COUNCIL REGULATION (EEC) No 3434/91

of 25 November 1991

imposing a definitive anti-dumping duty on imports of oxalic acid originating in India or the People's Republic of China

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

Whereas :

A. PROVISIONAL MEASURES

(1) Commission Regulation (EEC) No 1472/91 [2] imposed a provisional anti-dumping duty on imports into the Community of oxalic acid falling within CN code ex 2917 11 00 originating in India or the People's Republic of China.

Council Regulation (EEC) No 2833/91 [3] extended that duty for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

(2) Following imposition of the provisional duty, the parties which had so requested were granted a hearing by the Commission. They also made their views on the provisional findings known in writing. The Commission examined their oral and written comments.

(3) At their request, the parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of the amounts secured by way of provisional duty. They were allotted a period in which to make comments. Some made use of this opportunity.

C. PRODUCT CONSIDERED ; LIKE PRODUCTS

(4) In the absence of new arguments concerning the product considered and its similarity to the Community product, the Council confirms the findings put forward by the Commission in recitals 10 and 11 of Regulation (EEC) No 1472/91.

D. DUMPING

(a) Normal value

(5) For the purposes of the definitive findings, normal value was established using the same methods used in the provisional calculation of dumping margins, taking account of new facts and arguments put forward by the parties.

(6) The Indian exporters claimed that normal value should have been established on the basis of a monthly weighted average instead of a weighted average for the entire period of the investigation. In this instance, the Commission considers that a monthly weighted average could indeed be used.

(7) In the light of these considerations, the Commission will calculate normal value for oxalic acid from India on the basis of a weighted monthly average and confirms the calculation of normal value for oxalic acid from China contained in recital 13 of Regulation (EEC) No 1472/91.

The Council confirms these findings.

(b) Export price

(8) The Chinese exporters wished the export prices provisionally calculated on the basis of available facts, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88, to be determined using Eurostat statistics rather than the figures contained in the complaint.

The Commission takes the view that in this case the figures contained in the complaint, which come from traders whose information has been confirmed by an importer which cooperated in the investigation, are more suitable than Eurostat statistics. The Commission observed that Eurostat import figures for the product were not in fact correct.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 138, 1. 6. 1991, p. 62.
[3] OJ No L 272, 28. 9. 1991, p. 2.

(9) With regard to imports of oxalic acid from China, therefore, and in the absence of comments on the matter from Indian exporters, the Council confirms the findings put forward by the Commission in recitals 14 and 15 of Regulation (EEC) No 1472/91.

(c) **Comparison**

(10) In the absence of new arguments from the interested parties, the Council confirms the findings put forward by the Commission in recital 16 of Regulation (EEC) No 1472/91.

(d) **Dumping margins**

(11) 1. *India*

On the basis of the new normal value, the definitive dumping margin is 4,4 % for Punjab Chemicals and Pharmaceuticals Ltd and Excel Industries Ltd.

2. *China*

The Council confirms the observations and findings put forward by the Commission in recital 17 of Regulation (EEC) No 1472/91.

E. INJURY

(12) In its preliminary findings, the Commision considered that the Community firm in question had suffered material injury. The main grounds for this belief were the rapid increase in exports, undercutting by the exporters concerned on the Community market and the consequent decrease in selling prices for the Community complainant.

(a) **Volume, market share and export price**

(13) With regard to export volume, the Indian exporters requested that calculations be made on the basis not of the accounting data received by the Commission in the replies to its questions (data verified by its investigators), but on lower Eurostat figures. This was on the grounds that re-export from the Community to third countries might have taken place. The Commission rejected this request, considering that it had no information confirming this reasoning and that the Indian exporters had failed to offer even minimal proof of such occurrences.

(14) The Indian and Chinese exporters also challenged the Commission's provisional findings with regard to market share. However, since their figures were based on inaccurate statistics for Community consumption (sales figures for all Community producers and figures for imports of Indian origin), the Commission confirmed the observations it had put forward in recitals 19 and 20 of Regulation (EEC) No 1472/91.

In the absence of other considerations, the Council confirms the findings put forward by the Commission in recitals 19 to 22 of Regulation (EEC) No 1472/91.

