community industry's selling prices fell from an index 100 in 1985 to an index 89 during the investigation period.

(c) *Other economic factors to be taken into consideration*

(25) The Commission ascertained that while the Community industry's production capacity had remained constant, its utilization rate had fallen from an index 100 in 1985 to an index 70 during the investigation period. At the same time stocks had risen from an index 100 to an index 160.

The indices for the value and volume of the Community industry's sales fell from an index 100 in 1985 to indices 70 and 84 respectively over the investigation period. Profits also showed an unfavourable trend, since the profits of 1985 gave way to negative figures in 1987 and the lowest level was reached during the investigation period. The return on investment followed the same pattern. The level of employment fell from an index 100 in 1985 to an index 91 during the investigation period.

(d) *Conclusion*

(26) The Community industry has undergone a drop in sales, prices and utilization of its production capacity and a deterioration in its financial results. Its economic situation is therefore precarious and it is consequently suffering major injury.

G. CAUSAL LINK BETWEEN THE DUMPED IMPORTS AND THE INJURY

(a) *Cumulative effect*

(27) The Commission looked into the matter of whether the effects of the imports from Japan and China should be analysed on a cumulative basis. Assessment of the cumulative effects of imports from a number of countries is required where the products imported and Community production are in competition, where there is a significant level of imports and where the conduct of the various exporters on the Community market is comparable. In those circumstances, each exporter country is seen to have contributed to the injury and a comprehensive approach is therefore justified.

(28) In this case, the exporters' conduct differs widely. The Chinese exporters adopted an aggressive attitude, charging prices very much lower than the Community market prices, in order to acquire a substantial part of the Community market. The Japanese producer, although he had reduced his prices as a reaction to the Chinese exporters' conduct, in turn lost major shares of the Community market as a result of the Chinese producer's practices, but he did not at any time charge prices lower than the Community industry's prices and therefore charged prices much higher than those charged by the Chinese exporters. The Commission therefore concluded that the effects of the imports from China and the imports from Japan should not be considered on a cumulative basis.

(b) *Cause and effect*

(29) The Commission endeavoured to ascertain the extent to which the injury suffered by the Community industry had been caused by the dumping by Chinese and Japanese exporters. It noted that the reduction in market shares and the reduction in the Community industry's profit margin coincided with the increase in the volume of DHS imports from the People's Republic of China. The volume of imports of DHS from Japan had considerably declined, however, as had the volume of the Community producer's sales.

(30) Furthermore, Chinese exporters, owing to the size of their market shares and the fact that their prices were low, placed heavy downward pressure on the level of DHS prices in the Community and consequently on the level of the Community producer's prices. All the price-undercutting recorded stems from the wide dumping margin. Since the price level is a determining factor in the decision to buy, the extremely low price of DHS from China had become the reference price on the Community market. Chinese exporters therefore prevented the Community industry from keeping its prices at a suitable level, thereby causing a substantial deterioration in its financial situation.

(31) The conduct of the Japanese exporter did not play any role in the process of lowering prices. He did not charge prices lower than the Community industry's prices, and his limited market share only declined. The prices of DHS from Japan merely evolved in line with the Chinese producer's price, while remaining at a significantly higher level. The drop in the level of the Japanese exporter's prices is not a reason for the drop in the Community producer's prices, but is only a consequence of the drop in the Chinese producer's prices. The Commission therefore considers that imports of the Japanese product, although they involved dumping, did not cause any injury to the Community industry.

(32) The Chinese exporters alleged that the injury suffered by the Community industry had been caused by the drop in DHS consumption in the Community and also that it was not an objective assessment of the facts but a partial view of the Community producer's economic situation. The Commission notes, however, that while the fall in consumption could possibly explain some of the drop in production and sales, it does not in any way explain the drop in market share and prices, and the effects on the Community producer's profit margin. The Commission did not ascertain during the investigation any factor which showed or seemed likely to show that the Community producer's management could have contributed to the injury suffered.

(33) There are no significant quantities of DHS imported from other countries which could give rise to the injury suffered by the Community industry. The pattern of the Community producer's exports has not contributed to the injury.

(34) The Commission therefore notes that dumping by exporters of DHS in the People's Republic of China has caused major injury to the Community industry.

Furthermore, there is no sign at this stage of the proceeding to suggest that imports of DHS from Japan have caused or contributed to the injury suffered by the Community industry.

