COMMISSION REGULATION (EEC) No 1031/92

of 23 April 1992

imposing a provisional anti-dumping duty on imports of potassium chloride (potash) originating in Belarus, Russia or Ukraine

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

Whereas :

A. PROCEDURE

(1) In June 1990 the Commission received a complaint from the European Potash Producers' Association (EPPA), acting on behalf of producers accounting for the Community's entire potash output.

(2) The complaint about potash imports originating in the Soviet Union included evidence of dumping and resultant material injury which was considered sufficient to justify the initiation of an investigation. Consequently, the Commission announced in a notice published in the *Official Journal of the European Communities* the initiation of an anti-dumping proceeding concerning imports of potash originating in the Soviet Union and falling within CN code 3104 20 (2). The Soviet Union's potash mines were located in what are now the republics of Belarus, Russia and Ukraine, which have therefore become the product's countries of origin.

(3) The Commission officially notified the exporters and importers known to be concerned, the representatives of the exporting country and the complainants, gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing, and sent a questionnaire to all concerned.

(4) The Community produces made known their views orally and in writing, as did certain exporters and their umbrella organization.

Community producers :

— Société Commerciale des Potasses et de l'Azote (SCPA), France,

— Mines des Potasses d'Alsace (MDPA), France,

— Kali und Salz, Germany,

— Comercial de Potasas (Coposa), Spain,

— Ercros, Spain,

— Potasas de Subiza, Spain,

— Cleveland Potash Limited, United Kingdom.

Exporters and their umbrella organization :

— Soyuz Agrochimexport, Russia,

— Agrochim Export Association.

Importers :

Two importers are related to the exporters :

— Ferchimex, Belgium,

— Fersam, Switzerland.

The following independent importers also completed the questionnaire :

— Ameropa, Switzerland,

— Demesa, France,

— Champagne Fertilisant SA, France,

— Société Conseil Distribution, France,

— Superfos, Netherlands.

Ameropa requested and was granted a hearing.

(5) The Commission collected and verified all the information it deemed necessary to determine whether there was sufficient evidence of dumping and injury to justify the initiation of an investigation and carried out checks at the premises of all the above Community producers and the following importers into the Community : Ferchimex, Demesa, Superfos and Ameropa. The Community producers proposed Canada as a reference country.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 274, 31. 10. 1990, p. 18.

(6) The dumping investigation covered the period from 1 January 1990 to 30 June 1990 (investigation period).

(7) The investigation overran the normal duration of one year owing to the volume and complexity of the information collected and examined and the need to find firms in the reference country willing to cooperate after those that had initially consented to do so pulled out at a late stage.

B. PRODUCT, LIKE PRODUCT AND COMMUNITY INDUSTRY

(a) The product

(8) The product allegedly being dumped is potassium chloride : the potassium content is variable and is expressed as the percentage of the weight of the dry anhydrous product represented by K_2O. There are three basic specifications :

— a potassium content not exceeding 40 % K_2O, by weight, on the dry anhydrous product, and therefore falling within CN code 3104 20 10,

— a potassium content exceeding 40 % K_2O but not 62 % falls within CN code 3104 20 50,

— a potassium content 62 % K_2O falls within CN code 3104 20 90.

The imports originating in countries once part of the Soviet Union consist entirely of products falling within CN codes 3104 20 10 and 3104 20 50.

(9) The first two specifications cover two grades of a single product. Their physical and chemical properties are the same and their use, as agricultural fertilizers, identical. Differences in their K_2O content reflect only a difference in their potash concentration and they cannot therefore be regarded as different products. The two grades are, moreover, interchangeable. The grade used is a matter of personal preference. Potash falling within CN codes 3104 20 10 and 3104 20 50 is available either as powder ('standard' form) or granules ('granulated' form). Either form may be used a fertilizer, alone or blended with other fertilizers.

(10) The product containing over 62 % K_2O has no agricultural use. It is a refined product and consequently has different chemical properties from the other two types of potash. It is used as a raw material in the pharmaceutical and chemical industries. This product is not therefore interchangeable with either of the products meeting the first two specifications and has not been taken into account in the preliminary conclusions.

(b) Like product

(11) The Community industry produces several grades of potash with the following K_2O contents : 40, 60, 60,5, 61 and 62 %.

The Commission finds that potash produced in the Community and Canada has the same physical and chemical properties as the product under investigation and must therefore be considered a like product to that exported from the countries that were formerly part of the Soviet Union.

