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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3836/91

of 19 December 1991

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

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 Articles 9 and 12 thereof,

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

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EEC) No 2054/91 (2), (hereafter referred to as the provisional Regulation) imposed a provisional anti-dumping duty on imports of dihydrostreptomycin (hereafter referred to as DHS) originating in the People's Republic of China. The Council, by Regulation (EEC) No 3090/91 (3) extended this duty for a period not exceeding two months.

(2) The Commission did not impose measures concerning Japan, since it found that dumped Japanese imports did not cause any injury to the Community industry. In this respect the proceeding concerning Japan has been terminated by a Commission decision.

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of the provisional anti-dumping duty, the Chinese exporters as well as the complainants, requested, and were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

(5) Owing to the complexity of the proceeding, in particular to the detailed verification of the data involved and the numerous arguments put forward, the investigation could not be concluded within the time limit provided for in Article 7 (9) (a) of Council Regulation (EEC) No 2423/88 (hereafter referred to as the basic Regulation).

C. DUMPING

(a) Normal value

(6) For the purpose of the definitive findings, normal value was, in general, established on the basis of the same method as that used in the provisional findings.

(7) As explained in recitals 10 to 15 of the provisional Regulation, normal value for the Chinese exporters was established on the basis of the constructed normal value in Japan.

(8) DHS is only produced in two countries apart from the Community, one of which is the People's Republic of China and the other, Japan, which has a particular market situation. According to Article 2 (5) of the basic Regulation, the normal value has to be established in an appropriate and not unreasonable manner on the basis of the prices or the constructed value in a market economy third

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No L 187, 13. 7. 1991, p. 23.
(3) OJ No L 293, 24. 10. 1991, p. 1.

country by adding cost of production and a reasonable margin of profit. As explained in recitals 11 to 15 of the provisional Regulation, the prices in Japan were not fairly comparable with the export prices of the Chinese exporters. Normal value had, therefore, to be constructed on the basis of the Japanese costs of production and a reasonable profit margin. The result was then adjusted to render it reasonable and appropriate by taking account of the fact that one of the raw materials was sourced in the People's Republic of China and the use of its cost price would have reintroduced the distortions which Article 2 (5) of the basic Regulation was intended to eliminate.

Since Rhône Poulenc is the only other known producer of dihydrostreptomycin in the world, its costs, exclusive of selling, general, and administrative expenses and profit, pertaining to the relevant raw material, were utilized as there is no established world market price for this raw material which could be used as an alternative. The constructed normal value for Japan was therefore adjusted by the difference between the cost of production of the raw material of the only known market economy producer and the cost price of the Chinese raw material to the Japanese producer of dihydrostreptomycin.

(9) The Chinese exporters contested this method, arguing that the Commission had confused different methods of determining normal value as set out in Article 2 (5) of the basic Regulation. The Commission cannot accept this argument. The method used is fully in accordance with Article 2 (5), the normal value being adjusted as explained above to make it reasonable and appropriate as is required. Thus, the fact that this adjustment was made by reference to the cost of a raw material in the Community does not mean that the Commission mixed the methods.

(10) As far as a reasonable profit margin is concerned, it is recalled that, due to the predominant market position enjoyed by the Japanese producer on its domestic market, the profit margin found for this Japanese producer was exceptional and therefore it was not considered appropriate to include it in the calculation of the constructed value for the Chinese exporters. For this reason, a profit margin of 5 %, as requested by the Chinese exporters, was used in the calculation of the normal value, as this was thought to be reasonable for a mature generic pharmaceutical product used in the agricultural sector.

The Council confirms these findings and conclusions of the Commission as well as those set out in recitals 9 to 15 of the provisional Regulation.

(b) **Export price**

(11) The export price of DHS exported by the Chinese producers was determined as explained in recital 16 of the provisional Regulation. No comments from any party have been made on this course of action. Therefore the Council confirms the Commission's findings.

(c) **Comparison**

(12) The comparison between normal value and the export prices was made on a transaction-by-transaction basis at the ex-works level and at the same level of trade. For the purposes of ensuring a fair comparison the Commission took account, where appropriate, of differences concerning price comparability, such as differences in physical characteristics and selling expenses. The Chinese exporters claimed, and the Commission after examination agreed, that a 9 % downward adjustment of the normal value was justified in the light of the differences in the physical characteristics, namely the lower potency of DHS produced in China.

(13) In addition, the Chinese exporters claimed that the differences in the manufacturing process between DHS produced in Japan and China justify a further adjustment. However, no material evidence was put forward by the exporters as provided for by Article 2 (9) (b) of the basic Regulation. Therefore the Council confirms the Commission's position.

