COMMISSION REGULATION (EEC) No 2720/93

of 28 September 1993

imposing a provisional anti-dumping duty on imports of isobutanol originating in the Russian Federation

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 under the above Regulation,

Whereas :

A. PROCEDURE

(1) In June 1992 the Commission received a complaint lodged by the European Chemical Industry Council (Cefic) on behalf of producers representing a major proportion of the Community production of isobutanol.

The complaint contained evidence of dumping of the said product originating in the Russian Federation and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

(2) The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding concerning imports of isobutanol originating in the Russian Federation, falling within the CN code ex 2905 14 90, and commenced an investigation.

(3) The Commission officially notified the exporters and importers known to be concerned and the representatives of the exporting country of the initiation of the proceeding and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(4) Representatives of the Russian producers were granted a hearing and made their views known in writing.

(5) One company which processed isobutanal in the Community also made it views known to the Commission.

(6) The Commission sought and verified all the information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following :

(a) *Community producers :*

— BASF AG, Mannheim, Germany,

— Hüls, AG, Marl, Germany,

— Elf Atochem, Oxochimie, Paris, France ;

(b) *Importers in the Community :*

— Related importer : Sogo SA, Paris, France,

— Unrelated importer : Mitsui & Co. Benelux SA, Brussels, Belgium.

Limited information has been supplied by other traders and importers who have also imported isobutanol from the Russian Federation.

(7) No Russian exporter replied to the Commission's questionnaire.

(8) As the United States of America has been used as an analogue country for the purpose of calculating normal value, the Commission conducted an investigation at the premises of a number of United States producers of isobutanol, representing a major part of the domestic sales of isobutanol in that country.

(9) The investigation of dumping covered the period 1 July 1991 to 30 June 1992 (the 'investigation period').

B. PRODUCT UNDER INVESTIGATION

1. Product description

(10) The product concerned is isobutanol, a colourless neutral liquid with a characteristic odour. Its main application is as a solvent in the paint and laquer industry. It is also used as a plasticizer and as raw material for the production of acrylates.

Isobutanol produced in the Community appears as a particular homogeneous product and therefore constitutes a single product.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 239, 18. 9. 1992, p. 3.

2. Like product

(11) The Commission also found that the isobutanol produced by the Community industry or by the United States producers (see recitals 13, 14 and 15) and isobutanol imported from the Russian Federation have the same basic characteristics. However, some differences in specifications, and especially the lower purity of the imported product, limit its application in the production of certain higher quality paints and plastics.

Nevertheless, given that, for most users, the Russian, Community and United States products are interchangeable, the Commission considered that the product imported from the Russian Federation is comparable to isobutanol produced and sold both by the Community and by the United States producers, within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

C. COMMUNITY INDUSTRY

(12) The Commission found that the complainants accounted for 94 % of the Community production of isobutanol and thus formed a major proportion of the total Community production in accordance with Article 4 (5) of Regulation (EEC) No 2423/88.

D. DUMPING

1. Normal value

(13) In order to establish the normal value of isobutanol produced in the Russian Federation, the Commission had to take account of the fact that this country does not have a market economy and thus it had to base its determination of value on the conditions in a market economy country in accordance with Article 2 (5) of Regulation (EEC) No 2423/88. In this connection, the complainants suggested Brazil as an analogue country. However, the Commission did not consider the Brazilian market appropriate for the purpose of determining normal value, as there is only one producer in Brazil and the Brazilian market is protected by relatively high import duties.

Representatives of the Russian producers proposed Poland as an analogue country, arguing that Poland has the same production technology as the Russian Federation. This proposal was not corroborated by adequate information. Therefore, the Commission examined, on the basis of the best information available, whether Poland could be considered an appropriate analogue country. On the basis of the information held by the Commission's services, the choice of Poland does not seem appropriate because this market is being operated by a sole producer. Furthermore, the Polish market is protected by high tariffs. Poland, therefore, could not be considered a representative analogue country.

(14) Of the limited remaining market economies with a significant production of isobutanol, the Commission considered that the United States was the most reasonable choice, as it was the only market outside the Community in which a sufficient number of producers were present to ensure the existence of a competitive market. Domestic sales and production were at levels comparable to the Russian exports and the number of producers was five. It was also established that prices of the United States producers' domestic sales were in reasonable proportion to the production costs.

(15) Consequently, in accordance with Article 2 (5) (a) (i) of Regulation (EEC) No 2423/88, normal value has been based on domestic sales prices of a sample of United States producers representing about 69 % of their domestic market in terms of sales volume.