(c) Community production

(12) The Commission found that the Community producers on whose behalf the EPPA had lodged the complaint accounted for the Community's entire output of the like product. Consequently, the Commission deemed them to constitute the Community industry within the meaning of Article 4 (5) of the Regulation (EEC) No 2423/88.

C. DUMPING

(a) Normal value

(13) Since the Soviet Union was, not at the time of the investigation, a market economy country, normal value had to be calculated according to Article 2 (5) of Regulation (EEC) No 2423/88. The complainants proposed Canada. The choice of the second-largest potash producer, after the Soviet Union, seemed appropriate to the Commission, especially since prices there are the result of real competition.

After several fruitless contacts, one producer finally agreed to cooperate : the Toronto-based Potash Company of Canada Limited. The Commission carried out on-the-spot checks on the data supplied by this producer and its mining subsidiary. Neither the importer given a hearing, nor the exporters or the producers opposed the choice of Canada.

(14) Normal value was therefore established on the basis of prices on Canada's domestic market. In order to ensure that these prices generated a profit in normal trading, the Commission compared them with production costs.

It emerged that certain temporary and exceptional costs borne by the company would have to be deducted. These costs reflect the special situation of this Canadian mining area and it would be unreasonable to make exporters in the former Soviet Union bear the burden of such costs without any adjustment being made. Once they had been deducted, it was clear that Canadian market prices permitted Canadian firms to make a profit from normal trading.

(15) Normal value was therefore determined on the basis of the average Canadian market price for the most common domestically produced granulated grade. In the case of standard grade, the volume of sales on the Canadian market only was too small to be representative, so it was necessary to take into account the prices of exports to the United States. The United States and Canada form a single highly competitive market. Since these countries display the properties of a single market, their market may be considered comparable to the Canadian domestic market for products like potash.

(16) The prices used are the prices actually paid, net of any discounts and rebates directly connected with the sales in question.

(b) **Export prices**

(17) Soviet potash was exported through both official and unofficial networks. Only the official exporters cooperated in the proceeding.

(18) Since the independent importers bought the imported product from middlemen outside the Soviet Union, it was impossible to establish a reliable export price on the basis of the purchase prices collected by the Commission. Since, moreover, the middlemen failed to cooperate in the proceeding, the transactions concerned were not taken into account.

(19) The links between the importers Ferchimex and Fersam and the Soviet exporters meant that the export prices had to be recalculated according to Article 2 (8) (b) of Regulation (EEC) No 2423/88. They were calculated on the basis of the prices actually paid by the first independent customer in the Community, net of all taxes, discounts, all costs incurred between the time of import and resale, and a profit margin, and after the deduction of all transport costs incurred between Community ports and the USSR and the costs of transport from the mine to the port of loading in the USSR.

(20) The adjustments required for the calculation of the ex-mine price were calculated on the basis of the costs of importers taking part in the investigation, and on the basis of the costs actually paid or payable for transport between the USSR and the Community, but excluding transport costs within the USSR and the importer's profit margin. The profit margin deducted (5 %) equals that of the independent fertilizer importers. Since the distances between the Soviet Union's mines and ports are comparable to those in Canada, and in view of the unreliability of costing in the USSR, transport costs within the USSR were calculated on the basis of those actually paid or payable in Canada.

D. **COMPARISON**

(21) Normal value and export prices were compared at the ex-mine stage, transaction by transaction and at the same stage of marketing in the case of the export prices. Adjustments made were in accordance with Article 2 (10) of Regulation (EEC) No 2423/88.

(22) The producers of the territories formerly part of the Soviet Union asked that normal value be adjusted to take account of qualitative differences between their product and Canadian potash. Since the physical and chemical properties of Soviet potash are substantially similar to those of the Canadian products (they contain the same proportion of potassium), and the Soviet producers produced no evidence to the contrary, this request for an adjustment must be rejected in accordance with Article 2 (9) (b) of Regulation (EEC) No 2423/88.

E. DUMPING MARGIN

(23) A preliminary of the evidence reveals that dumping has occurred. The dumping margin equals the amount by which the constructed normal value exceeds the price of exports to the Community. In view of the Soviet economic system a single weighted average dumping margin was calculated for all exporters. The weighted average dumping margin was set at 35 % of the total cif value of the exports in question.