(14) The Chinese exporters also argued that the Commission had neglected other factors of adjustment such as differences in end-use, in customer perception due to lower potency and colouration of Chinese DHS. These differences were already taken into account by the abovementioned 9 % allowance, because they are a consequence of the lower potency. It is considered that these claims are not justified and this is confirmed by the Council.

(d) **Dumping margins**

(15) The final examination revealed that exports of DHS by the Chinese exporters were dumped. The dumping margin is equal to the difference between the normal value and the export prices. The Commission has taken into account the fact that the Chinese exporters are controlled and represented by a single state organization which is also able to influence the export prices. Consequently, a uniform dumping margin has been determined for the Chinese exporters who cooperated.

(16) The two Chinese exporters which cooperated claimed, however, that they acted independently and were therefore entitled to individual dumping margins. In this respect, the Commission noted that these Chinese exporters were represented by a single Chamber of Commerce on behalf of which identical arguments and considerations for the two exporters, without any evidence of differences in circumstances except for differences in potencies of DHS, were submitted. In addition, these exporters were unable to show that they enjoyed a high degree of independence, that they are not state controlled in their commercial behaviour, especially in the setting of export prices and that they had the possibility to transfer any part of their profit outside China. For these reasons, the exporters' claim, in this respect, has to be rejected.

(17) As far as other Chinese exports to the Community are concerned, an analysis of Eurostat figures for imports of DHS and a comparison with the declared export volumes by the Chinese exporters which cooperated shows that it is highly probable that other Chinese producers export DHS to the Community with a similar purity to that of the Japanese producer. No evidence was available on the individual circumstances of these exporters for which, therefore, a dumping margin had to be calculated on the basis of the facts available as provided for in Article 7 (7) (b) of the basic Regulation. Since it has to be assumed that these non-cooperating exporters export higher potency DHS, no allowance can be made for differences in potency levels. Therefore, it was considered reasonable that the dumping margin calculated for all other exporters from the People's Republic of China should not take account of any allowances claimed by the Chinese exporters which cooperated.

On the basis, the dumping margins expressed as a percentage of cif frontier prices were found to be for:

Long March Pharmaceutical Plant, Sechuan	37,46 %
Shanghai Fourth Pharmaceutical Plant	37,46 %
For all other Chinese exporters	50,65 %.

These margins are equivalent to ECU 14,9 per kilogram of base DHS for Long March Pharmaceutical and Shanghai Fourth Pharmaceutical Plant and ECU 20,16 for all other Chinese exporters. The Council confirms these findings.

D. INJURY

(18) The Commission concluded in its provisional findings that the Community industry had suffered material injury. While further investigation revealed that the capacity utilization was not as low as indicated in the provisional Regulation but dropped from an index of 100 in 1985 to 84 during the investigation period, all other injury factors remained unchanged even after the submission by the interested parties.

(19) Given the above and for the reasons explained in recitals 21 to 26 of the provisional Regulation, the Council confirms that the Community industry has suffered material injury.

E. CAUSATION OF INJURY

(20) In recitals 29 to 34 of the provisional Regulation, the Commission found that the increase in the volume of DHS imports from the People's Republic of China, at low prices which undercut the prices of the EC industry, coincided with the reduction in the Community industry's profit margin, reduction in market share and price erosion. In this respect, the Chinese exporters themselves have indicated that the DHS market is highly price sensitive. It is, therefore, clear that the lower prices charged by the Chinese exporters was an important factor in the realignment of market shares amongst the Chinese exporters and the Community industry and also in the price erosion and the consequent losses suffered by the Community industry.

(21) It was also found that the Japanese exporters' sales of DHS in the Community had declined considerably and had not undercut the Community industry prices. It was considered, therefore, that these exports did not contribute to the injury to the Community industry. As regards any other factors which had an impact on the situation of the Community industry, the Council is aware that demand for the product concerned has contracted in recent years. However, this factor has not been imputed to the injury caused by the Chinese exporters. Furthermore, the Commission considers that the large increase in dumped imports from China at very low prices into a contracting market has only served to aggravate the injurious effect of the dumping.

(22) For these reasons and for those explained in recitals 29 to 34 of the provisional Regulation, the Council confirms that the dumped Chinese imports, taken in isolation, have caused material injury to the Community industry.

F. DUTY

(23) As regards the duty, the Commission has recalculated what is necessary to remove the injury using the method as explained in recitals 35 and 36 of the provisional Regulation. Given the low prices of the Chinese DHS in the Community and the high losses suffered by the Community industry, the difference between these Chinese prices and a price which would allow the Community industry to achieve a reasonable return on sales on the basis of a reasonable sales volume is still considerably higher than the dumping margins now calculated. Therefore, in accordance with Article 13 (3) of the basic Regulation, the dumping margins should be imposed as definitive duties, since only these two amounts would be adequate to remove the injury caused by the dumping.