2. Export price

(16) In view of the non-cooperation of the Russian exporters, the Commission used the best information available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

(17) In this context, the Commission examined whether Eurostat prices could be used. As explained under recital 22, Russian exports of isobutanol are, to a considerable extent, recorded by Eurostat as imports of 'secret origin'. However, not all of those 'secret origin' imports do originate in Russia or consist of isobutanol originating in Russia, there is no indication as to the value attaching to those volumes imported from Russia. Consequently, the information emanating from Eurostat could not be used for determining cif prices. For the same reason, cif prices supplied by the complainant, being an estimate based on Eurostat figures, could not be used.

(18) However, two importers, one related and one unrelated, which together accounted for 26 % of Russian exports to the Community, cooperated with the Commission. In the case of sales to the unrelated importer, export prices were determined on the basis of the actual cif Community frontier price, duty unpaid. In the case of sales to the related importer, the cif price was reconstructed by deducting from the average resale price to the first independent customer in the Community all costs between importation and resale; plus the profit

margin of the unrelated importer, in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88.

Since isobutanol is a homogeneous commodity which is traded by importers throughout the Community at similar prices for any given period, the Commission considered that the verified prices of these two importers constituted the most reasonable information available for the calculation of export prices, within the meaning of Article 7 (7) (b) of Regulation (EEC) No 2429/88.

3. Comparison

(19) Normal value, at ex-factory level, was compared with the export prices at ex-national frontier level. For the purpose of ensuring a fair comparison, the Commission took account of the difference in the physical characteristics between isobutanol produced in the United States and isobutanol imported from the Russian Federation (see recital 11). Consequently, normal value was adjusted by an amount corresponding to a reasonable estimate of the value of that difference in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88.

Furthermore, adjustments were made, within the meaning of the abovementioned Article, with respect to inland freight, sea freight, insurance, handling/loading, packing, credit costs and technical assistance and salesmen's salaries.

4. Dumping margin

(20) The comparison of normal value and export price determined for the Russian producers shows the existence of dumping, the margin — expressed as a percentage of cif price, free-at-Community-border — being 46,1 %.

E. INJURY

1. Preliminary considerations

(21) (a) A certain portion of the isobutanol produced by the Community industry is consumed by the producers themselves. During the investigation period, this internal consumption represented 41 % of total production and has diminished from 40 777 tonnes in 1988 to 33 536 tonnes during the investigation period.

In this respect, the Commission has examined whether the captive and free markets can be considered distinct for the assessment of injury on the basis of the criteria laid down by the Court of Jusice. The Court has held (1), in this context, that only the free market should be considered for the purpose of establishing injury, if the volumes of the product used for intra-company consumption do not enter into direct competition with the sales on the free market and, consequently, do not suffer from the effects of dumping. As this is the situation in the present case, the assesment of the injury has been exclusively based on data referreing to the free market.

(22) (b) Eurostat statistics, besides covering imports from the Russian Federation, report a significant and growing volume of imports of isobutanol under the heading 'Secret origin'. Furthermore, CN code ex 2905 14 90 covers products other than isobutanol. Nevertheless, from the information supplied by the importers and other sources, it has been possible to establish that almost thetotal volume recorded under the 'Secret origin' heading was isobutanol originating in the Russian Federation. The Commission therefore considers that 'Secret origin' import volumes are to be aggregated with the import volumes recorded as originating in the Russian Federation, in order to provide a proper estimate of the actual imports of isobutanol from that country.

2. Volume and market shares of dumped imports

(23) In the light of the abovementioned considerations (recital 21), Community consumption of isobutanol was established to be 132 335 tonnes in 1988 and 95 818 tonnes during the investigation period; that means that Community consumption, excluding internal consumption, declined by 27 %.

The aggregation of the two sets of data concerning isobutanol declared as being of Russian origin and that of secret origin, in conformity with the considerations of recital 22, shows an increase of the imports in question from 17 838 tonnes in 1988 to 27 993 tonnes in the investigation period, an increase of 56 %.

(24) As the Community market has been shrinking during the investigation period, this increase of import volume from the Russian Federation led to more than a doubling of the market share of Russian exporters, from 13,5 % in 1988 to 29,2 % in the investigation period.

By contrast, the Community industry saw its market share falling from 64,3 % to 40,6 % over the same period.

(1) Gimelec v. Commission (1991), ECR-I, p. 5589.