F. INJURY

(a) Total consumption, volume and market share of imports

(24) The information available to the Commission suggests that Community consumption of potash in the period 1986 to 1990 was relatively stable. It stood at 6 085 000 tonnes in 1987, 5 761 000 tonnes in 1988, 5 737 00 tonnes in 1989 and 5 823 000 tonnes in 1990 (this last figure being extropolated from the figures for the first six months of the year: 2 913 000 tonnes).

(25) In that same period imports of potash originating in the Soviet Union rose steadily. Imports in the first half of 1990 were 109 % up on 1986 levels, having risen from 271 295 tonnes in 1986 to 326 514 tonnes in 1987, 324 388 tonnes in 1988, 487 344 tonnes in 1989 and 566 970 in 1991 (extrapolated from the figures for the first half of the year: 315 090 tonnes). Soviet imports increased their market share from 5,10 to 10,8 % in the period from January 1986 to June 1990.

(b) Prices

(26) *Depression of prices*

The Community industry was forced to cut its selling prices by about 12 % from 1986 to 1990. Throughout that period prices fluctuated and drifted downwards, without ever recovering to 1986 levels. The downward trend accelerated between 1989 and 1990.

(27) *Undercutting*

A price comparison shows that the Soviet producers undercut their Community counterparts by, on weighted average, about 3 %.

Since, as the considerable fall in prices shows, the potash market is transparent and reacts very quickly, and undercutting immediately brings down the prices of all the other players.

(c) State of the Community industry

(28) Community producers' fluctuating sales figures for the period 1986 to 1990 show that, despite considerable efforts leading to a small increase from 1987 to 1990, sales did not recover to 1986 levels.

Sales in millions of ecus went from 829 in 1986 to 701 in 1987, 758 in 1988, 808 in 1989 and 766 for the whole of 1990 (extrapolated from the figure 383 for the first half of the year).

(29) The Commuity industry's market share remained stable at about 75 % from 1986 to 1990.

(30) The capacity of the Community industry increased very slightly in the period from 1986 to 1990, rising from 6 082 000 tonnes to 6 228 000 tonnes. Output, however, fell. The percentage of capacity in use fell from 68 % in 1986 to 66 % in 1990.

(31) The Community industry's losses increased sharply from – 14,5 % in 1989 to – 27,1 % during the investigation period.

(32) The number of people employed in the Community potash industry fell considerable, from 16 796 in 1986 to 14 387 in 1990, a decline of 14 %.

(d) Conclusion

(33) Although holding its market share by increasing sales from 1987 to 1990, the Community industry saw its prices fall and its financial results deteriorate considerably. Its economic position is therefore precariuos and it is suffering material injury, characterized mainly by an appreciable deteriora-

tion in a situation that had been improving until the imports concerned began.

G. CAUSES OF THE INJURY

Causal link between the dumping and the injury

(34) The Commission found that the increasing losses incurred by the Community industry coincided with the rise in cheaper potash imports from the Soviet Union. In a market as transparent and sensitive as that for potash, the slightest undercutting of prices depressed the entire market, thereby increasing the losses of a Community industry attempting to hold its share of the market by increasing sales. It was therefore the prices of the dumped Soviet imports that prevented the Community industry from raising prices and improving the situation.

The coincidence of the very substantial increase in imports of Soviet potash in 1989 and the steepening of the decline in the indicators for the Community industry, and prices in particular, from that point is very significant. It shows that dumped imports caused material injury.

Other factors

(35) The possibility that the Community industry could have been affected by imports originating in other countries cannot be ruled out. However, the Commission excluded the possible adverse impact of such imports from the injury caused by the imports involved in this proceeding. At the end of its preliminary examination, the Commission, determining the injury solely on the basis of the imports under consideration, took account of their volume and price.

(36) In the course of its investigation, the Commission found no evidence to suggest that the material injury suffered by the Community producers could be ascribed to shrinking demand or poor management.

(37) The Commission therefore concludes that, taken in isolation, dumping by exporters based in countries once part of the Soviet Union is causing material injury in the Community industry.