(24) In addition, the Commission considers that the structure of a state controlled economy gives the Chinese exporters considerable room for manœuvre to further decrease their export prices. This concern of the Commission has been confirmed by the considerable price undercutting which has taken place in the Chinese export transactions. In such a situation, a fixed duty amount or an *ad valorem* duty by itself would not guarantee the elimination of the injurious effect of the dumping. Therefore, it is considered that a minimum price has to be established in order to deter further injurious dumping after the imposition of the definitive anti-dumping measures.

(25) The Commission also had to take account of the fact that an increase of the export prices of the Chinese exporters may be caused by other factors than the elimination of dumping. Indeed, the production of DHS is an energy intensive process so that changes in the energy costs may provoke an increase in overall costs which will lead to an increase of the export price. However, this increase would not necessarily result in a reduction in the dumping by the Chinese exporters, as the normal value could also increase by a corresponding amount. Therefore, it is considered appropriate that in such a case the form of the duty should be that of a set amount per kilo of the imported DHS. The dumping amounts are ECU 14,9 per kilo of base DHS for the cooperating organizations and ECU 20,16 for the other Chinese exporters. Consequently, given the potential for absorption of any duty in the market concerned, it is necessary that the imposition of a minimum price is combined with the imposition of a set amount of duty.

(26) While this combination of two forms of duty is necessary to guarantee the elimination of the injury caused by dumping and its recurrence, the Commission is ready to investigate, in due course, refund or review applications of importers or the Chinese exporters, should a change in price lead to a reduction in dumping margins or for any other reasons should any change in circumstances be considered sufficient justification.

(27) The Community industry requested that the definitive anti-dumping duty be imposed retroactively in accordance with Article 13 (4) (b) (ii) of the basic Regulation. No evidence of the legal requirements as set out in the relevant provision has been provided and therefore the claim was rejected.

(28) The Council confirms these views and the conclusions as set out in recitals 23 to 27 of this Regulation.

G. COMMUNITY INTEREST

(29) No further facts or arguments concerning Community interest were submitted to the Commission by any of the parties. The Council therefore confirms the Commission's conclusions, set out in recitals 40 to 46 of the provisional Regulation, that it is in the Community's interest to eliminate, by anti-dumping measures, the injurious effects of the dumping by the Chinese exporters and thus, to prevent the further decline of the Community industry.

H. UNDERTAKING

(30) A price undertaking has been offered on behalf on two Chinese producers. However, the price level proposed would not eliminate the dumping as established nor its injurious effect, as provided for in Article 10 (2) (b) of the basic Regulation. The Commission has considered that the price undertaking is not acceptable and has informed the exporters concerned of this decision and the reasons therefor.

I. COLLECTION OF PROVISIONAL DUTIES

(31) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts collected by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively

imposed, which is equivalent to an *ad valorem* rate of duty of 37,4 % of the net, free at Community frontier price, prior to customs clearance, as far as imports from Shanghai Fourth Pharmaceutical Plant and Long March Pharmaceutical Plant, Sechuan are concerned. For all other Chinese exporters an *ad valorem* rate of 47,6 % of the net, free-at-Community frontier price, prior to customs clearance should apply,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive 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 amount of duty shall be ECU 20,16 per kilogram of base DHS or the difference between the cif price and ECU 58,4 per kilogram of base DHS whichever is the higher (additional Taric code 8604).

For Long March Pharmaceutical Plant, Sechuan and for Shanghai Fourth Pharmaceutical Plant (additional Taric code 8603), the duty shall be ECU 14,9 per kilogram of base DHS or the difference between the cif price and ECU 53,16 per kilogram of base DHS whichever is the higher.

3. The provisions in force concerning customs duties shall apply to the said duty.

Article 2

The amounts collected or secured by way of provisional anti-dumping duty pursuant to Regulation (EEC) No 2054/91 shall be definitively collected to the extent of the amounts resulting from the application of the definitive duty as imposed in Article 1 (2). However, the extent of the provisional amounts definitively collected shall be limited as follows :

— for Long March Pharmaceutical Plant, Sechuan and for Shanghai Fourth Pharmaceutical Plant, an *ad valorem* duty rate of 37,4 % shall be applied subject to a maximum of the definitive duty as imposed in Article 1 (2) for imports from these firms, and

— for all other Chinese exporters, an *ad valorem* rate of duty of 47,6 % shall be applied subject to a maximum of the definitive duty as imposed in Article 1 (2).

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, 19 December 1991.

For the Council

The President

P. DANKERT