3. Prices of dumped imports

(25) Prices of the imported product were found to be lower than those of the Community producers during the investigation period. The Commission compared the average cif price, duty-paid, of the Russian product with the average ex-factory price of the Community producers at the same level of trade. The difference has been expressed as percentage of the cif value, duty unpaid. The price undercutting found was 12,6 % during the investigation period.

4. Situation of the Community industry

(a) *Production, production capacity and utilization rate*

(26) The volume of production of isobutanol by the Community industry decreased from 133 175 tonnes in 1988 to 80 190 tonnes in the investigation period (– 39,8 %). The main drop in production took place in 1989 and 1990, when some companies reduced the production capacity of isobutanol plants. Production declined between 1990 and the investigation period by a further 9 %.

(27) The production capacity went down from 196 800 tonnes in 1988 to 157 500 tonnes in the investigation period. However, this 20 % drop in production capacity has not been enough to keep stable the utilization rate of the plants, which nevertheless declined from 73,8 % in 1988 to 57,3 % during the investigation period.

(b) *Sales and market shares*

(28) Sales on the Community market by the industry concerned suffered a sharp fall from 85 063 tonnes in 1988 to 38 948 tonnes during the investigation period. The decrease of 54,2 % in those sales on the Community market has been twice as great as the decline in consumption over the same period.

(29) Consequently, the market share of the Community industry was reduced substantially from 64,3 % in 1988 to 40,6 % during the investigation period.

(c) *Sales prices*

(30) The Community producers sales prices proved to be relatively stable during 1988 and 1989.

(31) However, from 1990 onwards, under increasing pressure from Russian imports, the Community industry was compelled to reduce its sales prices and between 1990 and the investigation period its sales prices of isobutanol fell by 31,5 % from ECU 507,5 per tonne to ECU 347,8 per tonne — a level which, on balance was insufficient to cover produciton costs.

(d) *Investments*

(32) No clear trend appears from investment figures. In fact, during the period under consideration the Community producers reduced their production capacity. All investment was designed either to introduce new technology or to comply with safety and environmental legislation.

(e) *Profitability*

(33) The considerable decline in the sales prices of isobutanol in a situation of relatively stable production costs during the last three years inevitably had a negative impact on the profitability of Community industry. The average profit margin on turnover, which was still positive in 1988 (+ 9,32 %) for the Community industry as a whole, turned into increasing losses in the following years. By 1991 a loss was recorded by every company of the Community industry and during the investigation period the losses on isobutanol reached their highest level with a 33,9 % loss on turnover.

5. Conclusion on injury

(34) The preliminary examination of the facts on injury shows that the Community industry experienced a considerable drop in sales both in volume and in terms of market share. The negative movement of sales combined with sharp price depression resulted in heavy and increasing losses.

(35) The Commission concludes therefore that the industry concerned has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

F. CAUSE OF INJURY

(a) *Effect of dumped imports*

(36) In its examination of the extent to which the material injury suffered by the Community industry was caused by the dumped imports, the Commission found a clear inverse correlation between the movement of the Community industry market share and that of the Russian imports. While the former lost 24 percentage points of market share, the latter gained 16 percentage points between 1988 and the investigation period.

(37) Moreover, as commodity markets are transparent and competitive, Russian exporters could expand their isobutanol export volumes by applying prices which undercut those of the Community producers. The latter were obliged to follow the Russian producers in their systematic price reductions if they wanted to sell their product. It is therefore considered that the drop in sales volume and prices, and consequently the heavy losses made by the industry concerned, are the direct consequence of the dumped imports.

(b) *Other factors*

(38) Russian exporters claimed that the injury suffered by the Community industry was not only due to imports originating in the Russian Federation but also, and to a larger extent, to imports from other countries. The allegation was based on the fact that in 1991 the volume and market share of imports from third countries were higher than those from the Russian Federation.

The allegation cannot be accepted for several reasons. First, during the investigation period, the market share of Russian imports rose to 29,2 %, overtaking the market share of all other third-country imports. Secondly, the Russian exporters more than doubled their market share between 1988 and the investigation period, while the market share of the other third countries showed a downward trend during the last three years. In particular, Poland, previously the second major exporter of isobutanol to the Communityx, saw its exports diminish during the investigation period to a point at which its market share represented only 10,3 % of total Community consumption.