(b) **Cumulative effect**

(15) The Indian exporters claimed that taking an aggregate of Chinese and Indian exports of oxalic acid to the Community was inappropriate in that the economic structures, tax systems, raw materials subsidies and manufacturing procedures of the two countries were different.

(16) The Chinese exporters, meanwhile, challenged aggregation of Chinese and Indian exports on the grounds that they had followed a different sales strategy from the Indian exporters, bringing down their exports during the first eight months of 1990.

(17) The Commission took the view that the Indian exporters' arguments were not strictly relevant to the considerations governing aggregation of exports from third countries. It rejected the Chinese exporters' arguments on the grounds that their conduct was comparable to that of the Indian exporters for the investigation period as a whole, although it had differed to a degree for a few months.

The Commission therefore upholds the validity of the criteria set out in recital 23 of Regulation (EEC) No 1472/91.

In the light of these considerations, the Council confirms the findings put forward by the Commission in recitals 23 and 24 of Regulation (EEC) No 1472/91.

(c) **The state of the Community industry and conclusions concerning injury**

(18) In the absence of new arguments from the interested parties, the Council confirms the observations and findings put forward by the Commission in recitals 25 to 34 of Regulation (EEC) No 1472/91.

F. CAUSAL LINK BETWEEN DUMPING AND INJURY

(19) The Indian exporters disputed that their exports of oxalic acid to the Community might have caused injury to the Community producer concerned,

arguing that their share of the market was negligible and that the Community complainant's difficulties were caused by errors of management such as an increase in production capacity and ill-considered investment within the existing company and in the establishment of a new company.

(20) The Chinese exporters also disputed causing injury, adding to the claim referred to above the argument that the Community complainant's difficulties were caused mainly by the activity of other Community producers.

(21) The Commission pointed out that India's market share was 9,4 %, and therefore not negligible. It said that the investment which had been criticised and the increase in production capacity had occurred at a time when Community consumption had risen substantially. The Commission stressed that the new company's production capacity had not been considered during the assessment of injury, as it had not begun production during the period of investigation.

(22) With regard to other Community producers, the fact that the production of oxalic acid was only a marginal activity for them, the fact that one of the producers sold most of its output to the other and the fact that the prices they charged on the Community market were significantly higher than those of the complainant Community firm led the Commission to conclude that these firms' activities could not have caused injury to the complainant.

(23) The Council therefore confirms the findings put forward by the Commission in recitals 35 to 41 of Regulation (EEC) No 1472/91.

G. COMMUNITY INTEREST

(24) The Indian exporters claimed that the risk in imposing anti-dumping measures on their exports of oxalic acid was that the Community firm would acquire a monopoly, given that anti-dumping measures were already applied to other countries.

This argument seems to have little foundation considering the complainant's share of the Community market, the presence of other Community producers and the rate of market penetration in the Community of imports from third countries.

(25) In the light of these considerations, the Council confirms the findings put forward by the Commission in recitals 42 to 44 of Regulation (EEC) No 1472/91.

H. DUTY

(26) The Council confirms the provisional measures (*ad valorem* anti-dumping duties corresponding to the dumping margins calculated) set out in recitals 45 to 47 of Regulation (EEC) No 1472/91.

I. UNDERTAKING

(27) The Indian producers/exporters offered a price undertaking. After consultation this undertaking was not considered acceptable by the Commission. The Commission notified the producers/exporters of the reasons for this decision.

J. COLLECTION OF PROVISIONAL DUTIES

(28) In the light of the dumping margins calculated for imports of oxalic acid originating in India and China and the material injury caused to the Community industry in question, the Council considers it necessary that the amounts secured by way of provisional anti-dumping duty be definitively collected at a rate corresponding to the definitive duty imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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*10, originating in India or the People's Republic of China.

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

— 4,4 % for imports of oxalic acid originating in India, and

— 20,3 % for imports of oxalic acid originating in the People's Republic of China.

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

Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Commission Regulation (EEC) No 1472/91 shall be definitively collected at the rate corresponding to the definitive duty.

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, 25 November 1991.

For the Council

The President

J. M. M. RITZEN