H. DUTY

(35) In the absence of a causal link between imports of DHS from Japan and the injury suffered by the Community industry, it is not necessary to apply anti-dumping measures to Japan. Measures are, however, needed in the case of imports from China.

(36) In order to determine the measures required to counter the harmful effects of dumping by Chinese exporters, the Commission examined, in accordance with Article 13 (3) of Regulation (EEC) No 2423/88, whether it would be excessive to fix the duty at the level of the dumping margin. Such a level would be excessive if it exceeded the level required for eliminating the injury. The Commission noted in that respect that the Community industry had suffered a considerable market loss and that its profits had been obliterated by the invasion of imports from China. It should be noted that if the prices of the Chinese product were increased to the extent of the dumping margin the increase would still be less than the amount by which the Community industry would have to raise its prices in order to eliminate the injury and restore its viability under normal market conditions. Imposition of a duty of the same amount as the dumping margin would therefore not be excessive, since a lower duty would not be sufficient to remove the injury, and is consequently fully justified pursuant to Article 13 (3) of Regulation (EEC) No 2423/88.

I. COMMUNITY INTEREST

(37) It is nevertheless advisable to examine whether it would be in the Community's interests to impose a duty.

(a) *General considerations*

(38) The aim of the anti-dumping duties is to eliminate the dumping which is causing injury to the Community industry and to restore fair competition in the general interest.

(39) Although the imposition of anti-dumping duties could affect the level of the prices charged by exporters in the Community and so have an influence on the relative competitiveness of their products, these measures are not intended to reduce competition on the Community market. On the contrary, the removal of the advantages unduly acquired by dumping is intended to prevent the decline of Community industry and so help maintain and promote a healthy economic situation.

(b) *Considerations specific to this case*

(40) In order to determine whether it is in the Community's interests to take measures against dumped imports of DHS from the People's Republic of China and Japan, the Commission had to consider that fact that the Community industry comprised only one producer.

(41) Exporters and some importers have in this respect asserted that the imposition of anti-dumping duties could eliminate from the market DHS of Chinese and Japanese origin and create a monopoly or dominant position for the Community producer. This fear does not, however, appear to be justified. The imposition of anti-dumping duties is not intended to eliminate exporters from the Community market. The duties are in any event set at a level which enables dumping, or even only the harmful effects of dumping, to be eliminated.

Furthermore, since the Japanese producer has not contributed to the injury, the imposition of a duty does not concern him at this stage. He should therefore stay on the Community market on the present terms, and if he stays this should help maintain competition on the market.

(42) On the contrary, the halting of Community production of DHS, which might well happen if the present situation were to continue, would have a potential risk for the end-users' security of supply and would reduce the number of DHS suppliers on the Community market. The possible disadvantage of an immediate increase in the price of imports as a result of the imposition of anti-dumping duty would therefore be offset by the benefits of maintaining a viable Community industry and healthy, fair competition.

(43) Furthermore, if dumping, which is an unfair practice, were to cause Community production to be stopped, this would result in additional job losses in an industrial area already affected by rising unemployment.

(44) DHS serves mainly in the manufacture of veterinary medicines which are widely used in livestock production, owing to their low cost. DHS is, however, only one of the components making up the production cost of these medicines. The imposition of an anti-dumping duty on DHS imports will result in only a marginal increase in the price of these medicines for the users, and the increase will be too small to deter these users.

(45) Lastly, assessment of the seriousness of the injury suffered by the Community industry suggests that action has to be taken to defend the Community's interests in order to prevent injury from being caused during the proceeding.

(c) *Conclusion*

(46) The Commission therefore considers that the imposition of anti-dumping duties is likely to enable the injury suffered by the Community industry to be eliminated without any other really harmful effects. The Community's interests reasonably demand that the Community industry be defended against the Chinese exporters' unfair trading practices. It is therefore necessary to introduce a provisional anti-dumping duty on DHS imports from the People's Republic of China.

(47) The parties concerned are given time in which to make known their views and request a hearing. All the conclusions set out for the purposes of this Regulation are provisional and may be reconsidered if a definitive duty needs to be imposed on the basis of a Commission proposal,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of dihydrostreptomycin falling within CN code 2941 20 10 and originating in the People's Republic of China.

2. The rate of duty, applicable to the free-at-Community-frontier net price prior to customs clearance, shall be 47,6 %.

3. The provisions in force concerning customs duties shall apply.

4. The 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

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 request a hearing 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 that of its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for 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, 11 July 1991.

For the Commission

Frans ANDRIESSEN

Vice-President