(39) Russian exporters further argued that the decrease in prices of isobutanol could not be exclusively connected to imports from the Russian Federation, because of the considerable decline in the price of propylene, the main raw material for isobutanol production. This is only partially correct. While the cost of propylene accounted for 70 % of the cost of production of the isobutanol, propylene prices in the Community declined by only 6,6 % during the period under consideration for the injury evaluation. Thus the price decline for propylene had only a limited effect on the isobutanol price and cannot explain a price drop as great as that found in the investigation (see recitals 30 and 31).

(40) It was also argued that the difficulties of the Community industry are due to the decline of consumption of isobutanol in the Community market. However, this fall in demand has been equivalent to the reduction of production capacity in the Community.

(41) Accordingly, it must be concluded that the substantial and increasing volume of imports of isobutanol from the Russian Federation and their low, dumped prices have been an important cause of the price depression on the Community isobutanol market and hence of the financial losses recorded in that sector. Those imports taken in isolation are therefore considered to have caused material injury to the Community industry.

G. COMMUNITY INTEREST

(42) When examining the Community interest, the Commission found that Community producers had made large investments to rationalize production. In particular, since the middle of the 1980s, the Community industry has introduced a new production technology (low-pressure process) entailing a lower energy consumption and allowing a higher flexibility in the output rate of isocomponents. This indicates the determination of the Community industry to remain competitive in the oxo-alcohol business.

(43) The heavy losses recorded for isobutanol had a strongly negative impact on the profitability of the plants for the production of oxo-alcohols as a whole. If the present situation created by the dumped import continues, a large number of oxo-plants would have to shut down. The recent investments made to rationalize the production would therefore have been in vain. The production of the other oxo-alcohols, namely n-butanol and 2-ethylexanol, could be also affected. In such a case, widespread repercussions upstream and downstream of the production process would be likely.

(44) The main Community processor of isobutanol argued that the imposition of a duty would result in an increase in isobutanol prices and that this could weaken the competitive position of the isobutanol processing industry on the market for derivatives in the face of the complainant industry, which uses its own isobutanol to produce the same derivatives.

In considering this argument, sight should not be lost of the fact that, under present conditions the price advantage enjoyed by the processors is the consequence of an unfair trade practice causing injury to the Community industry. Moreover the increase in costs for processors following the imposition of an anti-dumping duty would be limited, in view of the considerable number of Community and third-country suppliers on the Community market.

(45) In addition, as regards the producers of the end products in which isobutanol is used (paints and plastics), the effect of anti-dumping measures on their competitive position would be extremely moderate, given the limited impact of the cost of this product on the end products. Indeed, as far as the main application (covering over 80 % of all uses of isobutanol) of isobutanol is concerned, namely as a solvent for paints, it has been estimated that, should the isobutanol price increase as a consequence of anti-dumping measures, the cost of the end product would go up by only 0,2 %. As far as the application as plasticizer (less than 20 %) is concerned, the impact on the cost of the final product would be less than 4 %.

(46) In addition, in the interests of ensuring stability of supply of isobutanol, the Community industry, as a reliable supplier of this product, should be prevented from being forced out of the market which in the absence of anti-dumping measures is likely to be the case.

(47) No other arguments were raised by the other economic operators on this market.

(48) After considering the various interests involved, the Commission concludes that it is in the Community interest to remove the effects of the injury on the Community industry and to restore fair competition by the imposition of anti-dumping measures with regard to imports of isobutanol originating in the Russian Federation.

H. PROVISIONAL DUTY

(49) In order to establish a level of duty adequate to remove the injury caused by dumping, the Commission calculated a price which would allow the Community industry to cover its cost of production and to obtain a reasonable profit.

In this context, a 5 % return on sales was considered sufficient to finance the long-term investment in this sector.

(50) The comparison of this target price with the weighted average cif price, duty paid, of the Russian isobutanol results in a duty level which exceeds the margin of dumping (see recital 20). Consequently, in conformity with Article 13 (3) of Regulation (EEC) No 2423/88, the provisional anti-dumping duty has to be established at the level of the dumping margin.

(51) In order to avoid the consequences of manipulation of the invoice price and to secure the collection of the necessary amount of the duty, the Commission considers that the anti-dumping duty should be expressed as a fixed amount of ecus per tonne. The calculation of the dumping margin related to cif price results in ECU 102 per tonne.

(52) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of isobutanol falling within CN code ex 2905 14 90 (Taric code 2905 14 90 10), originating in the Russian Federation.

2. The duty applicable shall be a fixed amount of ECU 102 per tonne.

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

4. The release for free circulation in the Community of the product 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 apply to be heard orally by the Commission within one month of the date of 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, 28 September 1993.

For the Commission
Leon BRITTAN
Vice-President