H. DUTY

Amount of the duty

(38) In order to determine the measures needed to counter the injury caused by dumping by Soviet exporters, the Commission examined, in accordance with Article 13 (3) of Regulation (EEC) No 2423/77, whether a duty set at the level of the dumping margin would exceed the amount needed to remove the injury. The Commission calculated a reference price for the Community industry based on its present production costs and a profit margin (9 %) considered reasonable in view of production factors and the constraints imposed by technological advances and environmental protection. The Commission consideres that the Soviet exporters' free-at-Community-frontier prices should be brought up to that target price in order to give the Community industy a chance of achieving profitability and reversing its unfortunate economic situation. However, Soviet potash prices are so low that increasing them to the target price would exceed the dumping margin. The imposition of a duty equalling the dumping margin is therefore fully justified in terms of Article 13 (3) of Regulation (EEC) No 2423/88.

Form of the duty

(39) In view of the room for manoeuvre enjoyed by exporters in countries still without a market economy, and in view of the impact of even the slaughtest undercutting on the potash market, the Commission considers that neither a fixed-rate nor an *ad valorem* duty would be certain to remove the injury caused by dumping. The duty to be imposed on imports of potassium chloride from Ukraine, Belarus, and Russia should therefore take the form of a variable duty amounting to the difference between the net free-at-Community-frontier price per tonne of potassium chloride, not cleared through customs, and a minimum price established on the basis of the normal value for each specification in order to ensure that the injury caused by dumping is removed once and for all.

(40) Since the product's value depends on its K_2O content, the value of potash matching the first specification, not produced in Canada (see recital 9), can be established pro rata according to its K_2O content: In this case, where the K_2O content is 40 % or less, normal value would be two thirds of that established for potash of the second specification (see recital 9). The second specification can cover varying contents, but these are not, however, matched by any significant variations in the commercial value of this class of product.

It was therefore considered reasonable, for the purposes of provisional measures, to calculate a minimum price for each of the first two specifications and each of their two forms (standard or granulated).

I. COMMUNITY INTEREST

(a) General

(41) Anti-dumping duties are intended to stop dumping that is causing injury to the Community industry and restore fair competition.

(42) Although the imposition of an anti-dumping duty can affect the prices charged by exporters to the Community and, consequently, influence the relative competitiveness of their products, the measures are not inteded to reduce competition on the Community market. They are intended to abolish an advantage unfairly acquired by dumping and thus prevent the further decline of the Community industy and contribute to the restoration of a sound economic situation.

(b) Special considerations in this case

(43) The Commission feels that the substantial injury shown to have been caused to the Community industry by dumped imports warrants countermeasures, and that without them the sector will continue to register losses and face the threat of premature extinction.

(44) Failure to act against this unfair competition would perpetuate injury, endangering thousands of jobs in an already ailing sector in which major social intervention will be required in the years ahead.

(45) It should be noted that potash is used mainly in agriculture and that it is vital that the Community continue, as it sees fit, to secure its supplies from the Community industry.

(46) Lastly, it should be stressed that the imposition of anti-dumping measures should not remove products originating in the countries concerned from the Community market or even, as the producers seem to fear, deprive them of a valuable source of the foreign exchange so desperately needed by the economies of countries once part of the Soviet Union, since the measures in question take the form of a minimum price on a market where Community demand exceeds production.

Conclusions

(47) The Commission considers that the imposition of an anti-dumping duty in the form of a minimum price would establish fair competition, remove the injury to the Community industy and prevent the disappearance of a Community industry, with all the attendant hardship. It is therefore in the Community's interest to impose anti-dumping measures in the form of a provisional anti-dumping duty.

(48) Those concerned should be allowed a period in which to make known their views and request a hearing. The conclusions adopted for the purposes of this Regulation are provisional and subject to review in the event of a Commission proposal, for the imposition of a definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of potash falling within CN codes 3104 20 50 and 3104 20 10 originating in Belarus, Russia or Ukraine.

The duty shall amount to the difference between the minimum prices indicated below and the net free-at-Community-frontier-price, not cleared through customs:

— potash with a K_2O content of 40 % or less:

ECU 62 per tonne KCl for standard grade (Taric code: 3104 20*10), ECU 67 per tonne KCl for granulated grade (Taric code: 3104 20 10*20),

— potash with a K_2O content exceeding 40 but not 62 %:

ECU 92 per tonne KCl for standard grade (Taric code: 3104 20 50*10), ECU 103 per tonne KCl for granulated grade (Taric code: 3104 20 50*20).

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

3. 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 to be heard by the Commission within one month from the entry into force of this Regulation.

Article 3

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, Article 1 of 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, 23 April 1992.

For the Commission

Frans ANDRIESSEN

Vice-President